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

WRIT PETITION NO. 11179 OF 2015

Sujit Indrajeet Desai

...Petitioner

Vs.

Sandhyarani Sujit Desai

...Respondent

Mr. Shreyas Adyanthaya for the Petitioner

Ms. Seema S. for the Respondent

CORAM : M.S. KARNIK, J.

DATED : 25TH JANUARY, 2017

P.C. :

The Petitioner husband has filed the present Petition challenging the order dated 26th August, 2015 passed below Exhibit-25 thereby rejecting the application for amendment filed by the Petitioner. The Petitioner husband filed Petition under Section 13 of the Hindu Marriage Act, 1955 against the Respondent wife on the ground of desertion.

2. A reading of the Petition filed for divorce on the ground of desertion indicates that the only ground on which the divorce is sought was desertion. The said Petition was filed on 1st October,

2012.

3. By filing an application for amendment on 24th September, 2014 the Petitioner husband contended that the proceedings filed by the Respondent wife under Section 498A of Indian Penal Code had culminated into an order of acquittal and thus the ground of cruelty is now available to him which he is raising by way of this application. Accordingly the application for amendment is moved seeking divorce also on the ground of cruelty.

4. The application for amendment was opposed by the Respondent wife contending that the application would change the nature of proceedings. Learned trial Judge by the impugned order has rejected the application on the ground that the amendment would change the nature of the proceedings. According to the learned Counsel for the Respondent the Petitioner had filed a petition for divorce only on the ground of desertion and now allowing the Petitioner to amend the Petition would virtually amount to changing the nature of the Petition.

5. Learned Counsel for the Respondent further contended that the husband was always aware of the proceedings filed under Section 498A of Indian Penal Code which were pending at the time of filing of the present Petition for Divorce and despite that the Petitioner did not chose to take up this contention in the Petition.

6. Learned Counsel for the Respondent wife has invited my attention to the order dated 8th March, 2011 passed by the Civil Judge, Family Court, Pune where in an earlier petition for divorce filed by the Petitioner against the Respondent wife on the ground of cruelty, the Petition was dismissed. According to the learned Counsel for the Respondent all these facts are not stated in the Petition and therefore, though the husband was well aware of these facts, he has chosen to file the present Petition for divorce only on the ground of desertion.

7. Be that as it may, I have gone through the order passed by the trial Court rejecting the application preferred by the Petitioner for amendment. I do not see any error in the said order as according to

the learned trial Judge in the present facts found that the Petitioner had filed a Petition for divorce on the specific ground of desertion, the Petitioner cannot now be allowed to raise a plea of cruelty at this stage in the present proceedings as that would change the nature of the proceeding.

8. Learned Counsel for the Petitioner has relied upon following authorities:

1. **Balakrishnan S. Periyaswamy Vs. Kalaiarasi B. Periyaswamy in Writ Petition No.3723 of 2012**
(Coram: Smt.Justice Roshan Dalvi, J. dated 26th June, 2012).
2. **Uttara Praveen Thool Vs. Praveen Bhanudas Thool 2014(2) Mh.L.J. 321.**
3. **Mangesh Balkrushna Bhoir Vs. Sau. Leena Mangesh Bhoir in Second Appeal No.634 of 2013**
(Coram: R.D. Dhanuka, J. dated 23rd December, 2015)

9. In my opinion in the facts of the present case, as the trial Court has rejected the application for amendment I do not see any reason to interfere with the impugned order in the exercise of Writ jurisdiction.

10. Writ Petition is accordingly dismissed with no orders as to costs.

(M.S. KARNIK, J.)