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

WRIT PETITION NO. 3644 OF 2021

Anjusha Satishchandra Kale Petitioner
Vs.
Shri Satishchandra Purshottam Kale and ors. Respondents

Mr.Vinod Joshi a/w Ms.Lata Patne, for the Petitioner.

CORAM : M. S.KARNIK, J.

DATE : AUGUST 3rd, 2021

P.C. :

1. Heard learned Counsel for the Petitioner. The order under challenge in this Petition is passed by the Family Court at Mumbai below Exhibit 201. The Respondent - husband filed an application seeking amendment in his pleadings under order VI Rule 17 of Code of Civil Procedure, 1908. The main Petition was filed by Respondent No.1 before the Family Court seeking divorce and custody of minor children against the Petitioner - wife. The main ground on which divorce is sought is adultery.

2. When the matter was fixed for examination-in-chief,

an application came to be made by the Respondent – husband seeking the amendment. According to the Respondent, there are some vital documents of the years 2014, 2015 to 2019 which are necessary to be brought on record to decide the issue involved in the Petition for which the same needs to be proved and exhibited. According to the Respondent – husband, the said incidents and documents are necessary to decide the real question in controversy between the parties and that the proposed amendment will not change the nature of the Petition and prayers made therein.

3. Learned Counsel for the Petitioner assailing the order passed, contended that when the trial has commenced, such an application filed at such a belated stage without indicating any due diligence should not have been entertained. He moreover contended that by an order passed by this Court in Writ Petition No. 10807 of 2019 between the same parties filed by the Respondent - husband, challenging the order dated 01/07/2019 passed by the Family Court, this Court expedited the proceedings and requested the Family Court to decide the Petition itself finally, preferably within 6 months from 23/03/2021. Learned Counsel for the Petitioner submitted that he also needed to file consequential application for amendment placing on record

certain facts, but as matter was proceeding pursuant to an order passed by this Court and as Petitioner had already filed this Petition, such application for consequential amendment could not be moved.

4. I have gone through the impugned order. The Family Court was conscious of the fact that the trial has commenced. The Family Court was of the opinion that the amendment would be necessary for the purpose of determining the real question in controversy between the parties. The Petition before the Family Court was filed in the year 2014. The Family Court records that the alleged incidents which the Petitioner wants to plead by way of proposed amendment occurred after filing of the present Petition, more specifically from 2017 onwards. The Family Court observed that the Court while considering the application for amendment should not adopt hyper technical approach, but liberal approach should be adopted. The Family Court further observed that the proposed amendment will not change the nature of the Petition. In these circumstances the Family Court allowed the application for amendment. Having gone through the impugned order passed by the Family Court, I see no reason to interfere with the impugned order in as much as the Family Court has also awarded cost of Rs. 5,000/- payable to the

Petitioner - wife.

5. It is made clear that if the Petitioner- wife wants to make an application for consequential amendment, it is open for the Petitioner- wife to make appropriate application before the Family Court which shall be considered on its own merits and in accordance with law.

6. Considering the overall circumstances, it would be in the fitness of the things if the time granted by this Court vide order dated 23/03/2021 to decide and dispose of the Petition is extended by a further period of 6 months from today. Petition is disposed of in the above terms.

7. Learned Counsel for the Petitioner submits that there are several other applications which have been filed by the Petitioner before the Family Court which are not decided. It is open for the Petitioner to move the Family Court with a request to decide the applications and it is for the Family Court to deal with this request.

(M.S.KARNIK, J.)