

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

WRIT PETITION NO.9826 OF 2019

Shri. Ashish Sharad Desai & Ors. Petitioners

Vs.

Sou. Madhura Ashish Desai & Ors. Respondents

Ms. Rati Sinhasane for Petitioners.

Mr. Gaurav Sharma i/by Mr. Ashotosh Kulkarni for Respondents.

Coram : NITIN W. SAMBRE, J.

Date : 3RD FEBRUARY, 2021

P.C.:

1. This petition is filed by the defendants to the Special Civil Suit No.123 of 2012 pending on the file of 2nd Joint Civil Judge, Senior Division, Sangli. The said suit came to be initiated by the Respondent-wife and the parents against the Petitioner-husband and his parents for compensation of Rs.5,28,213/-, so also additional compensation of Rs.35,00,000/-. It is also prayed in the said suit that the directions be issued to the Respondents to return all belongings of the Petitioners such as Photo Album, C.D. as were made on the day of engagement.

2. Based on the rival pleadings of the parties, the trial Court has framed the issues, which read thus :

1.	Does Plaintiff prove that defendant has suppressed fact of his impotency from the Plaintiff and obtained her consent for marriage ?
2.	Does Plaintiff prove that an amount of Rs.5,28,213/- was spent for marriage ?
3.	Is Plaintiff entitled for compensation ? If yes, at what amount ?
4.	Is Plaintiff entitled for expenses of marriage ? If yes, at what amount ?
5.	Is Plaintiff entitled for mandatory injunction as prayed ?
6.	What order and decree ?

3. The Petitioners-Defendants moved an application Exhibit 18-A thereby praying for casting of additional issues, which read thus :

1.	Do Plaintiffs prove that the marriage between Plaintiff No.1 and Defendant No.1 has not been consummated owing to the impotency of the Respondent ?
2.	Does Defendant No.1 prove that the Plaintiff herself was responsible for non-consummation of the marriage ?

4. Vide order impugned, the said prayer came to be rejected. As such, this petition.

5. Learned counsel for the Petitioners-original Defendants would urge that the aforesaid two issues are required to be additionally casted as the said issues are necessary for deciding the true controversy between the parties. According to him, after appreciation of pleadings of the rival parties i.e. in the plaint and written statement, it can be inferred that the Plaintiff is duty bound to prove that the marriage was not consummated owing to the impotency of the Respondent-husband and that the Respondent-Plaintiff herself was responsible for non-consummation of the marriage.

6. Per contra, learned counsel for the Respondents supports the order impugned and sought dismissal of the petition by relying on issue No.1 framed in the suit.

7. Considered rival submissions.

8. This Court is required to be sensitive to the fact that based on the rival pleadings of the parties, the trial Court on 3rd January, 2013 has framed the issues and the additional issues are sought to be framed

after a period of five years. If we consider issue No. 1, which speaks of the burden on the Plaintiff to prove that defendant has suppressed the fact of his impotency from the plaintiff and obtained her consent for marriage. The said issues particularly covers the issues, which are sought to be additionally framed by the Petitioners. While deciding the issue No.1, it is incumbent for the Court to decide the issue of impotency and then consummation of marriage.

9. Learned trial Court has correctly considered the same and rejected the prayer for casting of additional issues.

10. The application moved by the Petitioners/defendants prima facie appears to be with an intention to prolong the litigation in the pending suit.

11. In the aforesaid backdrop and having regard to the pleadings of the rival parties, the trial Court was justified in rejecting the prayer for casting of additional issues.

12. No case for interference is made out. The petition as such fails, stands dismissed.

(NITIN W. SAMBRE, J.)