

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7846 OF 2018
ALONG WITH
WRIT PETITION NO. 7855 OF 2018

Ashish s/o Rijhumal Bharani
Age- 45 years, Occ- Service,
R/o. 40, Mid Town Plaza,
Opp. Gurunanak Dharmashala
Manik Baug Road, Indore (M.P.).

...PETITIONER
[Ori. Deft. No. 1]

Versus

1] Chetna d/o Morandmal Tanwani
Age- 42 years, Occ- Lecturer,
R/o 110, Sindhi Colony, Jalna Road,
Aurangabad, Dist. Aurangabad

...(Respondent No. 1
Orig. Plaintiff)

2] Rijhumal Baharani
Age- 83 years, Occ- Retired,
R/o. 403, Mid Town Plaza,
Opp. Gurunank Dharmashala,
Manik Buld. Road Indore (M.P.)

3] Meera w/o Rijhumal Baharani
Age- 75 years, Occ- Household,
R/o. As above.

4] Rakesh s/o. Rijhumal Baharani
Age- 53 years, Occ- Business,
R/o. As above.

5] Jaya w/o Rakesh Baharani
Age- 48 years, Occ- Household,
R/o. As above.

...RESPONDENTS
(Ori. Deft. Nos. 2 to 4)

Mr. M.K. Deshpande, Advocate for Petitioner.

Mr. Kuldeep Patil h/f. Mr. S.S. Chaudhari, Advocate for Respondent
No 1.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 31st MARCH, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard with the consent of parties.
2. Since both these petitions raise similar question of law and facts, they were heard together and are being disposed of by this common judgment.
3. In Writ Petition No. 7846/2018, the petitioner/original defendant has challenged the order passed by the learned Civil Judge Senior Division, Aurangabad, below Exhibit-110 in Special Civil Suit No. 270/2010, thereby rejecting the application filed by the petitioner/defendant for production of documents.

4. In Writ Petition No. 7855/2018, the petitioner has challenged the order passed below Exhibit-119 whereby his prayer for for framing additional issues is rejected.

5. The petitioner is original defendant in the said suit, filed by respondent seeking compensation of Rs. 41,000,00/- from the petitioner/defendants and others on account of agony suffered by her by her marriage with the petitioner. Under various heads like amount spent for marriage, for journey, mental tension, suppressing real facts i.e. impotency, future expenses etc. The total compensation of Rs. 41,000,00/- is claimed. The petitioner resisted the suit by filing the written statement.

6. The evidence was led by both the parties and the suit was posted for final arguments of both the parties. At this stage, the petitioner moved an application Exhibit-110 for production of documents. The trial Court rejected the said application holding that those documents are related with potency of petitioner, which is not the fact in issue in case at hand. The evidence of defendant is closed by

virtue of purshis Exhibit-117 and the matter is reserved for final arguments. The defendant is trying to protract the matter on one or other pretext and filing of application is nothing but one more attempt on his part. The trial Court therefore, rejected the application.

7. The application Exhibit-119 is filed by the petitioner seeking framing of additional issues i.e. 'whether plaintiff proves that the defendant is impotent?'. The said application is rejected by the trial Court holding that the issues which are framed in the suit are sufficient to adjudicate the matter finally and framing of additional issue, when the matter is fixed for final arguments is not warranted. The defendant is trying to protract the matter. Hence, the trial Court rejected the said application.

8. Heard the rival submissions of learned advocate for the petitioner and learned advocate for respondent No. 1.

9. Admittedly, the marriage between the petitioner and respondent No. 1 is declared null and void by the decree passed on

29.09.2008 by the Family Court in Petition No. B-4/2007, on the ground that the marriage between them was not consummated. The petitioner admittedly, has not challenged the said decision.

10. So far as the application Exhibit-110 is concerned, the documents sought to be produced on record by the petitioner were in respect of his potency. Issue No. 1 framed below Exhibit-67 is 'does the plaintiff prove that due to impotency of defendant No. 1, she suffered mental torture and harassment?' In the light of decree of nullity of marriage passed on account of non consummation of marriage and since same having been not challenged by the petitioner, there is no propriety to permit the petitioner to produce the said documents on record. Admittedly, the suit is at the final stage and is fixed for final arguments. In that view of the matter, the trial Court is justified in passing the impugned order thereby rejecting the application Exhibit-110.

11. For the same reason, the application Exhibit-119 is rightly rejected by the trial Court holding that issue of potency of the

petitioner is not the fact in issue in the trial. The issues framed below Exhibit-67 are sufficient to adjudicate the matter finally. Framing of additional issues at the final stage of the matter when the suit is posted for final arguments is not necessary and the petitioner is trying to protract the the matter.

12. In the facts of the present case, the trial Court was right in passing the impugned orders. There is no illegality or perversity in the impugned orders. The petitions being devoid of merits, are dismissed. No costs.

13. Rule discharged.

[NITIN B. SURYAWANSHI]
JUDGE