

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 9866 OF 2017**

Mrs. Sanchita Dhiraj Sankpal ...Petitioner

Versus

Mr. Dhiraj Jagannath Sankpal ...Respondent

Mr. Shantanu R. Phanse a/w. Noorseema M.U. Baig for the  
Petitioner.

Mr. Ajinkya Badave for the Respondent.

**CORAM: G.S. KULKARNI, J.**  
**DATED: 07<sup>th</sup> September, 2017**

**PC:-**

1. This petition under Article 227 of the Constitution challenges the order dated 16/08/2017 passed by the learned Civil Judge, Senior Division, Vasai passed below exhibit 88 in Matrimonial Petition No. 26 of 2010. By the impugned order the learned trial Judge has allowed the application as filed by the respondent husband for correction of the title of the matrimonial petition to incorporate the provisions of Section 13(ia) of the Hindu Marriage Act (in short 'the Act') which pertains to seeking relief on the ground of cruelty in the matrimonial petition.

2. The case of the respondent in the application was that though appropriate averments and pleadings to support the ground of cruelty as would be available under Section 13(ia) of the Act were made however due to inadvertance in the title of the petition reference to Section 13(ia) had remained to be incorporated. It was the case of the respondent that it was only an inadvertent mistake which was needed to be corrected. It was also pointed out that the parties were very well aware that the respondent was pursuing the matrimonial petition on the ground of cruelty under Section 13(ia) of the Act, which was clearly demonstrated by the Court framing issues to that effect by an order dated 20/01/2011. By the said order passed by the learned trial Judge the following issues were framed:-

#### ISSUES

1. Does petitioner prove that after solemnization of marriage the respondent treated him with cruelty?
  2. Is petitioner entitled for decree of divorce as sought for?
  3. What relief?
3. On the above background, the contention as urged on behalf of the petitioner is that, the learned trial Judge was in an error to

allow the application and more particularly when the final arguments were heard and the petition was being closed for judgement, as being pointed out on the basis of roznama annexed to the petition and the relevant extract of which is appearing at page 79 of the paper book.

4. Learned counsel for the petitioner submits that the amendment which was sought to be made was a substantial amendment. Such an amendment would not be permissible under the provisions of Order VI Rule 17 of the Code of Civil Procedure and more particularly the proviso to the said provision which bars such an application after the trial has commenced and particularly when before the commencement of the trial such an issue was not raised. In support of this contention learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of *Chander Kanta Bhansal Vs. Rajinder Singh Anand (2008) 5 S.C.C. 117*. On the other hand, learned counsel for the respondent has supported the impugned orders.

5. Having considered the nature of the application dated 10/07/2017 as moved on behalf of the respondent, it is clear that what was sought to be corrected was only the title of the

matrimonial petition, so as to incorporate and make a reference to the provisions of Section 13(ia) of the Act. It is not in dispute that the petition contains appropriate averments on the petition being filed by the petitioner raising grounds of cruelty. It is also not in dispute that the Court in 2011 had framed a specific issue on the ground of cruelty asserted on behalf of the petitioner before the trial Court. It is quite clear that the parties proceeded on trial only on the ground of cruelty. If on this background such an application is made in removing the inadvertent error/lapse in not referring/incorporating the said provision in the title of the petition, in my opinion, the learned judge cannot be said to be unjustified in allowing this application as made on behalf of the respondent by the impugned order.

6. A perusal of the impugned order clearly demonstrates that the learned trial Judge has ordered and permitted, only to make a correction in the title of the petition, which would certainly not cause prejudice to the petitioner in the facts and circumstances as noted above. The reliance in the decision of the Supreme Court (Supra) would also not support the case of the petitioner in the present facts and it is totally misplaced.

7. The petition is devoid of any merit, it is accordingly rejected.

No costs.

**(G.S. Kulkarni, J.)**