

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.86 OF 2017
IN
FAMILY COURT APPEAL NO.20 OF 2017

...
Mrs. Priyanka Pravin MandolkarApplicant/Appellant
V/S
Mr. Pravin Anand MandolkarRespondent
...
Mr. Pradip R. Patil for Applicant/Appellant.
Mr. Manoj A. Patil for Respondent.
...

**CORAM : A.A. SAYED &
S.C. GUPTA, JJ.**
DATE : 21 AUGUST 2018.

ORDER:

1 This Civil Application filed by the Applicant/Appellant wife seeking the following relief:

“a. That the Hon'ble Court be pleased to allow the present Application for amendment of pleading and to lead additional evidence as mentioned in the Schedule annexed herewith and if necessary the matter may be please remanded back to the lower court for fresh trial.”

2 Heard learned Counsel for the Applicant wife and Respondent husband.

3 The operative part of the impugned judgment dated 15 October 2016 of the Family Court which is challenged in the Appeal reads as follows:

- "1. Petition filed by Petitioner/husband bearing P.A. 30/2015 is hereby allowed.*
- 2 Petition filed by Respondent/wife bearing P.A. 83/2015 is hereby dismissed.*
- 3 Respondent/wife is hereby directed to resume cohabitation with Petitioner/husband within a period of one month from the date of this order.*
- 4 Parties to bear their own costs.*
- 5 Decree be drawn accordingly."*

4 It is thus seen that by the impugned order, the Petition filed by the Respondent husband for restitution of conjugal rights is allowed and the Petition filed by the Petitioner wife for divorce was dismissed by the Family Court.

5 On perusal of the averments made in the Civil Application, we are of the view that the filing of the Civil Application by the Applicant wife is an abuse of process of Court. The Applicant wife not only seeks to produce additional evidence, but also seeks to amend the pleadings. It is not as if the facts sought to be brought on record were not within her knowledge or could not, even after exercise of due diligence, be produced before the Trial Court by her. The entire case of the Applicant wife in the Civil Application is that she 'felt shy' at the relevant time to disclose certain facts which she

now seeks to bring on record. We are of the opinion that the attempt of the Applicant wife is merely to fill up the lacuna in her case and to somehow get over the findings of the Trial Court. The Civil Application is filed only as an after thought. We find no merit in the Civil Application.

6 The Civil Application is accordingly dismissed. We spare the Applicant wife of costs.

(S.C. GUPTE, J.)

(A.A. SAYED, J.)

katkam