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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8995 OF 2022

Smita Vivek Bhurkapalle

PETITIONER

VERSUS

Vivek Ramakant Bhurkapalle

RESPONDENT

.....

Mr. Krishna P. Rodge, Advocate for the petitioner

Mr. Shrikant G. Kawade, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st SEPTEMBER, 2022

ORDER :

1. The challenge in this petition is to the order dated 11th April, 2022 passed by the learned Judge, Family Court, Latur below Exhibit-81 in Petition No.A-28 of 2018.
2. The respondent – husband has filed said petition seeking divorce against the petitioner – wife. The petition was resisted by the petitioner – wife, by filing written statement. Thereafter, evidence of the husband and his witness is recorded. The petitioner – wife, thereafter filed application Exhibit-81 seeking amendment for inclusion of prayers in the written statement. By way of written statement the petitioner – wife, had prayed for dismissal of the divorce petition, however, by way of

amendment, she claims that decree of divorce be granted. By another proposed prayer, she prays for a direction to the respondent-husband to return the dowry amount paid, expenses incurred for engagement and marriage ceremonies, her gold and silver ornaments and other things including utensils, her degree certificates, original mark sheets, medical documents, Adhar Card, PAN Card etc. She also claims amounts towards loss of income and for mental harassment etc. etc.

3. This application is resisted by the respondent-husband and the Family Court has rejected it holding that as per orders of the High Court, the matter is time bound and has to be disposed of within six months. It is further held that at the time of filing of the written statement, the wife could have made the prayers, which she now intends to include in her written statement. By way of seeking amendment to include prayer clauses in the written statement, the wife in fact is trying to bring counter claim against the husband. Merely because the wife has engaged a new advocate that is not a sufficient ground for allowing the amendment. Since cross-examination of the husband and his witness is over, if the amendment is allowed, it will cause serious prejudice to the husband. The Family Court was of the view that the wife has not brought anything on record to show that in spite

of due diligence, she could not raise the matter before the commencement of the trial. Her application is, therefore, rejected.

4. Heard learned advocate for the petitioner-wife and learned advocate for respondent-husband. Perused the grounds raised in the writ petition and the documents annexed thereto and the impugned order.

5. It appears from the record that the petitioner-wife has changed her mind after conducting cross-examination of the husband. It seems that having realized the fact the respondent-husband is not ready to accept her, by way of amendment she has made a prayer that his divorce proceedings be allowed, which she had resisted in the written statement. In that view of the matter, she has sought amendment in the written statement to include prayers to demand dowry and other amounts paid to the husband and her other belongings including gold and silver ornaments and decree certificates, mark sheets etc.

6. May be, the petitioner-wife is trying to raise a counter claim by way of amending the written statement, but, with a view to settle the controversy between the parties and so as to avoid multiplicity of proceedings and in view of settled legal

position that amendment has to be liberally allowed, the Family Court ought to have allowed the amendment application filed by the petitioner-wife.

7. By order dated 26th July, 2022, this Court has granted extension of 9 months to dispose of the proceedings pending before the Family Court. In that view of the matter, there is sufficient time for the Family Court to decide the matter on merit.

8. For aforesaid reasons, the writ petition is allowed. The impugned order dated 11th April, 2022 passed by Judge, Family Court, Latur below Exhibit-81 in Petition No. A-28 of 2018 is quashed and set aside. Application Exhibit-81 is allowed. Amendment to be carried out by the petitioner-wife within a period of two weeks from the date of receipt of writ of this order. Family Court to proceed with the trial thereafter.

[NITIN B. SURYAWANSHI]
JUDGE