

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 886 OF 2016

MR. GODFREY JOHN FERNANDES ... Petitioner

Versus

MRS. MATILDA RODRIGUES ... Respondent

Shri Gajendra Usgaonkar, Advocate for the
Petitioner.

CORAM:- C. V. BHADANG, J.

DATE:- 7th OCTOBER, 2016

ORAL ORDER:

Heard Shri Usgaonkar, the learned Counsel
for the petitioner.

2. The challenge in this petition is to, two
orders, both dated 14.06.2016 passed by the
learned Senior Civil Judge at Mapusa in
Matrimonial Petition No. 40/2015/A. By the order
below Exhibit D-13, the application filed by the
petitioner herein (respondent before the learned
Trial Court) under Order XII, Rule 6 of CPC for
decreeing the counter claim on the basis of
admission, has been dismissed. By the order below
Exhibit D-12, the application for amendment of the

written statement to the counter claim, has been allowed.

3. It is contended on behalf of the petitioner that the marriage between the parties has already been dissolved by the Patriarchal Court, in which there is a finding that the respondent has "given cause for divorce". Reliance is placed on Article-27 of the Family Laws in order to submit that the spouse who "gives cause for divorce", shall lose all the benefits that might have been received or would be receiving from the other spouse, whether they have been stipulated in the ante-nuptial agreement or assured subsequently.

4. The petition before the Trial Court is filed by the respondent for dissolution of marriage, in which the present petitioner has raised a counter claim for direction to the respondent to surrender all the deposit receipts due to mature in Account No. SB/01/0014571 of the

Corporation Bank and the Deposit Receipt dated 26.08.2008. The petitioner is further seeking a direction to the respondent to take away the cupboard, clothes and other personal articles from the residence of the petitioner and return the gold ornaments to the petitioner.

5. It appears that the present respondent filed reply to the counter claim, in which, in paragraphs (c), (d) and (e), the respondent admitted the material part of the counter claim. This led the petitioner to file an application for passing a decree in terms of Order XII, Rule 6 of CPC. The respondent thereafter filed an application for amendment of the counter claim, in which she sought to introduce the following paragraphs:

"(f-1) That the respondent has desired the return of the gold items as also the fixed deposits and other amounts which constituted the property of the married couple i.e. the petitioner and the respondent

during the subsistence of the marriage, since the petitioner and the respondent were married under the regime of communion of assets.

(f-2) That the respondent however whilst doing so ought to have enlisted the entire properties/assets of the couple as existing during the subsistence of the marriage, at the time of seeking the annulment of the marriage.

(f-3) That it was necessary that the respondent also account for the gold chain that was given by the family of the petitioner to the respondent as also the share of the respondent in the property bearing Survey No. 247/9 of Socorro Village and the house that was constructed therein from the monies of the couple, in addition to the other properties/assets that formed the assets of the couple during the subsistence of the marriage.

(f-4) That without the entire properties of the couple married

under the regime of communion of assets, and as existing at the time of the annulment of the marriage being separated by a Court Order, the respondent cannot be said to be entitled to the return of the gold items or the amounts under the fixed deposit receipts."

6. The learned Trial Court has allowed the said application for amendment. In view of the fact that the application for amendment is allowed, the Trial Court has rejected the application for passing a decree on admission.

7. It is submitted on behalf of the petitioner that in view of the judgment of the Patriarchal Court and Article-27 of the Family Laws, the respondent would not be entitled to raise such a defence. He therefore submits that the amendment could not have been allowed. It is submitted that once, the respondent had admitted the material part of the counter claim, the Trial Court ought to have granted a decree on admission.

8. I have carefully considered the circumstances and the submissions made. Admittedly, the application for amendment is moved at the stage when the trial has not commenced. At this stage, it is neither necessary nor appropriate to go into the merits of the amendment. The question whether the respondent would be able to substantiate the plea introduced by way of an amendment, would have to be gone into at the stage of trial. The gist of the amendment is that the entire property, including movables has to be enlisted, and cannot be separated in part. On carefully going through the impugned order allowing the amendment, I do not find that any case for interference is made out.

9. Once the Trial Court has allowed the amendment, the counter claim cannot be said to be admitted. Thus, a decree on admission could not have been passed. The impugned order does not suffer from any infirmity. Needless to mention that the petitioner would get an opportunity to

contest the petition as well as the counter claim on its own merits. The rival contentions in this regard are left open. No case for interference is made out.

In the result, the writ petition is dismissed, with no order as to costs.

At this stage, the learned Counsel for the petitioner states that the matrimonial petition may be expedited, in which the pleadings are complete. In such circumstances, the learned Trial Court shall proceed to decide the petition as expeditiously as possible and an endeavour shall be made to decide the same preferably within a period of one year from the receipt of this order.

C.V. BHADANG, J.

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