

Anand

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

WRIT PETITION NO. 1409 OF 2020

Atul Vilasrao Shinde

.Petitioner

Vs.

Sou. Mohini Atul Shinde

.Respondent

Mr. Shashikant M. Sansare, Advocate, for the Petitioner
None for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 12.03.2020

P. C.

. Heard learned counsel for the Petitioner.

2. By this Petition, the Petitioner has impugned the order dated 26.07.2019 passed by the learned Judge, Family Court, Pune below Exh. 44 in P. A. No. 784 of 2016, by which the learned Judge partly allowed the Petitioner's Application seeking amendment in his Written Statement and counter-claim for restitution of conjugal rights.

3. Learned counsel for the Petitioner submits that the learned Judge ought to have also allowed transcript of the phone calls exchanged between the Petitioner and the Respondent, as it constitutes a fact, within the meaning of the Evidence Act. He submits that the transcripts were necessary to be brought on record by amending the

Written Statement as well as the counter claim.

4. Perused the papers as well as the impugned order. The Respondent – Sou. Mohini Shinde has filed a Petition, being P. A. No. 784 of 2016 for divorce in the Family Court, Pune. The Petitioner appeared in the said divorce proceeding and filed his Written Statement alongwith the counter-claim for restitution of conjugal rights. It appears that after issues were framed, the Petitioner filed an Application seeking amendment of his Written Statement and counter-claim on 01.03.2019. The trial Court partly allowed the said Application subject to costs of Rs. 5,000/-. The said order reads thus :-

“ **ORDER**

1. The application is partly allowed subject to costs of Rs. 5000/-.
2. The costs shall be paid to the petitioner on or before next date.
3. The petitioner shall have right to amend her pleadings in consequence only.
4. The amendment for incorporating the transcript of conversation is rejected.
5. Only those paragraphs, which are not the transcripts, shall be incorporated in the written statement in addition.
6. The court fees shall be paid as per rules on claim of Rs. Two crores.
7. No orders as to costs.”

5. A perusal of the amendment shows that the Petitioner wanted to bring on record the incidents that had taken place post framing of issues and post filing of the earlier Written Statement and counter-claim. The trial Court partly allowed the said Application, inasmuch as, the trial Court permitted the Petitioner to bring on record the circumstances that had taken place post filing of the Written Statement and counter-claim, however, dis-allowed incorporation of the transcript of conversation exchanged between the Petitioner and the Respondent. The trial Court observed that the contents of the conversation cannot be pleaded, being matter of evidence and as such, rejected the request for bringing the said transcript of conversation on record.

6. No infirmity can be found in the said impugned order. Hence, the Petition is dismissed. The trial Court to proceed with the case on its own merits uninfluenced by the observations made in this order. All contentions of all parties are kept open.

7. At this stage, learned counsel for the Petitioner states that the Petitioner has filed an Application for setting aside the order of “No Cross” passed by the trial Court. The trial Court to consider the said Application on its own merits uninfluenced by the observations made in

this order.

8. Accordingly, the Petition is disposed of.

(REVATI MOHITE DERE, J.)