

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8432 OF 2017

Mahendra Madhusudan Ghag .Petitioner

Vs.

Sanjay Ramchandra Ghag & anr. .Respondents

Mr. Jaydeep Deo a/w Mr. Vikram Sutaria, Advocate, for the
Petitioner

None for the Respondents

CORAM : M. S. SONAK, J.

DATE : 24.11.2018

P.C.

. Heard Mr. Deo, learned counsel for the Petitioner.

2. The challenge in this Petition is to the Order dated 31.01.2017, by which the learned trial Court has permitted the Respondent No. 1 (Original Plaintiff – husband) to amend the Petition seeking divorce and to add the Petitioner as a co-respondent in the said Petition.

3. The Respondent No. 1 has made allegations of

adultery and it is in the said context, the Petitioner has been impleaded as a co-respondent.

4. Mr. Deo, learned counsel for the Petitioner submits that before any order could have been passed to implead the Petitioner as a co-respondent, the learned trial Court ought to have issued notice to the Petitioner and afforded the Petitioner an opportunity of opposing such impleadment. He submits that since the learned trial Court has held that the impleadment was for the benefit of the Petitioner, the Petitioner ought to have been afforded an opportunity of convincing the learned trial Court that such impleadment was neither for the benefit of the Petitioner nor was the Petitioner interested in any such alleged benefit. Mr. Deo submits that the Petitioner does not want to get involved in the matrimonial issue between the two Respondents. He submits that he is in any case, not at all involved with the Respondent No. 2. He, therefore, submits that his presence in the divorce Petition is neither necessary nor proper. He referred to the Hindu Marriage And Divorce Rules, 1955 framed by this Court and on the basis of the same, he submits that there is a provision for dispensing with

the impleadment of the persons who is alleged to have committed adultery. Mr. Deo submits that from this also, it is quite clear that the presence of the Petitioner was neither necessary nor proper and in any case, the same could have been ordered without previous notice to the Petitioner.

5. Having considered the submissions made by Mr. Deo and perused the record, in my Judgment, there is no case made out to either accept the aforesaid contentions or to interfere with the impugned order.

6. From the perusal of the Hindu Marriage And Divorce Rules, 1955, it cannot be said that there is any statutory requirement to issue notice to the person who is sought to be impleaded as a co-respondent in a matter where divorce is sought for inter alia on the ground of adultery. Rule 5 of the said Rules, in fact, provides for in every petition for divorce or judicial separation on the ground that the respondent is living in adultery or has committed adultery with any person, the petitioner may, however, apply to the Court by an application supported by an

affidavit for leave to dispense with the joinder of such person as a co-respondent on certain grounds. This does not mean that the Petitioner who is alleged to have an adulterous relationship with the Respondent No. 2 is either not a necessary or proper party to the proceedings or that some notice has to be issued to him before he can be impleaded as a co-respondent in such proceedings.

7. It is true that one of the purposes of impleading the Petitioner as a co-respondent is so that the allegations made against him are not adjudicated in his absence. However, that by itself does not mean that the Petitioner can insist upon a notice even before he is impleaded as a party or on the issue as to whether he ought to be impleaded as a party to the proceedings or not. Once the Petitioner is impleaded as a party, it will be obviously upon the Petitioner to file his response and deny the allegations made against him. However, it cannot be said that the Petitioner is not even a proper party to such proceedings.

8. The learned trial Judge has exercised discretion on proper parameters and there is no merit in the contentions raised

by and on behalf of the Petitioner. Accordingly, this Petition is dismissed. There shall be no order as to costs.

9. At the request of Mr. Deo, however, the Petitioner is granted liberty to file his Written Statement, if not already filed within a period of four weeks from today. The learned trial Judge is directed to accept such Written Statement, if filed within 4 weeks from today, since he was pursuing this Petition and this by itself can, in the facts of present case, be construed as sufficient cause for not filing Written Statement earlier.

(M.S.SONAK, J.)