

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRI. WRIT PETITION NO. 1007 OF 2017

Suresh S/o Late Gordhandas Nankani and others

-vs-

Arushi W/o Suresh Nankani

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mrs.Rajeshree Dewani, counsel for the petitioners.

CORAM : SMT.REVATI MOHITE DERE, J.

DATE : 14.11.2017.

Heard learned counsel for the petitioners.

By this petition, the petitioners have impugned the order dated 04/10/2017 passed by the learned 24th Judicial Magistrate First Class (Spl. Court of P.W.D.V. Act), Nagpur, by which the respondent's application (Exhibit-44) seeking amendment to the main complaint bearing Misc. Criminal Complaint No.1673 of 2015, came to be allowed.

Learned counsel for the petitioners submitted, that the learned Magistrate had erred in law by permitting the respondent-wife to amend the main complaint. She submitted, that the said application under Order VI Rule 17 of Civil Procedure for grant of permission to amend the main complaint was not only filed belatedly, but there was no due diligence exercised by the respondent-wife nor was the same pleaded by her in the said application. She further submitted, that the respondent-wife in the said application had merely stated, that she had forgotten to incorporate certain details and due to inadvertence, they were left to be mentioned

earlier in the complaint and that the same cannot be a ground for entertaining such an application. Learned counsel for the petitioners relied on a judgment of the Apex Court in the case of **Kunapareddy Alias Nookala Shanka Balaji v. Kunapareddy Swarna Kumari and another**, reported in (2016) 11 SCC 774 and a judgment of this Court in the case of **K.T.Kubal and Company (M/S) v. Mujibur Rehman Haji Israr Alam Siddiqui**, reported in 2015 (3) Mh.L.J. 892 in support of her submission. She further submitted, that the power to allow the amendment has to be exercised sparingly and with caution under limited circumstances and that the present case was not such a case.

Perused the papers and all the documents annexed to the petition. On 12/05/2015, the respondent-wife filed a complaint/application under section 12 of the Protection of Women from Domestic Violence Act, 2005 as against the petitioners before the learned Special Judge under the Domestic Violence Act, Nagpur. In the said complaint/application, bearing Misc.Cri.Appln.No.1673 of 2015, the respondent-wife amongst other reliefs, also sought maintenance of Rs.75,000/- per month from the petitioner No.1. The petitioners filed their written statement on 02/08/2015 and refuted the allegations made by the respondent-wife. On 05/02/2016, the respondent-wife filed her evidence on affidavit. Thereafter, on 05/05/2016 the respondent-wife filed her additional evidence on affidavit. In the said additional affidavit the respondent-wife has set out the details of the movable and immovable properties owned by the petitioner No.1-husband as well as has given the details of the petitioner No.1's bank accounts, LICs, FDs and

PAN card etc.. The said additional affidavit of evidence was filed alongwith an application for grant of permission to adduce additional evidence by way of an affidavit. In the said application seeking permission to adduce additional evidence, the respondent-wife has stated, that neither the evidence had commenced, nor had her examination-in-chief started, and that due to inadvertence, certain important facts were forgotten to be mentioned by her in her first affidavit evidence. It was also stated, that no prejudice would be caused to the petitioners, if the said permission was granted, and that the said additional affidavit was necessary in order to enable the Court to adjudicate upon the points/issues involved in the said complaint/application. The said application was opposed by the petitioners. It was contended that what was stated in the additional affidavit of evidence was not mentioned in the main complaint and that the respondent-wife was going beyond her pleadings and as such, the application was not maintainable and hence be rejected. It appears that the said additional evidence was taken on record by the learned Magistrate and was exhibited. Admittedly, the petitioners did not challenge the taking on record of the additional evidence, nor it being exhibited.

Thereafter, on 14/02/2017 the respondent-wife filed an application seeking permission to amend the original complaint filed under section 12 of the Protection of Women from Domestic Violence Act. It was stated that the amendment was necessary to bring on record the movable and immovable properties as well as financial details of the petitioner-husband. It was also stated in the said application, that although the learned Magistrate had permitted her to

adduce additional evidence, with respect to the movable and immovable properties as well as financial investments of the petitioner-husband, the said facts were not incorporated in the complaint filed by her and that there should not be any legal objection about the permission granted by the learned Magistrate to adduce the additional evidence and hence it was necessary to amend the pleadings in the said complaint. The said application seeking amendment of the complaint under section 12 of DV Act was opposed by the petitioners by filing their reply. The learned Magistrate, after hearing the parties, was pleased to allow the said amendment application vide order dated 04/10/2017.

It is pertinent to note, that the learned Magistrate had taken on record the additional affidavit of evidence filed by the respondent-wife with respect to the properties, both movable and immovable as well as financial details of the petitioner-husband and had exhibited the same. The petitioners have not challenged the exhibiting of the said document i.e. additional affidavit of evidence. Admittedly, the examination-in-chief of the respondent-wife has not yet commenced. The said application for grant of permission to amend the complaint under section 12 of DV Act would not change the nature of proceedings and would ultimately be necessary to decide the quantum of maintenance sought by the respondent-wife. By the said amendment, the respondent -wife only seeks to bring on record the entire details of movable and immovable properties and other financial details of the petitioner-husband, which are germane in deciding the quantum of maintenance, as sought for in the complaint/application. The said amendment will not cause

any prejudice to the petitioners. It appears that the additional affidavit of evidence was taken on record in 2016 and has been exhibited. In this light of the matter, the submission advanced by the learned counsel for the petitioners, that the reason given in the application cannot be accepted i.e. due to inadvertence, the said application was not filed earlier, deserves to be rejected. The judgment in the case of **K.T.Kubal and Company** (supra) relied on by the learned counsel for the petitioners, will not apply to the facts of the present case, as the facts are clearly distinguishable. As far as the judgment of the Apex Court in the case of **Kunapareddy Alias Nookala** (supra) is concerned, the Apex Court in para 16 has rightly observed as under:-

16. We understood in this backdrop, it cannot be said that the court dealing with the application under the DV Act has no power and/or jurisdiction to allow the amendment of the said application. If the amendment becomes necessary in view of subsequent events (escalation of prices in the instant case) or to avoid multiplicity of litigation, court will have the power to permit such an amendment. It is said that procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it. It is nobody's case that Respondent 1 was not entitled to file another application claiming the reliefs which she sought to include in the pending application by way of amendment. If that be so, we see no reason, why the applicant be not allowed to incorporate this amendment in the pending application rather than filing a separate application. It is not that there is a complete ban/bar of amendment in the

complaints in criminal courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with caution under limited circumstances.”

The DV Act has been enacted to provide more effective protection of the rights of women, who are victims of violence. As noted earlier, the additional affidavit of evidence giving details of petitioner No.1's movable and immovable properties as well as other financial details has already been taken on record and has been exhibited by the learned Magistrate. The said application (Exhibit-44) is only a consequence of the same, by permitting the respondent-wife to incorporate the details of movable and immovable assets as well as financial details of the petitioner-husband, even in the complaint/application filed under section 12 of the DV Act. No prejudice can be said to be caused to the petitioners by the said amendment. In fact, if the amendment is not allowed, serious prejudice will be caused to the respondent-wife. The said amendment would be necessary for considering the quantum of maintenance that may eventually be awarded to the respondent-wife.

Considering the aforesaid, no infirmity/perversity can be found in the impugned order dated 04/10/2017 passed by the learned Judge, Family Court No.3, Nagpur below Exhibit-44. Accordingly, no interference is warranted in writ jurisdiction in the impugned order. Petition is accordingly dismissed. No order as to costs.

JUDGE