

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8798 OF 2016**

**Sou Arpana Babasaheb Kamble
Vs.**

..Petitioner

Babasaheb Ratnappa Kamble

..Respondent

Mr. A. S. Patil for the Petitioner

Mr. T. S. Ingale for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 11th JANUARY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 23-3-2016 passed by the Learned Civil Judge Senior Division, Jaysingpur, by which order, the application Exhibit 26 filed by the Respondent for amendment of the Hindu Marriage Petition (for short HMP) and also to join a party, came to be allowed subject to the payment of costs of Rs.700/-.

2 The Petitioner and the Respondent are husband and wife and are involved in prosecution of HMP No.37 of 2015 which has been filed by the Respondent for divorce under Section 13(1)(i-a) of the Hindu Marriage Act. In the Petition as originally filed, the Respondent has alleged that the Petitioner is having illicit relation with a person who is residing in the near vicinity of the residence of the mother of the Petitioner. The facts relating to the alleged adulterous conduct of the Petitioner have been mentioned in the

Petition. However, the alleged paramour has not been specifically referred to and not joined as a party to the Petition. It seems that issues came to be framed in the said HMP and it is after the said issues came to be framed and before the evidence started that the instant application Exhibit 26 came to be filed by the Respondent. In the application Exhibit 26 also the Respondent has sought to mention the facts in support of his case to implead the person with whom the Petitioner is allegedly having illicit relations. It has been mentioned in the application Exhibit 26 that since the facts relating to the ground of adultery have already been mentioned. The amendment sought in the Petition as well as the impleadment of the party which is sought vide the said application Exhibit 26 would not in any way change the nature of the proceedings and would cause no prejudice to the Petitioner.

3 The Trial Court has by the impugned order dated 23-3-2016 has allowed the said application Exhibit 26. The Trial Court was of the view that though issues have been framed, the evidence has not started and though the application has been filed after the issues have been framed, the application could not be rejected on the ground of delay. The Trial Court has also observed that by the proposed amendment no new case would be introduced, as also the impleadment of the party is necessary for a complete adjudication of the dispute. The Trial Court accordingly deemed it appropriate to allow the application albeit on the payment of costs of Rs.700/- which was imposed on

the Respondent.

4 In my view, having regard to the well settled principles applicable to the consideration of an application for amendment as also for joining the party to the proceeding as also having regard to the case as already pleaded in the Petition as originally filed, the order passed by the Trial Court cannot be said to be suffer from any error of jurisdiction or any other illegality or infirmity. It seems that pursuant to the order dated 23-3-2016, the Petition has also been amended. In that view of the matter, no case for interference is made out, the Writ Petition is accordingly dismissed.

5 In case if the additional reply to the amended HMP is not filed, it would be open for the Petitioner to apply for the same. The Trial Court may consider the same having regard to the fact that the Petition has been amended in terms of the order dated 23-3-2016.

[R.M.SAVANT, J]