

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4876 OF 2022**

Satish @ Dhanaji Mahadeo Ghadge] ... Petitioner

Vs.

Sarika Satish @ Dhanaji Ghadge] ... Respondent

...

Mr. Shailesh Chavan i/b Mr. Milind Deshmukh for the petitioner.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 16TH JUNE, 2022.

P.C.:-

1. By the present writ petition, the petitioner raises a challenge to the order dated 21/10/2021 passed by the 3rd Joint Civil Judge, Senior Division, Satara, below Exh.25, in Marriage Petition No.433 of 2017.

2. In a petition seeking dissolution of marriage under Section 13(1)(1b) of the of the Hindu Marriage Act, an application came to be filed by the husband, seeking permission to conduct DNA testing of the child and this application is rejected.

3. Perusal of the impugned order would reveal that the learned Judge has recorded that the case pleaded in the divorce petition is that, the wife had left the matrimonial house from 04/07/2008 and refused to reside with him and that is pleaded to be the date for cause of action to institute the proceedings. The wife by setting a defence, vide Exh.-30, specifically pleaded that the son was borne out of the wedlock on 28/11/2006 and since then, her husband was not taking proper care and she was subjected to physical and mental harassment. Further, suspecting her character, she was driven out from the matrimonial house and since then, she is residing with her child in her parental house. She has also instituted proceedings in the court at Meda and sought maintenance. The claim was contested by the husband, but he never disowned the child. He even filed Revision Application No.15 of 2011 and, even on this occasion, never questioned the paternity of the child.

4. Making a reference of Section 112 of the Indian Evidence Act and drawing a presumption in favour of the legitimacy of the child, observing that when the relationship between the husband and the wife is not severed and they were residing together and they continued in a valid marriage, learned Judge has rejected the application.

5. Heard learned counsel for the petitioner, who would

submit that he has specifically raised a ground that the wife was not residing with him two years prior to the birth of the child. He has invited my attention to paragraph No.3 of the divorce petition to make good his submission. However, on perusal of the same, it can be seen that the petitioner's contention, as contained in paragraph No.3 is that from 2004, the wife was not allowing him to establish physical relationship and since she was of an adulterous nature, he disowned the child. It is not the case of the petitioner that the wife had any physical relationship with any other man, to dispute the paternity of the child. The cause of action for the divorce petition is pleaded to be from 04/07/2008, when she left the petitioner.

Drawing presumption under Section 112 of the Indian Evidence Act and since there is no pleading in the petition that the wife was not residing with him or she was separated or their relationship has severed, learned Judge has dismissed the application. The plea of doubt being raised at a very belated stage, has rightly been turned down.

6. Since there is no illegality or perversity in the impugned order, upholding the same, the writ petition is dismissed.

[SMT. BHARATI DANGRE, J.]