

vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.218 OF 2021.

MEENAL MOHAN GARUDI
@ BABY MORTO PORAB

...Petitioner.

Versus

MOHAN EKNATH GARUDI
@ DESSAI

...Respondent.

Ms. P. Bandekar, Advocate *for the petitioner.*

None *for the respondent.*

CORAM: MANISH PITALE, J.

DATED: 20th September, 2021.

P.C.:

1. Heard Ms. P. Bandekar, learned Counsel for the petitioner. By this Petition, the petitioner has challenged order dated 26.2.2020 passed by the Court of Ad-hoc District Judge-I(FTC) Mapusa, whereby an application filed by the petitioner to produce additional documents(Exh.8) has been dismissed.

2. In the present case, the petitioner is the wife and the respondent is the husband in a matrimonial dispute wherein respondent had filed suit for divorce against the petitioner. The respondent *inter alia* alleged that the petitioner was living in adultery and that she had also deserted him giving him ground for seeking divorce.

3. In her written statement the petitioner denied the allegations made against her and further stated the respondent was living in adultery with a lady whose name was specifically stated. It was further stated in the Written statement that said

lady was living in the said matrimonial house on account of which the respondent was not allowing the petitioner to return to the matrimonial house.

4. By judgment and order dated 30.9.2009, the suit/Matrimonial Petition filed by the respondent for grant of divorce was dismissed.

5. Aggrieved by the same, the respondent has filed appeal before the Court of Ad-hoc District Judge-I(FTC) Mapusa. When the appeal reached the stage of final hearing, the petitioner moved the aforesaid application at Exh.8 for placing on record additional document. This is the evidence of the respondent recorded before the Magistrate in a proceeding for maintenance filed by the petitioner herein. According to the petitioner, the contents of the said evidence of the respondent demonstrate admission that he was living in adultery. According to the petitioner this document was relevant to issue no. 2 framed by the concerned Court when the suit/Matrimonial Petition was decided, which contains the allegations of desertion levelled by the respondent against the petitioner.

6. The said application was opposed by the respondent and by the impugned order, the Court of Ad-hoc District Judge-I(FCT), Mapusa dismissed the application on two grounds. Firstly, that the said document i.e evidence of the respondent in the maintenance proceedings was not in existence when the divorce petition was dismissed and secondly, that it was wholly irrelevant because there was no counter claim filed by the petitioner and that no issue was framed, on the allegation of adultery against the respondent.

7. This Court issued notice in the present Writ Petition. Record shows that respondent has been served. This Court had adjourned the present petition on 14.9.2021. Neither on the said date nor today, the respondent has chosen to appear before this Court. Hence, the learned counsel for the petitioner was heard on merits of the present Writ Petition.

8. The learned counsel for the petitioner has submitted that the Court below has erred in rejecting the application for the reason that the document sought to be produced on record was clearly relevant for issue no. 2 framed by the concerned Court while dismissing the suit/ Matrimonial petition for divorce filed by the respondent.

9. This Court has perused the material on record. The issue on which much emphasis is placed by the learned counsel appearing for the petitioner reads as follow:-

2. Whether the petitioner proves that the respondent abandoned the matrimonial house for more than 5 years and deserted the petitioner?

10. In Written statement filed on behalf of the petitioner it has been specifically stated in the context of the petitioner being unable to return to the matrimonial house as follows:-

It is stated that the plaintiff is living in a adultery with one lady by name Savita Babu Naik from Mazali, Karwar who stays along with the plaintiff in his house at Betim. Further there are no any adult member in the family of

the plaintiff and the plaintiff is therefore living a adulterous life in company of the Savita Babu Naik on account of which the plaintiff is not allowing the defendant to return in her matrimonial house.

11. Perusal of the impugned judgment shows that the Court of Ad-hoc District Judge-I(FTC),Mapua has misdirected itself in emphasizing only upon absence of counter claim and absence of issue framed regarding adultery of the respondent herein. The above quoted issue no.2 has been completely ignored in the context of the document sought to be produced on record. This Court is of the opinion that there is substance in the contention raised by the learned counsel appearing on behalf of the petitioner that the document in question would be relevant to support the finding rendered in favour of the petitioner on the question of desertion. This is particularly in the backdrop of the particular stand taken in the written statements, which is quoted above

12. Apart from this, the Add-hoc District Judge-I(FTC),Mapusa has erred in proceeding on the basis that the document sought to be produced on record could not be looked into because it came into existence after suit/matrimonial petition for divorce filed by the respondent was dismissed. This is a wholly irrelevant consideration because while exercising the powers under 41 rule 27 of the CPC, the Court of District Judge-I, Mapusa was supposed to examine as to whether the said document was necessary for rendering decision in the pending appeal. Therefore, the approach adopted by the said Court is found to be erroneous.

13. In view of the above, Writ Petition is allowed and the impugned order is set aside and the application filed at Exh. 8 is allowed in terms of prayer made therein.

MANISH PITALE, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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