

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.451 OF 2017
(SACHIN DILIP AGRAWAL...VS..HEMLATA DEOKINANDAN MOR)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.A.Mohta, Advocate for Petitioner.
Ms Anu Gupta h/f. Shri J.M.Gandhi, Adv. for Respondent.

CORAM : S.C.GUPTE, J.
DATED : SEPTEMBER 14, 2017.

Heard learned counsel for the parties.

2. This petition challenges an order passed by the Family Court at Akola on an application of the petitioner (original respondent to the matrimonial petition) under Order 6 Rule 17 of the Code of Civil Procedure for amendment of his written statement. The application was rejected by the Family Court, *inter alia*, on the ground that the amendment was not material having regard to the controversy in the petition. The Court was of the view that the petition filed by the respondent herein (petitioner-wife before the Family Court) was for annulment of marriage specifically on the ground that a fraud was practiced upon her while fixing the marriage by concealment of the husband's actual educational qualification. The amendment sought to be introduced by the petitioner herein concerns the respondent-wife having expressed happiness about the marriage after about one month of the marriage. The Court was of the view that since the allegations, on the basis of which the present annulment

petition was filed, did not concern mental cruelty and, thus, did not bear on the behaviour of the husband, there was no necessity to bring in the amendments sought by the husband.

3. It is pertinent to note that these observations were made in the light the fact that the trial in the matter had already commenced and the examination-in-chief of the respondent-wife was concluded.

4. In these facts, it is really not necessary to interfere with the impugned order of the Family Court. There is indeed no explanation why this amendment could not be produced earlier. In fact, the explanation in the petition (para 7) is that it was for the first time after the matter was posted for cross-examination that the petitioner/ husband found two letters addressed by the respondent/wife. On the other hand, in the application for amendment what is stated is that it was through ignorance and oversight that the two letters were not given to the counsel at the time of drafting of the written statement and hence, not referred to in the written statement.

5. Be that as it may, even otherwise, the amendment, which does not really pertain to the actual merits of the controversy before the Court, is in any event, a matter of evidence.

6. The order, accordingly, does not call for any interference. In the premises, the writ petition is **dismissed**. No order as to costs.

7. Rejection of the amendment application and dismissal of the present petition shall not, however, come in

the way of the petitioner relying on these letters in the course of the trial if, and to the extent, it is permissible in law.

JUDGE

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