

IN THE HIGH COURT OF BOMBAY AT GOA

WP/202/2021

1. Mrs. Chaya Shaba Naik alias
Chaya Vijay Shirodkar,
Age about 35 years,
daughter of Shri Shaba Naik,
wife of Shri Vijay Nanu Shirodkar,
married, service,
Presently residing at house no.258,
Meharfarm, Uguem, Sanguem-Goa.

..... Petitioner

V e r s u s

1. Mr. Vijay Nanu Shirodkar,
Son of Shri Nanu Shirodkar,
age about 39 years, married,
service, resident of house no.02,
Vikas Nagar Pajimol, Sanguem-Goa.
(The above are the registered addresses).

..... Respondent

Mr. Phaldesai Chandru Purushottam, Advocate for the Petitioner.

CORAM: M. S. SONAK, J.**DATE : 16 th June, 2021.****Oral Order:**

Heard Mr. Purushottam Paldesai, the learned counsel for the petitioner.

2. The challenge in this petition is to the order dated 1/3/2021, by which the learned Trial Court has permitted the original petitioner/plaintiff in Matrimonial petition No.26/2018/A to amend the matrimonial petition.

3. Mr. Phaldesai, the learned counsel for the petitioner submits that there is

a difference between annulment of marriage which was applied for in the original petition and a divorce which is now sought to be applied for by amending the petition.

4. He submits that an amendment which will change the nature of the petition cannot be allowed. He submits that the application seeking leave to amend was filed after the trial commenced and there is no explanation for the delay involved. He submits that the amendment is causing severe prejudice to the petitioner and, therefore, no leave should have been granted by the trial Court. He submits that the even the costs of Rs.800/- have not been paid by the original petitioner.

5. Having considered the submissions made by Mr. Phaldesai and having perused the material on record, I find no jurisdictional error in the impugned order so as to warrant interference under Article 227 of the Constitution of India.

6. There was an obvious error in quoting the correct provision of law. Instead of quoting Article 4(4), the original petitioner, had made reference to Article 18 of the Family Laws, which deal with the provision of annulment of marriage. If the plaint is perused in its entirety, it is apparent that the original petitioner was desirous of seeking a divorce, and not an annulment. No doubt,

there was some amount of laxity in the pleadings as originally filed. That is the reason why, amendment was applied for and leave, was quite correctly been granted by the learned trial Court.

7. According to me, no serious prejudice will occasion the petitioner herein if the impugned order is allowed to stand. Based upon the line of cross examination, the original petitioner must have realized the error in the pleadings and therefor, applied for leave to amend. The petition was instituted in the year 2018 and the amendment was applied for in the year 2019. Therefore, it is not as if there there is some unreasonable delay involved. If the petitioner is desirous to further cross examination, then the petitioner can always apply to the trial Court and the trial Court will consider grant of such leave, now that the leave has been granted to amend the petition. However, this is no ground to interfere with the impugned order which cannot be said to be in excess of the jurisdiction conferred upon the learned trial Judge.

8. Some amount of prejudice that may have occasioned the petitioner is compensated by award of costs. If the costs are not yet paid then the trial Court will ensure that the costs are paid by the original petitioner before the original petitioner proceeds further in the matter based on the amended pleadings.

9. For all the aforesaid reasons, the present petition is not entertained. The

shall be no order as to costs.

10. The petitioner to place authenticated copy of this order before the trial Court on the next date fixed in the matter and also furnish a copy of the same to the learned counsel for the respondent.

M. S. SONAK, J.

Ap/-

MARIA AURA PEREIRA
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MARIA AURA PEREIRA
Date: 2021.06.17
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