

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

WRIT PETITION NO.4562 OF 2017

(PANKAJ TAMRADHWAJ GAJBHIYE...VS..SMT. PORNIMA PANKAJ GAJBHIYE.)

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

Court's or Judge's orders

Shri A.B.Ramteke, Advocate for Petitioner.
Shri H.I. Kothari, Advocate for Respondent.

CORAM : S.C.GUPTE, J.

DATED : AUGUST 08, 2017.

Heard learned counsel for the parties.

The petition challenges an order passed by the Principal Judge, Family Court No.4, Nagpur on the petitioner's application for amendment of his petition. The petitioner herein is the original petitioner in a divorce petition filed before the Family Court. He is also a respondent in the petition filed by the respondent herein under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. The petitioner herein has filed a detailed written statement in that petition which contains all averments which are now sought to be incorporated in the petitioner's own divorce petition. Admittedly, this divorce petition is filed by the petitioner herein after the respondent's petition under Section 9 of the Hindu Marriage Act was filed and the petitioner filed his written statement in that petition.

The application for amendment was rejected by the Family Court on the ground that the trial had already commenced and the petition was fixed for evidence on 23rd December, 2016, the petitioner failed to adduce his evidence

till 1st February, 2017 and accordingly a last chance was granted to him on 4th March, 2017, whereafter the petitioner moved the present application for amendment.

Admittedly, the trial has commenced in the two petitions. Every averment, which is sought to be introduced by way of the present amendment application, forms part of the petitioner's own written statement in the respondents petition for restitution. There is no case accordingly under the proviso to Rule 17 of Order 6 of the Code of Civil Procedure. Anyway, since the petitions are in the nature of cross-petitions and are clubbed together for a consolidated hearing, it will be open to the petitioner to lead evidence on the facts which form part of his written statement in the respondent's petition for restitution, which includes these averments. Accordingly, there is no merit in the present petition.

The petition is **dismissed**. No order as to costs.

JUDGE