

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

WRIT PETITION NO. 3668 OF 2019

Jayshree Shivsharan Choudhary	...	Petitioner
V/s.		
Shivsharan Malleshappa Chaudhary	...	Respondent

Mr.Harish Ramesh Pawar for Petitioner.
Mr.Ashokvardhan Purohit for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 12th December 2019.

PC. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioner has impugned Order dated 24th October 2018 passed below Exhibit-35, thereby rejecting her application for amendment of written statement.

2] Heard Mr.Pawar, learned counsel for the petitioner and Mr.Purohit, learned counsel for the respondent. Perused the entire record annexed to the Petition.

3] The record indicates that, the respondent-husband has filed Petition No.A-626 of 2016 for divorce under Section 13(1)(i-a)(i-b) of the

Hindu Marriage Act, 1955 in the Family Court at Bandra. After receipt of summons, the petitioner-wife filed her detailed written statement of 13 pages on 10th October 2016. It is to be noted here that, the said written statement is drafted by an Advocate and the petitioner has affirmed the said written statement before a Competent Authority established under the law. The petitioner has signed the said written statement in English language.

In this background, the petitioner filed an application for amendment of the written statement under Order-6 Rule-17 of the Civil Procedure Code (for short, "Code") on 5th September 2018. The record further indicates that, the amendment application is filed by another Advocate and not the Advocate who has drafted and filed the written statement. Thus, it appears that, after change of Advocate the application for amendment of written statement is belatedly filed. It is further to be noted here that, the trial of the aforesaid Petition before the Family Court has already begun and the parties herein have filed Affidavit of evidence in lieu of examination-in-chief. The Trial Court by its impugned Order dated 24th October 2018 has rejected the said application.

4] Mr.Pawar, learned counsel appearing for the petitioner, submitted that, certain vital aspects which were necessary to be brought on record in the written statement were not stated by the earlier Advocate and therefore, the petitioner was left with no other alternative than to file application under

Order-6 Rule-17 of the Code for amendment of the written statement. He submitted that, the petitioner was not explained about the contents in the written statement and therefore, the petitioner could not plead for counter-claim in her written statement at the first instance. He therefore, prayed that, impugned Order may be set-aside by allowing the present Petition.

5] Per contra, Mr.Purohit, learned counsel appearing for the respondent vehemently opposed the application and submitted that, the Petition may be dismissed summarily.

6] The Proviso to Order-6 Rule-17 of the Code mandates that, no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before the commencement of trial.

As noted in para No.3 above, the written statement filed by the petitioner dated 10th October 2016 was drafted by an Advocate. A bare perusal of the written statement indicates that, it is an elaborate written statement of about 13 pages. The petitioner has affirmed the said statement and signed it in English language before the Competent Authority under the law. The petitioner had every opportunity to plead her case at the time of filing her written statement at the first instance.

7] A perusal of amendment application would indicate that, no case is made out by the petitioner that, inspite of due diligence she could not have

raised the pleadings before the commencement of trial as stated in amendment application. The Trial Court has recorded a finding that, the application for amendment preferred by the petitioner is not a *bonafide* one and the same is preferred only with a view to keep the proceedings lingering for further period. I find substance in the said finding recorded by the Trial Court. It further appears that, the petitioner is intending to procrastinate the litigation by filing such an application, which according to me has no substance in it.

8] In view of the above, I find that the Petition is *dehors* of merits and is accordingly rejected.

[A.S. GADKARI, J.]