

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 185 OF 2019

SIYA KETAN PRABHU VERLEKAR., ... Petitioner

Versus

KETAN VINAY PRABHU VERLEKAR., ... Respondent

Mr. J. E. Coelho Pereira, Senior Advocate with Mr.V. Korgaonkar, Advocate for the Petitioner.
Mr. D. Pangam and Mr. S. P. Munj, Advocates for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 12th April 2019

ORAL ORDER

Heard Mr. Coelho Pereira, the learned Senior Counsel for the petitioner and Mr. Pangam, the learned Counsel for the respondent.

2. The present petition can be disposed off on a short count. The parties are husband and wife. The petitioner has filed Special Civil Suit No.50/2017/I against the respondent for divorce under Article 4(4) of the Decree Law dated 26.05.1911 and for permanent maintenance. It appears that the respondent filed his written statement cum counter claim in the suit on 06.06.2017. Incidentally, the petitioner is also seeking a decree of divorce in the counter claim, under the very same Article 4(4)

of the Decree law on the ground of cruelty. Up to this, there is no difficulty. The respondent filed an application for amendment of the written statement and the counter claim on 16.09.2017 raising an additional ground in support of his claim for divorce namely under Section 4(5) of the Decree Law i.e. the parties having stayed, separately for a period of three years. The proposed amendment specifically mentions that the cause of action for seeking the Decree of divorce on the ground of Article 4(5) of the Decree Law, has accrued to the respondent on 23.08.2017 when the period of three years was completed from the time the present petitioner abandoned the conjugal home/domicile of the couple at Bangalore. The application for amendment has been granted.

3. The petitioner filed an application (exhibit 17) for exclusion of the counter claim to the extent seeking divorce under Article 4(5) of the Decree Law, on the ground that the cause of action for the same has accrued subsequent to the filing of the written statement and, therefore, the counter claim was not permissible under Order VIII Rule 6-A of C.P.C. The said application (exhibit 17) has been dismissed by the Trial Court on 30.04.2018 which order is subject matter of challenge in this petition.

4. The material facts are matters of record. It is a matter of record that the cause of action for filing the counter claim

seeking divorce under Article 4(5) of Decree Law has accrued to the respondent on 23.08.2017 which is subsequent to the filing of the written statement on 06.06.2017.

5. Order VIII Rule 6A of the CPC in terms provides that the defendant may in addition to the right of pleading a set off under rule 6, set up, by way of counter claim, against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after filing of the suit, but before the defendant has delivered his defence or before the time limited for delivering his defence has expired.

6. In the present case, admittedly, the cause of action for filing the counter claim seeking divorce under Article 4(5) has accrued subsequent to the filing of the written statement and, therefore, that part of the counter claim cannot be permitted to be raised and can be excluded.

7. In such circumstances, the petition is allowed. The impugned order is hereby set aside. The counter claim filed by the respondent to the extent of seeking a decree of divorce under Article 4(5) of the Decree Law in terms of paragraph 119A and 119B of the amended written statement/counter claim stands excluded.

8. Needless to mention that the counter claim insofar as the ground under Article 4(4) of the Decree Law, can continue.

9. The petition is disposed off in the aforesaid terms with no orders as to costs.

10. The Trial Court shall decide the suit as expeditiously as possible.

C. V. BHADANG, J.

arp/*