

Bhogale

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

WRIT PETITION NO.5998 OF 2018

Prachi Shirish Kulkarni .. Petitioner

vs.

Shirish Madhusudan Kulkarni .. Respondent

Gauri Godse for the Petitioner.

Mr. Murlidhar Khadilkar a/w Mr. Akash Joshi I/b. MAG Legal for the
Respondent.

CORAM : M.S.KARNIK, J.

DATE : APRIL 5, 2021

P.C.

Heard learned counsel for the parties.

2. The Petitioner-wife challenges an order passed by the Family Court, Pune rejecting an application for amendment of written statement. The Respondent-husband filed a Petition for divorce under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 in the year 2013. The Respondent-husband was under cross-examination. At that stage application came to be filed by Petitioner for amendment of the written statement. The Family Court rejected the application on the ground that the Petitioner-wife was not able to establish due diligence in raising the defence in her written statement before the commencement of the trial.

3. Learned counsel for the Petitioner submitted that in the matrimonial proceedings the Family Court should have been liberal in allowing the amendment to the written statement. Further my attention is invited to the application made where it is stated that the proposed amendment does not change the nature of the written statement and counter claim therein. Learned counsel for the Petitioner relied upon the decision of the Hon'ble Supreme Court in the case of **Vidyabai and others vs. Padmalatha and Another**¹ in support of her submission. She submitted that the Respondent-husband is under cross-examination and therefore no prejudice would be caused if the application for amendment even at this stage is allowed in the interest of justice.

4. Learned counsel for the Respondent on the other hand supported the impugned order also relying upon the decision of the Hon'ble Supreme Court in the case of **Pandit Malhari Mahale Vs. Monika Pandit Mahale and Ors.**² to contend that no due diligence has been established by the wife in filing the application for amendment of written statement after the commencement of the trial.

5. Heard. I have gone through the impugned order passed by the Family Court. I have also gone through the application for amendment. A perusal of the application for amendment reveals that the averments falls short of establishing due diligence on the

1 (2009) 2 SCC 409

2 Civil Appeal No.189 of 2020 (Arising out of Special Leave to Appeal (Civil) No.5888 of 2019)

part of the wife in raising the defence in her written statement before the commencement of the trial. In the present case the Respondent-husband is under cross examination. The trial has commenced. I see no reason to interfere with the order passed by the Family Court.

6. Learned counsel for the Petitioner was at pains to point out that the grounds (i) and (j) in the Petition are the reasons which are sufficient to establish that despite due diligence the defence could not be raised before the commencement of the trial. It was argued by the learned counsel for the Petitioner that in fact it cannot be said that the trial has commenced as the Respondent-husband is under cross-examination. I do not find any merit in this submission. However the said grounds are not part of the application for amendment and therefore I see no reason to interfere with the impugned order. In the interest of justice, I leave it open for the Petitioner-wife to make an appropriate application incorporating the grounds (i) and (j) mentioned in the Petition or any other grounds to establish due diligence and if such an application is made, the same shall be considered on its own merits and in accordance with law.

7. Subject to these observations, the Writ Petition stands dismissed.

(M.S.KARNIK, J.)