

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13210 OF 2017

Padmini Nakul Deshmukh

...Petitioner

Versus

Nakul Anantrao Deshmukh

...Respondent

*Mr.Ameya Amhane, for the Petitioner.**Mr.Vishal Mughlikar with Mr.S.N.Gaikwad, for the Respondent.*

CORAM : G.S.KULKARNI, J.**DATE : 15 February 2018****P.C. :**

1. Heard learned Counsel for the parties. By this petition, the petitioner-wife is before the Court challenging the order dated 9 October 2017 passed by the learned Judge of the Family Court at Kolhapur, whereby the application filed by the petitioner below Exhibit 127 under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment of the written statement, has been rejected. The application for amendment was moved on behalf of the petitioner inter alia to incorporate paragraph 19A being the averments in regard to Stridhan as also to incorporate a prayer that the respondent-husband be directed to hand over possession of Stridhan as per the list as set out in

paragraph 19A. It would be appropriate to note the contents of the amendment sought, which read thus:-

“19A. The Respondent states that the Petitioner and his family members have through their acts and deeds compelled the Respondent and the minor children to reside at the maternal home. The Respondent submits that all her ornaments as listed below i.e. her stridhana is in the illegal possession of the Petitioner and his family members. Though the Petitioner is admitting in his whatsapp messages that he would be returning her stridhana, his father during his cross examination has categorically denied that the stridhana of the Respondent is in the possession of the Petitioner and his family members. The Respondent states that has a legal right to be in possession of her own stridhana. Hence, the Petitioner is required to be directed to hand over the possession of the stridhana of the Respondent which is listed as under:-

... ..

cc. The Hon'ble Court may direct the Petitioner to hand over the possession of the stridhana as per the list in para 19A above to the Respondent.”

This application was opposed by the respondent-husband inter alia contending that the application was a belated application and under the provisions of Order 6 Rule 17 of the Code of Civil Procedure, such an application would not be maintainable, after the trial has commenced. The learned trial Judge by the impugned order, has rejected the said application.

2. Learned Counsel for the petitioner in assailing the impugned order has drawn my attention to the additional written statement as filed on behalf of the petitioner dated 30 March 2016 and

more particularly paragraph 16 in which the petitioner has specifically averred in regard to the jewellery – stridhan of the petitioner being in custody of the respondent-husband. In paragraph 16 of the written statement the petitioner has made the following averments:-

“16. The Respondent states that again on 3rd June 2011 the Respondent had gone to Risod for a religious program of the Respondent's son's “JAWAL”. There the Petitioner again physically and verbally abused the Respondent, and verbally abused the Respondent's parents. There the Respondent was also shocked to see that the keys to her cupboard were changed and jewellery given to her by the Respondent's parents, in laws and gifted by the Respondent's parent were missing. When the Respondent asked her mother in law, she said that she has kept it in the bank locker. They did not even bother to inform the Respondent of this decision.”

3. Learned Counsel for the petitioner contends that thus there was sufficient foundation which was available in the written statement to incorporate averments as sought to be incorporated by the amendment application. It is submitted that the learned Judge of the Family Court has completely overlooked the consequence of such averments and has proceeded to dismiss the amendment application only on the ground that the amendment is belated amendment. It is submitted that the test of due diligence as necessary under the provisions of Order 6 Rule 17 of the Code of Civil Procedure would not be applicable, as already due diligence was undertaken in making the necessary averments in that regard in the written statement. However,

due to inadvertence the specific averment to that effect remained to be incorporated as also the consequential prayer in that regard.

4. On the other hand, learned Counsel for the respondent opposing this petition would submit that no interference is called for in the impugned order inasmuch as the learned trial Judge has exercised its discretion in appropriately considering all the facts as also in considering that the application was filed at belated stage after the respondent had closed his evidence. It is submitted that the provisions of Order 6 Rule 17 of the Code of Civil Procedure are clear that such an amendment ought not be allowed. In supporting this submission, the respondent has placed reliance on the judgment of the Supreme Court in the case “*Samuel & Ors. Vs. Gattu Mahesh & Ors.*”¹.

5. Having heard the learned Counsel for the parties and having perused the impugned orders, the additional written statement as filed on behalf of the petitioner and the other documents which are placed on record, it is clear that in paragraph 16 of the additional written statement, the petitioner had incorporated averments in regard to the jewellery being in custody of the respondent-husband. Further the petitioner in paragraph 16 of the additional written statement

¹ (2012)2 SCC 300

having incorporated the facts in regard to the jewellery being in custody of the respondent-husband, it cannot be said that there is absolute negligence on the part of the petitioner in not making any averments whatsoever in regard to stridhan/jewellery and/or that completely new case was sought to be introduced by virtue of the averments. As it seen from paragraph 19A which was sought to be incorporated by the proposed amendment, it is seen that the petitioner only intended to place on record and specifically reiterate her contention in regard to the details of the ornaments as listed in the said paragraph to be in the custody of the respondent and that it will be her entitlement under the law to receive the said stridhan/jewellery as one of the reliefs in adjudication of the said proceedings. Also it cannot be overlooked that such a claim would be incidental and integral part of the dispute between the parties and separate proceedings only for the said claim to be made on behalf of the petitioner, would certainly amount to multiplicity of proceedings between the said parties which is not acceptable. Apart from this, it would amount to incomplete adjudication of the dispute between the parties. This is surely not the intention of the proceedings before the Family Court.

6. In any event the provisions of the Family Courts, 1984 are

clear. Section 10 of the Family Courts Act clearly contemplate that the provisions of Code of Civil Procedure apply subject to the provisions of the Family Courts Act. Apart from that sub-section (3) of Section 10 of the Family Courts Act does not prevent the Family Court to lay down its own procedure in regard to the adjudication of disputes between the parties with an intention that truth of the facts as alleged by one party and denied by the other party are adjudicated. Thus, in my opinion, the strict rigour of the law as applicable in adjudication of a normal civil suit would not be strictly applicable to the proceedings before the family Court. The parties before the family Court cannot be bogged down to rigid technicalities. There cannot be any dispute on the proposition as laid down by the Supreme Court in the decision as relied upon by the respondent. However, considering the facts that the proceedings are before the family court and sufficient foundation has been laid by the petitioner to meet the consequential amendment in the written statement, it was not appropriate on the part of the family Court to reject the application. On this backdrop if the petitioner is not allowed to make a claim which she intends to make, would cause a serious prejudice to her rights and entitlement to seek the Stridhan. Thus, considering the nature of the proceedings, interest of justice would require that in the pending adjudication before the Family Court,

a fair adjudication of all the issues is undertaken and it would be necessary to include the issue in regard to stridhan/jewellery belonging to the petitioner.

7. Resultantly the impugned order is required to be quashed and set aside. It accordingly, quashed and set aside. The application of the petitioner below 'Exhibit 177" stands allowed. The consequential amendment in the written statement be carried out by the petitioner within four weeks from today. All contentions of the parties on merits of the principal dispute are expressly kept open.

(G.S.KULKARNI, J.)