

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO.6968 OF 2017

(Rahul s/o Ashok Malu ..vs.. Neha d/o Vijaykumar Taori)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.B. Gandhi, Counsel for the petitioner.

CORAM : ROHIT B. DEO, J.

DATED : 18-09-2018

The petitioner is challenging the order dated 27-11-2012 rendered by the Civil Judge (Senior Division), Akola in Miscellaneous Judicial Case 19/2012, by and under which the application preferred by the respondent-wife under Section 152 of the Civil Procedure Code ("Code" for short) for correction in decree, is allowed.

2. The respondent-wife preferred a petition under Section 11 read with Section 12(1)(a)(c) of the Hindu Marriage Act, 1955 seeking a declaration that her marriage with the petitioner-husband is null and void. The petition was allowed and the marriage was declared null and void, by judgment and order dated 24-8-2012.

3. The learned trial Court observes, and which observation is consistent with the record, that in the petition neither the petitioner-wife nor the respondent-husband referred to or raised the issue of giving or taking

any articles of marriage or return of such articles by husband to the wife. Obviously, due to the inadvertence, it is mistakenly incorporated in paragraph 3 of the decree that the respondent-husband had returned all stridhan and gift articles to the petitioner-wife. In all fairness, it is not even argued by the learned Counsel Shri J.B. Gandhi that in the judgment there is any reference much less consideration to the gift articles having been returned by the husband to the wife. The learned trial Court has not committed any error in correcting the decree. This petition is a gross abuse of the process of law for reasons, which I feel impelled to spell out, since I am inclined to impose exemplary costs :

(A) The petition is filed on 22-6-2017, i.e. nearly four years and five months from the judgment and order impugned. The objection is removed on 13-10-2017 and no attempt is made to circulate the petition for admission. Record reveals, that although the petitioner did not seek a circulation, in normal course, the petition came to be listed for the first time before the Court on 14-9-2018.

(B) Although it is argued by learned Counsel Shri J.B. Gandhi that the decree is corrected without hearing the petitioner-husband, perusal of paragraph 3 of the judgment and order impugned reveals that the learned Advocate for the husband appeared before the Court and submitted praecipe dated 27-11-2012 admitting the contents in the application seeking correction of the

decree. It is seriously and strenuously urged by Shri J.B. Gandhi that the praecipe came to be filed on record by Advocate Shri B.V. Ghuge who was not instructed by the petitioner-husband to represent him in the said proceedings. Shri J.B. Gandhi would further submit, that as a fact the husband was not even served with the summons-notice of the proceedings seeking correction in decree. Be it noted, that these contentions are raised after four years and five months of the judgment and order impugned. In response to a query, Shri J.B. Gandhi states that he is not aware whether his client has taken any steps against the Counsel, who according to the petitioner herein, represented him without authority. It is unfortunate that blaming the counsel has become the final resort of the unscrupulous litigant. In the present case, the allegation levelled and aspersions cast on the counsel Shri B.V. Ghuge deserve to be deprecated particularly since the concession or admission said to have been given by the counsel is not only fair, but is consistent with the judgment. As an officer of the Court, Shri B.V. Ghuge only followed the well established tradition of the bar in admitting that the decree indeed required a correction since in the entire judgment and order there is no even a reference of the husband having returned the articles to the wife. If as an officer of the Court Shri B.V. Ghuge has admitted this position, I do not see anything wrong since the decree must be in consonance with the judgment.

(C) The petition is as frivolous as it could be and the judicial time of this Court is wasted by a litigant whose conduct is not above board.

5. The petition is dismissed, with costs quantified at Rs.25,000/- which shall be deposited by the petitioner with the High Court Legal Services Sub-Committee, Nagpur within three weeks, failing which the registry shall initiate appropriate action.

6. List the disposed of petition on 05-10-2018 under the caption "order matters' for reporting compliance.

JUDGE

adgokar

Prafulla
Manoharrao
Adgokar

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by Prafulla
Manoharrao
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