

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 904 OF 2016

Mr. Paul A. D'Souza	.. Petitioner
vs.	
Mrs. Sangeeta P. D'Souza	.. Respondent

Mr. Sandeep Waghmare for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 20 JANUARY 2016.

P.C. :-

- 1] Not on board. Upon production, taken on board.
- 2] The challenge in this petition is to the orders dated 16 December 2015 made below Exhibit-23 and Exhibit-19 by the Family Court No.2, Bandra, Mumbai.
- 3] By the order made under Exhibit-23, the Family Court has merely permitted the Respondent to insert "*Section 27 (d) of the Special Marriage Act, 1954*" in lieu of "*Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955*", in the cause title to the counter claim filed by the said Respondent.
- 4] The Family Court has rightly observed that permitting an amendment to this nature will neither occasion any prejudice to the Petitioner nor is there any legal bar to permit any amendment to this nature. There is no case made out to interfere with the impugned order.

5] The order made below Exhibit-19 merely records that there is no necessity to frame a preliminary issue, as urged by the Petitioner and that the issue raised by the Petitioner will be taken up alongwith all other issues, which arise in the matter. Again, there is no error, much less jurisdictional error in the order. The Family Court has rightly observed that the mode of performance of marriage is a question of fact, which can be decided only on the conclusion of the trial. Therefore, there was really no case made out to insist upon the said issue to be framed as a preliminary issue.

6] For the aforesaid reasons, there is no case made out to interfere with the impugned orders. Accordingly, petition is dismissed. There shall be no order as to costs.

7] It is further made clear that this Court has not expressed any opinion on the merits of the matter and therefore, all issues, including the contentions raised by the Petitioner in the present petition, may be considered by the Family Court alongwith all other issues, which arise in the petition before it.

7] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)