

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD

WRIT PETITION NO. 1198 OF 2019

Pravin s/o Arjun Jadhav  
Age : 41 years, occupation :  
Educated unemployed,  
Residing at House No. CL-6/43/05,  
12<sup>th</sup> Scheme, Matruchhaya Nivas,  
in front of Morya Mangal Kendra,  
CIDCO, Shivaji Nagar, Aurangabad-  
431 005

.. Petitioner  
Original opponent

versus

Pranita w/o Pravin Jadhav  
Nee : Miss Pranita Asha Bansode,  
Age : 36 years, Occupation : Self-employed,  
presently residing at Amrut Sai Plaza,  
Flat No. 16, P-Wing, 4<sup>th</sup> Floor, Hamalwada,  
Behind Railway Station, Aurangabad  
– 431005

.. Respondent/  
Original claimant

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Mr Hemant Surve, Advocate for petitioner  
Mrs Smita S. Kulkarni, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.

DATE : 4<sup>th</sup> February, 2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.

2. Succinctly stated, petition arises out of an order passed on 03-10-2018 by family court, Aurangabad, whereunder application Exhibit – 97 moved by present petitioner husband – original

opponent in maintenance proceedings bearing no. C-26/2012 filed by present respondent – original applicant wife, seeking amendment to written statement in said maintenance proceedings has been rejected.

3. Perusal of written statement filed by present petitioner in maintenance proceedings reflects upon that present respondent being earning has been one of the basis for resistance of claim for maintenance, albeit, on different plea yet, while the proceedings were prosecuted, in one of the parallel proceedings between husband and wife i.e. divorce proceedings by present respondent, in the evidence of one of the witnesses it is being referred to that some statements about employment of present respondent – wife have been made and with reference to the same, Exhibit – 97 has been moved. Trial court has rejected request under Exhibit – 97 considering that the same is filed belatedly while maintenance proceedings have been pending for final arguments and several dates have intervened. It is further considered that while present respondent – wife was examined and had examined witness from beauty parlour where she is said to be working, petitioner herein was aware of the same and yet he did not take any efforts to bring on record her source of income and now to overcome lacunae, application Exhibit – 97 has been moved.

4. Learned counsel Mrs S. S. Kulkarni for respondent submits that several aspects will have to be taken into account. In the first place, a different reason has been given in the written statement about earning of present respondent and further in her cross examination in 2015 there is reference about certain other proceedings being undertaken by respondent. In such a case although ostensibly it may appear that deposition is recorded in January, 2018 yet, application Exhibit – 97 turns out to be belated and, as such, no fault can be found with impugned order. Attempt by present petitioner under Exhibit – 97 is only to overcome lacunae in written statement as observed by trial court. She, therefore, urges not to give any indulgence to the request under said application.

5. Although submissions are so advanced on behalf of present respondent – wife original applicant, the position emerges that petitioner herein in his written statement resisted maintenance proceedings on the ground of earning by present respondent and had also cross examined her on that count in present proceedings yet, it is indisputable position that there has been evidence led in divorce proceedings in respect of earning source of present respondent and on that basis an application has been moved by petitioner under Exhibit – 97 seeking amendment to his written statement. In such a case, taking into account legal position that

applications for amendments are to be liberally construed and here in present matter stand taken in written statement is sought to be elaborated by specific instance of source of income of respondent herein which appears to have occurred in January, 2018 and the cause for seeking amendments has emerged. It appears that the reasons which have weighed with family court as are appearing in paragraphs no. 4 and 6 of impugned order, in the face of legal position, tend to have weaker footing and may not be able to sustain legal scrutiny.

6. In the circumstances, writ petition is allowed in terms of prayer clause (B) and is disposed of.

7. Application Exhibit – 97 also stands allowed. Maintenance proceedings concerned to proceed with expeditiously and be disposed of preferably within a period of three months from the date of receipt of writ of this order.

8. Rule made absolute in aforesaid terms.

SUNIL P. DESHMUKH  
JUDGE

pnd/-