

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

WRIT PETITION NO. 2656 OF 2019

Mrs. Kruti Amit Nandoskar Petitioner

Vs.

Mr. Amit Vishwanath Nandoskar Respondent

Mr. Abhijit Dilip Sarwate a/w Mr. Ajinkya M. Udane for the Petitioner.
Mr. S.S. Bujlani i/by Mr. Manish Rai for the Respondent

Coram : **Smt. Sadhana S. Jadhav, J.**

Date : 23rd August 2019

P.C.:

1. The petitioner herein happens to be the plaintiff in Matrimonial Petition No.24 of 2012, pending before the Family Court, Pune. The petitioner was seeking divorce from the respondent on the ground of cruelty. There was a change in Advocate after the matter was transferred from Thane to Pune. The respondent herein had filed a petition seeking restitution of conjugal rights. It is true that the parties are living separately since last 10 years, however, the respondent is of the opinion that since no

cruelty was extended to her, no ground is made out for seeking divorce and therefore, the respondent has been persistently insisting upon a decree of restitution of conjugal rights.

2. It appears from the records that after framing of the issues, the petitioner herein filed an application below Exhibit 29 and had sought amendment to the written statement filed in P.A. No.73 of 2018. According to the petitioner, there was lack of communication between the petitioner and the Advocate earlier appointed by her and therefore she could not place on record the better particulars of the cruelty meted out to her by the respondent. It further appears, as has been rightly been observed in the order dated 16th February 2019 by the Family Court that the proposed amendment included serious allegations against the respondent.

3. The learned Family Court has observed that the pleadings, which do not form part of P.A.No.69 of 2012 are pleaded by way of amendment in the written statement.

4. Sub-clause 3 of Section 10 of the Family Courts Act, 1984 reads as follows :

(3) “Nothing in Sub-section (1) or Sub-Section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other”.

5. In any case, the respondent-husband would have every opportunity to cross-examine the petitioner on all the pleadings inclusive of the pleadings made by way of amendment in the course of cross-examination to assist the Court not only to arrive at the truth of the matter, but even to ascertain as to whether the pleadings made by way of amendment is only an after thought to defy the claim of the respondent-husband, who even at this stage seeks restitution of conjugal rights. It appears that the proceedings are pending since the year 2012. The parties are living separately since January, 2010.

6. Learned counsel for the respondent vehemently submits that the contents of the amended written statement would change the very nature of the allegations levelled against the respondent in the Marriage Petition No.73 of 2018, however, it is open for the Court to consider the same while deciding the issues that are framed. Learned counsel for the petitioner submits that he would furnish copy of the amended written statement on/or before 5th September, 2019. Learned counsel further undertakes to file an affidavit of evidence by 13th September, 2019. The ground of inconsistency in pleadings is open for the trial Court to decide at the end of recording of evidence.

7. In view of the above discussion, the order dated 16th February 2019 is quashed and set aside. The petitioner to file amended written statement by 5th September, 2019 and the affidavit of evidence by 13th September, 2019.

8. The petition is allowed in above terms with no order as to

Dusane

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costs.

(*Smt. Sadhana S. Jadhav, J*)