

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

WRIT PETITION NO.7667 OF 2013

Rajendra Gajanan Gawde	...Petitioner
<i>Versus</i>	
Rachana Rajendra Gawde	...Respondent

Mr.P.G. Karande for the Petitioner.

CORAM : M. S. SONAK, J.

DATE : 06th DECEMBER 2017

P.C.

1. Heard Mr.P.G. Karande for the petitioner. None for the respondent, though served.

2. This Court, on several occasions, had made it clear that this matter will be decided finally at the stage of admission.

3. The challenge in this petition is to the order dated 29th July 2013, by which the learned Trial Judge has dismissed petitioner's application seeking leave to amend the petition by introducing paragraph Nos.21A and 21B set out in the schedule to the application seeking leave to amend.

4. Admittedly, the application seeking leave to amend was filed after the issues were framed, before the trial actually commenced. From the perusal of the impugned order, the only reason stated therein is that paragraph Nos.21A and 21B of the Schedule referred to incident of 01-10-2010 and 23-11-2011 and there is no explanation as to why the application seeking amendment was filed only on 29-01-2013. The impugned order states that there are serious laches in filing the application.

5. The impugned order is unsustainable. In this case, the application seeking leave to amend was filed before the commencement of the trial. The impugned order does not state that the proposed amendment is either irrelevant or alter the basic structure of the petition. In fact, no reply was also filed by the respondent opposing the application seeking leave to amend. Merely because the incident referred to in the schedule or in paragraph Nos.21A and 21B pertains to some earlier dates, that by itself, cannot be a ground to reject leave to amend the petition. The record indicates that the petition was filed on 01st October 2010. The first instance relates to 01st October 2010 itself and second to 23rd November 2011. The amendment, at the highest, seeks to elaborate the instances of alleged cruelty and nothing further.

There was really no reason to deny it. At the highest, some cost would have been imposed upon the petitioner.

6. Accordingly, the impugned order dated 29th July 2013 is set aside.

7. The petitioner is granted leave to amend the petition subject to payment of cost of Rs.3,000/-. The cost to be paid within a period of four weeks from today. Upon payment of cost before four weeks, amendment is to be carried out within a period of two weeks thereafter. The petitioner is to serve a copy of amended petition on the respondent and the respondent is granted further four weeks time from the date of receipt of the amended copy of the petition to file reply, in case the respondent chooses to do so.

8. The petition is allowed in the aforesaid extent.

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

(M. S. SONAK, J.)