

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13402 OF 2021

Vaishali Shrikant Arane,
Age : 28 years, Occ: Household,
R/o- Near Block – A/330, Kurla Camp,
Behind Kalimata Mandir, Ulhasnagar-4.

... **PETITIONER**

VERSUS

Shrikant Pandir Arane,
Age: 32 years, Occ: Business,
R/o- Opposite to Utsav Mangal Karyalaya,
Balaji Towers, Ward No.07,
Shrirampur, Tal. Shrirampur,
Dist. Ahmednagar.

... **RESPONDENT**

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Advocate for Petitioner : Mr. Shaikh Mazhar A. Jahagirdar
Advocate for respondent : Mr. Rahul R. Karpe

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CORAM : MANGESH S. PATIL, J.

DATE : 07.12.2021

JUDGMENT :

Heard. Rule. The learned advocate Mr. Karpe waives service for the respondent. At the request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner who has filed a proceeding for annulment of marriage styling it to be a petition under Section 12 of the Hindu Marriage Act is aggrieved by the rejection of her application for amendment of the petition (Exhibit-48) seeking to add a paragraph so as to insert the averments in respect of impotency of the respondent husband.

3. After having heard both the sides at length and perusal of the

the record and the proceeding, it transpires that the petitioner did file the petition styling it to be one for annulment of marriage under Section 12. A minute perusal of her petition would reveal that she made a strenuous attempt to allege that the respondent was all the while unwilling to consummate the marriage. She has narrated the episodes wherein he denied to have sex. Conspicuously, though it could have been in her mind to make up a ground under Section 12(1)(a) of the Hindu Marriage Act seeking annulment on the ground of impotency of the respondent, the petition clearly lacks specific and clear averments so as to make out that ground.

4. Conspicuously, even the trial court seems to have framed the issues oblivious of the nature of the proceeding. He has framed the issues in vernacular which can be roughly translated as under :

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| Issue No.1 | Whether the petitioner establishes that the marriage has not been consummated and she was treated with cruelty ? |
| Issue No.2 | Whether the grounds made out in the petition are sufficient to annul the marriage ? |
| Issue No.3 | Whether the petitioner is entitled to claim annulment of the marriage ? |

A bare perusal of the issues would clearly demonstrate that the learned Judge has framed the issues unmindful of the provision under which the relief was being claimed by the petitioner.

5. There is no material to show that the petitioner had ever made

any attempt to seek the issues to be recast.

6. Again, admittedly, the application for amendment was filed when the matter was reserved for hearing final arguments.

7. The petitioner by way of amendment sought to add following paragraph:

“13-A. That thereafter also with a hope that the behavior of respondent will improve on some day or the other, the petitioner kept on trying communicating and having sexual relationship with the respondent however; to the shocking of petitioner, the respondent rudely and clearly uttered that, he is not interested in women and has different choice of sex. He clearly told petitioner that, he is unable to establish sexual relationship with her as he is incapable of same. He said that, he is interested in males than females for satisfying sexual desire. Thus it revealed to the petitioner that, the respondent is sexually impotent and unable to consummate the marriage. However; on multiple occasions petitioner literally begged respondent to seek medical treatment for this cause with a hope to consummate the marriage however, the respondent shown utter disregard to this suggestion of petitioner and continued depriving her from fulfilling sexual obligation.”

8. Perusal of the testimony of the petitioner would reveal that during her cross-examination in paragraph No.2 she was specifically put the questions and she admitted the facts that she had failed to clearly aver that the respondent was impotent. She also admitted that the petition also did not contain any averment about his incapability to have sex. She also

admitted that there are no averments that because of his inability to consummate the marriage that it was not consummated. It is therefore quite apparent that after such replies perhaps she had become alert and has tried to make amends to include the specific averment so as to make out the ground for seeking annulment on the basis of his impotency as is contemplated under Section 12(1)(a) which reads thus

12. Voidable marriages._(1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:—

(a) that the marriage has not been consummated owing to the impotence of the respondent;

.....

9. The Supreme Court in catena of decisions has laid down parameters to be borne in mind while considering the request for amendment of the pleadings some of which have been culled down by it in the case of **Ravajeetu Builders and Developers Vs. Narayanaswamy and Sons and Ors; (2009) 10 SCC 84**, which has been referred to and relied upon even by the trial court. Some of such parameters have been laid down in paragraph No.67 and read thus:

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper

and effective adjudication of the case?

- (2) Whether the application for amendment is *bona fide* or *mala fide*?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case ? and
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

10. True it is that the petitioner's case might fall under some of these categories in as much as the proposed amendment would be necessary for proper adjudication of the dispute and there are no apparent *mala fides* on her part. However, as has been clarified by the Supreme Court these are only illustrative parameters.

11. It has also been repeatedly laid down that the proposed amendment should not have the tendency of causing any prejudice to the other side which is nothing but to put the case in the Clause (3) of the above instances.

12. As is mentioned above, it is during her cross-examination when the petitioner admitted several clinching circumstances touching her claim to seek annulment that the proposed amendment is sought to be made. Allowing such amendment to be carried out would certainly put the clock back. If she has proceeded with the petition with the serious infirmities in the pleadings as well as in her testimony, the proposed amendment is

nothing but an attempt to fill the lacuna. A serious prejudice, therefore, is certain to be caused to the respondents.

13. There is one more aspect, if the proposed amendment is allowed to be carried out, there is every possibility of the petitioner then seeking to make the respondent undergo some medical examination to bring home her allegations. This would certainly be the prejudice of the respondent.

14. In view of the above state of affairs, I find no illegality in the order under challenge by which the trial court has refused permission to amend the petition. The Writ petition is dismissed. The Rule is discharge.

15. It is made clear that the trial court shall not feel influenced by the observations made herein above which are confined to the decision of the Writ Petition.

(MANGESH S. PATIL, J.)

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