

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4668 OF 2015

Tayyab Kasammiya Waruse & Ors. Petitioners

Versus

Sou. Najama Tayyab Waruse & Ors. Respondents

Mr. Dilip B. Shinde for Petitioners.

Ms. Farhana Shah for Respondent Nos.1 & 2.

Mr. S.R.Agarkar, APP for Respondent No.3/State.

CORAM : RAVINDRA V. GHUGE, J.
DATE : MARCH 20, 2017.

P.C.

1. The Petitioners are aggrieved by the order dated 7/3/2015 by which the trial court has rejected their Application Exh.4, seeking amendment to their written statement. The Petitioners are also aggrieved by the judgment of the Appeal Court in Appeal No. 69 of 2015 dated 14th September 2015, by which their Appeal has been disposed of.

2. The Petitioners had moved an Application Exh. 4 seeking leave to amend their written statement. The reason for seeking an amendment was in order to bring the subsequent events on record. The proposed amendment was mentioned below paragraph 1 and 3

and the same was restricted to such events that had occurred after the filing of the written statement.

3. The trial court has rejected the application on the ground that the Petitioner No.1 has entered into a remarriage. He had preferred a divorce within three months and such a divorce is not valid. The trial court has proceeded on the premises that since he was aware of the first marriage and is now trying to make allegations about the character of the original applicant. Hence, there is no necessity to amend the written statement.

4. Learned Counsel for the original applicant has strenuously defended the order of the trial court dated 7/3/2015 as well as the impugned judgment dated 14/9/2015 by which the Appeal filed by the Petitioners was rejected.

5. It is settled law that when it comes to an amendment, the merits of the proposed amendment are not to be evaluated by the trial court. When it comes to a written statement, an application for amendment is to be dealt with liberally unlike an amendment being sought in a plaint/complaint. So also, the original applicant would always be at liberty to file a counter affidavit to oppose or contradict the amended portion of the written statement.

6. Considering the above, I find that the impugned orders dated 7/3/2015 and 14/9/2015 would not advance the ends of

justice. Consequently, this petition is allowed. Both the impugned orders are set-aside.

7. Application Exh.15 seeking an amendment in terms of the proposed amendment mentioned therein is allowed. The Petitioners shall carry out the amendment in the written statement within three weeks from today.

8. The original applicant would be at liberty to file an additional affidavit to counter the amendment, if so desired.

(RAVINDRA V. GHUGE, J.)