

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 803 OF 2015

Manohar Rajshekar Kodam	..	Petitioner
vs.		
Geeta @ Smita Manohar Kodam	..	Respondent

Mr. Anand S. Kulkarni for Petitioner.
Mr. Surel S. Shah for Respondent.

CORAM : M. S. SONAK, J.
DATE: 17th OCTOBER 2016

P.C :

- 1] Rule.
- 2] With the consent of and the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the order below Exh.38 dated 31.10.2014, by which the Family Court, Solapur, has dismissed the petitioner's application (Exh.38) seeking framing of additional issues.
- 4] The petitioner has instituted marriage petition No. 99/2012 seeking inter alia divorce on the ground of cruelty allegedly practiced by the Respondent. On the basis of the petition as

originally filed and reply of the Respondent, the Family Court framed issues on 15.04.2011. Thereafter, the petitioner was granted leave to amend the petition on 10.02.2012. Upon the petition being amended, the petitioner on the basis of amended petition, applied for framing of additional issues.

5] The Family Court, upon such application, has made the following order.

*“The issue No.1 at exh.29 is already frame regarding cruelty.
Hence application is rejected.
Cost on Application”*

6] In my judgment, the impugned order warrants interference. In the first place, the impugned order records hardly any reasons. No doubt, issue of cruelty was already framed on 15.04.2011. However, consequent upon amendment of pleadings, further issues were necessary and the same were required to be framed. In particular, the proposed issue Nos.1,3 and 4, do not relate directly to 'cruelty' and refusal to frame the same, virtually amounts to failure to exercise jurisdiction. Even issue No.2, which is more specific, can always be framed.

7] The trial is yet to begin, it is not as if there was unreasonable delay on the part of the petitioner in seeking the framing of any additional issue.

8] Upon cumulative consideration of the above said factors, the impugned order dated 31.10.2014 is set aside and the petitioner's application at Exh.38 is allowed. The Family Court is directed to frame additional issues in terms of Exh.38.

9] Mr. Shah, learned counsel for the respondent states that respondent's application seeking interim maintenance is pending consideration. If that be so, the Family Court is directed to take up such application for consideration as early as possible and to dispose of the same within a period of six weeks from the date of production of authenticated copy of this order.

10] The consideration of the respondent's application seeking interim maintenance has obviously been delayed on account of the petitioner. The petitioner applied for amendment of his petition and some time was spent until such amendment was allowed. The petitioner thereafter, has applied for framing of additional issues and again, some time has been spent in that regard. In such circumstances, even though, this petition is being allowed, it is only appropriate that the petitioner pays costs of Rs.10,000/- to the respondent-wife. Such costs to be paid within a period of four weeks from today.

11] Rule is accordingly, made absolute with costs as aforesaid.

12] Parties to appear before the Family Court on 7 November 2016 at 11.00 a.m. and produce authenticated copy of this order.

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

(M. S. SONAK, J.)