

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 11 OF 2016**

Onkar S. Honkalas .. Petitioner
V/s.
State of Maharashtra
through its
Chief Secretary for Ministry
of Law and Judiciary .. Respondent.

Mr. J.D. Khairnar for the Petitioner.
Mr. P.P. Kakade, AGP for the Respondent-State.

**CORAM: DR. MANJULA CHELLUR, C.J. &
M.S.SONAK, J.
DATE : 18 NOVEMBER 2016.**

P.C.

1] The petitioner, an advocate by profession, by means of this public interest litigation (PIL) seeks the following reliefs:

“a] That this Hon'ble Court be pleased to issue Writ in the nature of Mandamus and/or any other appropriate Writ and/or Order thereby directing the Respondent No.2 either to make legislation or amend Code of Civil Procedure 1908, thereby incorporating appropriate provision to direct the Learned Civil Courts to refer the matrimonial disputes for counseling, at first instance.

And/or

b] That this Hon'ble Court be please to direct all the Learned Civil Courts, throughout State of Maharashtra to apply the Rules issued by this Hon'ble Court in Family Courts (Maharashtra High Court) Rules, 1988, mutatis mutandi.

C] Any other just and equitable order in the interest of justice may kindly be passed.”

2] Although, the objective of the petitioner in instituting this PIL might be laudable, we are afraid, that ordinarily it is not within our province to direct the legislature to enact a new legislation or to amend the existing one. Accordingly, we do not deem it appropriate to entertain the present petition.

3] We must observe though, that in matters which are instituted before the Civil Courts, the Civil Courts not only have the power, but also a duty to at least make attempts to persuade the parties to explore the possibility of an amicable settlement. This is evident from the provisions in Section 89 of the Code of Civil Procedure, 1908 (CPC).

4] Similarly, Section 9 of the Family Courts Act, 1984, in terms, provides that it shall be the duty of the Family Court to make efforts for settlement. Section 9 of the Family Courts Act, 1984 reads thus:

“9. Duty of Family Court to make efforts for settlement – (1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it

thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.”

5] The provisions contained in Section 89 of the CPC and Section 9 of the Family Courts Act, 1984, at least, to a certain extent, redress the issues raised by the petitioner in the present petition.

6] In the aforesaid circumstances, we dispose of the present petition. There shall, however, be no order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)