

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1426 OF 2016

**Mrs. Sushma Pradip Lele
Versus**

..Petitioner

Mr. Pradip Ganesh Lele

..Respondent

Shri. G. S. Godbole i/by Ms. Shruti Tulpule for the Petitioner.

Shri. R. V. Pai i/by Ms. N. N. Thakkar for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 5th DECEMBER, 2016

PC.

1 The writ jurisdiction of this court is invoked against the order dated 30.11.2015 passed by the Learned Principal Judge, Family Court, Mumbai, by which order, the application Exh.27 filed by the Petitioner for amendment of the written statement so as to include a counterclaim came to be rejected.

2 The Petitioner-wife and the Respondent-husband are engaged in Marriage Petition No.A-889 of 2014 which has been filed by the Respondent herein for divorce on the ground of cruelty and desertion on 09.04.2014. Initially, an order to proceed ex-parte against the Petitioner came to be passed on 08.07.2014. However the said order came to be set aside by the Learned Judge of the Family Court on the application filed by the Petitioner on imposing of costs of Rs.10,000/- on

her. The Petitioner thereafter filed a written statement on 01.10.2014 as also filed an application Exh.15 for interim injunction in respect of the two flats which are jointly in the names of the Petitioner and the Respondent. It seems that in so far as the said application Exh.15 is concerned, the Respondent herein i.e. the Petitioner in the said Marriage Petition gave an undertaking that he will not create third party rights in the two flats which are standing in the joint names till disposal of the Marriage Petition. It is in view of the said undertaking given that the said application Exh.15 came to be disposed of.

3 The Petitioner had filed her written statement on 23.09.2014 and as indicated above had filed the said application Exh.15 on the same day. It is thereafter on 29.06.2015 that the Petitioner filed the instant application Exh.27 seeking amendment of the written statement so as to include the counterclaim. In the counterclaim, the Petitioner has prayed for the three following reliefs :-

“a) A perpetual injunction decree should be passed that the Petitioner & his mother should permanently remove themselves away from the said Panorama Tower flat and the Petitioner should be restrained from interfering with the exclusive ownership & possession of the Respondent in future also.

b) A partition decree should be passed in respect of the said Pramukh Height flat to the extent of $\frac{1}{2}$ share of the

Respondent.

c) If the relief in clause a) above cannot be granted by the Hon'ble Court and if the Respondent's alternative claim is granted by the Hon'ble Court partition of the said Panorama Tower flat also be effected.

d) If the Hon'ble Court holds that the Petitioner has some share in the said flat, the excess payment made by the Respondent should be recovered from the Petitioner with 18% p.a. interest.

e) The Petitioner may be directed to handover the custody of the said car in original condition to the Respondent. If that is not possible, the Petitioner may be directed to pay Rs.6,35,250/- as claimed in Para No.34.”

4 The said application was opposed to on behalf of the Respondent husband by filing his reply Exh.29. The said application was opposed on the ground that the same is malafide and has been filed just to delay the proceedings. It was also the contention of the Respondent husband that in respect of her purported share in the matrimonial home and other flat, then she is at liberty to agitate her claim vide a separate suit and that there is no reason for her to amend the written statement for filing her counterclaim.

5 The Trial Court i.e. the Learned Principal Judge of the Family Court has by the impugned order dated 30.11.2015 rejected the application on three fold grounds. Firstly, that she was having full knowledge about the two flats in question when she filed her written

statement on 23.09.2014 and also application Exh.15, that the delay in filing the application for incorporating the counterclaim has not been explained and thirdly, on the ground of the conduct of the Respondent which the Learned Judge of the Family Court has referred to as casual in the impugned order.

6 The Learned Counsel appearing on behalf of the Petitioner i.e. wife would contend that the amendment of the written statement was sought so as to avoid multiplicity of proceedings as the Petitioner can otherwise file an independent suit. The next contention raised was as regards the ground of delay which has been held against the Petitioner. The Learned Counsel sought to rely upon the judgment of the Apex Court reported in (1987) 3 SCC 265 in the matter of Mahendra Kumar and another Vs. State of Madhya Pradesh and others. The Learned Counsel also sought to place reliance on an unreported judgment of a Division Bench of this Court in Family Court Appeal No.1089 of 2014 dated 30.01.2015 in the matter of Mrs. Mahalaxmi Joginder Singh Kahaan Vs. Mr. Johind Sing @ Kahan and another.

7 In my view, it is not possible to accept the contentions urged on behalf of the Petitioner. A perusal of the prayers of the counterclaim indicate that by the said prayers the Petitioner is seeking a decree of

eviction, partition as also other reliefs in respects of the flats in question. It is required to be noted that the Petition filed by the Respondent husband is for divorce on the ground of cruelty and desertion. Hence the reliefs sought in the Petition have nothing to do with the reliefs which the Petitioner seeks by way of the counterclaim. Evidence in respect of such a claim as is sought to be incorporated by way of the counterclaim would obviously be different. The judgments (*supra*) relied on behalf of the Petitioner would therefore not further the case of the Petitioner.

8 In my view, therefore, the impugned order passed by the Trial Court rejecting the application Exh.27 cannot be found fault with. There is no error of jurisdiction or any other illegality or infirmity for this Court to interfere in its writ jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]