

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12712 OF 2019

Anirudha Anant Chalke	...	Petitioner
versus		
Anushka Anirudha Chalke @		
Pradnaya Vilas Surve	...	Respondent

Rajesh Dharap for the Petitioner.

Ms.Shubhangi Nikam for the Respondent.

CORAM :- SMT.BHARATI DANGRE, J.

DATE :- MARCH 2, 2020

P.C. :-

1. The order dated 5th November, 2019, passed by the learned Judge Family Court No.3, Mumbai at Bandra on an application (Exhibit 17) seeking amendment to the petition filed by the husband in the Family Court, is the subject matter of the present writ petition. The petitioner, who has instituted proceedings seeking dissolution of marriage before the Family Court in the year 2017, had taken out an application under Order 6 Rule 17 of the Code of Civil Procedure, seeking an amendment to his petition.

2. The learned Judge rejected the same on the ground that the incidents referred to in the draft amendment pertain to the

period before filing of the petition, and therefore, since it was well within his knowledge and he had specifically not included them as a part of this petition, now he is estopped from relying on the same.

3. Perused the said application. The draft amendment consist of certain incidents in the form of better particulars in order to support the ground of cruelty. It is not in dispute that they pertain to the period when the parties shared a relationship, but the details of which leading to an inference that the said incidents amounted to cruelty was not to be found in the petition. In any contingency, since the parties are yet to file their notes of evidence, no prejudice would be caused to the other side and the amended writ petition can very well be responded to by filing an additional written statement before the parties enter the witness box.

4. In such circumstances, the impugned order is quashed and set side and the writ petition is allowed in terms of prayer clause (a), which reads thus :

“This Hon’ble Court may be pleased to issue any appropriate writ and call for records and proceedings of MJ Petition bearing no.A-250 of 2018 and Impugned Judgment and Order dt.5.11.2019

passed below Ex-17, passed by Hon'ble Family Court at Bandra and after perusing the legality, validity and proprietary, be pleased to quash and set aside the Order dt.5.11.2019 and further be pleased to allow the Application Ex-17 of the Petitioner, thereby be pleased to permit the Petitioner to carry out the Amendment as prayed for as per the Schedule attached to the Application at Exhibit-C."

(SMT.BHARATI DANGRE, J.)