

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3073 OF 2018

Sapana Shekhar Pokale

... Petitioner

versus

Shekhar Pandharinath Pokale

...Respondent

Mr. Sachin R. Pawar, for the Petitioner.

None for the Respondent.

CORAM : SMT. BHARATI H. DANGRE, J

DATE : 13th MARCH, 2018.

P.C. :-

1. The jurisdiction of this Court is invoked by the Petitioner being aggrieved by the order dated 22nd February, 2018 passed by the Family Court, Pune, thereby rejecting the application filed by the Petitioner (Respondent-wife) seeking an amendment and inserting certain new grounds and defences in her written statement cum counter-claim. The application came to be moved by the Petitioner to amend the written statement, in view of the peculiar fact that, after the

cross-examination of the Petitioner – husband, it has dawned upon her that when the husband specifically denied any physical relationship subsisting in their marriage, the Petitioner intends to bring on record certain events which are within the exclusive knowledge of the husband and wife to demonstrate and rebut the claim of the Petitioner, who seeks annulment of marriage on the ground that there was no physical relationship between the husband and wife and marriage was not consummated.

2. I have extensively heard the learned Counsel for the Petitioner, who took me through the impugned order. The learned Family Court has taken into consideration the objections raised to the application for amendment specifically, the ground that the written statement was filed 1 and ½ year back and the trial has commenced and the filing of such application is with intention to prolong the matter and showing disrespect of the directions given by the Bombay High Court to proceed the matter in the time bound manner.

The learned Judge of the Family Court has in detail has referred to the chronology and the stages in which the matter

is progressing. It can be noted that the wife appeared and resisted the claim raised by the Respondent – husband by putting an appearance on 10th December, 2014 and a written statement cum counter-claim was also filed on 30th January, 2016 after a reference was made to the marriage counsellor unsuccessfully. The Petitioner – husband filed his evidence Affidavit on 14th June, 2017 and the cross-examination of the husband commenced on 1st September, 2017, which was completed on 15th January, 2018. The events further reveal that the evidence Affidavit of PW-2 one Pandharinath Pokale was filed on 20th January, 2018 and his cross-examination is completed on 2nd February, 2018. Thereafter on 5th February, 2018, the evidence Affidavit of PW-3 Bharat Jagtap has also been filed and his cross-examination is completed on 2nd February, 2018 and it is on this date an application has been moved by the wife seeking an amendment. The learned Judge of the Family Court specifically referred to the various judgments of the Hon'ble High Courts in reference to Order VII Rule 11 of Code of Civil Procedure.

Order VII Rule 11 deals with an amendment of the pleadings. No doubt the learned Counsel for the Petitioner

would vehemently argue that the provisions of the Civil Procedure Code are to be made applicable to the proceedings before the Family Court by virtue of Section 10 of the Family Court Act and the parameters of the amendment of the pleadings would be made applicable to the proceedings before the Family Court. The said position of law is not in dispute. However, it is necessary to follow the purport of Order VI Rule 17. Order VI Rule 17 permits the Court to allow either party to alter or amend the pleadings, at any stage, in such manner and on such terms may be just and all such amendments are to be allowed, which are necessary for the purpose of determining the real question and controversy between the parties. The said Rule has a proviso appended to it which reads thus:

“Order VI Rule 17 : Amendment of Pleadings:

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in

spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Thus, on perusal of Rule 17, proviso make it clear that no application for amendment shall be allowed after the trial has commenced and unless the Court comes to a conclusion that inspite of due diligence the party could not raise the matter before the commencement of trial.

The case of the Petitioner clearly falls under the said proviso appended to the Rule. The grounds and the narration of events and the facts, which the Respondent proposes to introduce in her written statement are the facts which were very much within her knowledge and ought to have been incorporated in written statement. The narration of the facts is not something which has subsequently occurred or that was not within her knowledge. It was also open to her to seek an amendment to her written statement at any point of time before the husband entered into the witness box on 1st September, 2017. The finding recorded by the learned Family Court that the Respondent – wife has failed to satisfy the Court that in spite of due diligence she was not able to place the material on record which she seeks to bring on record by

amendment, cannot be said to be perverse. The Judge, Family Court, cannot be said to be at fault in making an observation that it was open for the Petitioner – wife to place the said material on record at the inception of the trial and in any case not when it is on the verge of conclusion. No infirmity can be found in the order passed by the learned Judge, Family Court, who has applied Order VI Rule 17 of the Civil Procedure Code in its true spirit.

It is informed today that the matter is fixed before the Family Court for evidence of the Petitioner – wife. It is one more reason, not to interfere in the proceedings at this stage. The order passed by the Judge, Family Court, is confirmed and the Writ Petition is dismissed.

3. It is made clear that this Court has not expressed any opinion on the merits of the matter nor has dealt with rival claims of the parties, which are pending for adjudication before the learned Family Court.

[SMT. BHARATI H. DANGRE, J]