

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.185/2018
IN
FAMILY COURT APPEAL NO.82/2018

Smt. Bharti Dhanaji Jadhav ... Appellant

V/s.

Dhanaji Mahipati Jadhav ... Respondent

Mr. Amey Deshpande for the Appellant
Mrs. Vaishali J. Patil for the Respondent

**CORAM: K.K. TATED &
N. J. JAMADAR, JJ.**

DATED : DECEMBER 19, 2018

P.C. :

1 By virtue of this Application, the Appellant is seeking permission to lead additional evidence in the nature of examination of witness Varsha Gurav in this appeal and further to examine Veena Bhagat in support of the ground of cruelty on which the Appellant had filed a petition for divorce.

2 The learned counsel for the Appellant - Applicant submitted that on account of extreme circumstances, the above named witnesses could not be examined before the Family Court. In order to adjudicate the real question in controversy, it is necessary to permit the Appellant to examine the above named witnesses.

3 In opposition to this, the learned counsel for the Respondent has pointed out that the Family Court had given effective opportunity of hearing to the Petitioner to substantiate her claim. The learned counsel for the Respondent invited our attention to the observations of the Family Court in paragraph 26 of the impugned judgment.

4 In order to retain emphasis, the relevant observations are extracted below:

“.....Thus, considering the reason mentioned in Exhibit-54 and in order to assist the parties in just and fair way and also for having fair adjudication of trial, today I have called Bharati and her lawer and asked about her willingness to examine said witness. However, again she has shown her inability and endorsed on the Application that she is not pressing affidavit of said witness. As such, an affidavit Exhibit-44 cannot be taken into consideration for any purpose.”

5 The aforesaid observations indicate that the Appellant had exercised informed choice not to pursue with the further examination of Varsha Gurav, whose evidence by way of examination in chief, was tendered. The observations further indicate that the Family Court had shown inclination to give further opportunity to the Appellant to lead evidence. Yet, the Appellant chose to proceed ahead with the matter and expressly stated that the Appellant does not want to press the affidavit of the said witness.

6 In view of the aforesaid peculiar facts and circumstances, it cannot be said that the evidence which the Appellant now

proposes to tender was not available or the Appellant could not lead it despite exercise of due diligence. Nor can it be said that this Court requires the evidence, proposed to be led, so as to determine the questions in controversy.

7 We find that the Application for leading additional evidence does not fall within the parameters of Order 41 Rule 27 of the Code of Civil Procedure. We are, thus, inclined to reject the Application.

8 Hence, the Civil Application stands rejected. No order as to costs.

(N. J. JAMADAR, J.)

(K. K. TATED, J.)