

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11100 OF 2015

Deepak s/o Vijay Mahajan,
Age-31 years, Occu-Unemployed,
R/o Shivkripa Apartment,
Govind Colony, Bhusawal,
Tal.Bhusawal, Dist. Jalgaon

-- PETITIONER

VERSUS

Mrs.Sonal w/o Deepak Mahajan,
Age-30 years, Occu-Service,
R/o Pur-Niyantran and Mojni Up-Vibhag,
(Girna Patbhandhare Jalsampada Vibhag),
Opp. Collector Office, Jalgaon

-- RESPONDENT

Mr.N.A.Shaikh Mohammad, Advocate for the petitioner.
Mr.Girish Nagori, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 19/11/2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. This Court, while issuing notice on 06/11/2015, had recorded its prima-facie conclusions in its order, which reads as under :-

"1. Heard learned counsel for the petitioner and perused impugned orders. Application for amendment of written statement filed by respondent/wife came to be allowed but

application for consequential amendment in Marriage Petition filed by the petitioner/husband came to be rejected by the learned District Judge-2 Bhusawal with a reasoning that petitioner is not supposed to deny the contention in the written statement. Prima facie this observation does not appears to be correct.

2. Issue notice to the respondent returnable on 16/11/2015. In addition to usual mode of service, petitioner is permitted to serve respondent by private notice. Hamdast allowed."

3. The petitioner had moved applications Exhs.50 and 51 before the Trial Court in Spl.Marriage Petition No.9/2014. The ground put forth was that as the respondent was permitted to amend the written statement, a consequential amendment is required to be carried out in the petition filed by him. By the impugned order dated 09/10/2015, the Trial Court, without considering the object for which Exhibit 50 and 51 were filed, proceeded to reject Exhibit 50 refusing consequential amendments.

4. I find that the respondent/wife was permitted to amend her written statement and her counter claim, by order dated 01/08/2015 passed by the same Court allowing her applications Exh.39 and 41. It was, as a consequence to the said amendment being allowed, that the petitioner desired to amend his petition. Hence Exh.50 was

filed. Exh.51 was filed to amend the say to the counter claim of the wife as the counter claim was also amended by the leave of the Court.

5. I find it quite surprising that in a cryptic impugned order, the Trial Court allowed the petitioner to amend his say to the counter claim and rejected Exh.50 vide which his petition was sought to be amended in view of the amendment to the written statement.

6. This petition is, therefore, allowed. In view of the above, the impugned order to the extent of rejecting Exh.50 is rendered perverse and erroneous. The impugned order dated 09/10/2015 to the extent of rejecting Exh.50 is quashed and set aside. Exh.50, therefore, stands allowed.

7. The petitioner shall carry out the necessary amendments to the petition memo and tender a retyped amended memo of the petition on or before 06/12/2018, failing which, the petitioner would acquiesce his right to carry out of the said amendment.

8. Rule is made absolute in the above terms.

(Ravindra V.Ghuge, J.)