

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

WRIT PETITION NO.6590 OF 2022

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Smt. Anuradha Ananda Todkar

..... Petitioner

Vs.

Smt. Sunita Ananda Todkar

....Respondent

.....

Mr. Vijay Killedar for the Petitioner.

Mr. Nagesh Chavan for the Respondent.

**CORAM: SANDEEP K. SHINDE, J.
RESERVED ON : SEPTEMBER 8, 2022
PRONOUNCED ON: SEPTEMBER 13, 2022**

P.C.

1. This Petition under Article 227 of the Constitution of India takes exception to the order dated 31st January, 2022 by which the Joint 3rd Civil Judge, Senior Division, Sangli did not allow the Petitioner-Original Respondent to amend her reply.

2. Facts essential for the decision of this application are that;

Respondent filed an application for certificate under Section 372 of the Indian Succession Act, 1925 for claiming debts-terminal benefits, payer to Shri Ananda Todkar-her husband, who died intestate on 12th August, 2020. Petitioner appeared in application proceedings and opposed the grant of

succession certificate to the respondent, contending that she was not legally wedded wife of late Ananda. In contrast, she claimed herself to be wife of late Ananda and filed her Written Statement/Reply. In the proceeding, Respondent-Original Applicant adduced her evidence in December, 2021. In January, 2022, Petitioner sought leave to amend her Reply-Pleading. In the proposed amendment, she pleaded that, though the Respondent was married to Ananda, marriage did not consummate. As such, as per prevailing customs in the caste, respondent's marriage with Ananda, was dissolved on 1st August, 2018 by customary divorce in the presence of Ananda's relatives. Afterthat, Petitioner married to Ananda on 4th February, 2018 at Miraj in the house of one Vishwanath Koulapure. She would, therefore, claim her marriage according to customs, was valid and not against the public policy.

3. The learned Trial Court did not allow, to amend her Reply for want of due, diligence on her part in terms of the proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908.

4. Heard learned counsel for the Parties.

5. Herein Petitioner and the Respondent both are claiming that they were married to late Ananda. In the first Reply filed on 12th November, 2021, Petitioner denied respondent's marriage with Ananda and affirmed her marriage with him. The amendment sought to be introduced, simply introduce additional facts, with no change in her substantial defence. Thus, facts sought to be introduced by way of amendment would not cause injustice or prejudice to the Respondent. Settled law is, a prayer for amendment is generally required to be allowed unless; (i) By the amendment, time-barred claim is sought to be introduced in which case the fact that the claim would be time-barred becomes a relevant factor for consideration or the prayer for amendment is malafide or by amendment, the other side loses valid defence. In the case of **Life Insurance Corporation of India, Civil Appeal No.5909 of 2022**, the Hon'ble Apex Court has held that where amendment merely sought to be introduced an additional or a new approach without introducing time-barred cause of action, amendment is liable to be allowed even after expiry of limitation.

6. In the case at hand, amendment sought to be introduced was not introducing time-barred cause of action. In

fact, this amendment would assist the Court in rendering more satisfactory decision. What appears from application moved by the Petitioner, is that the, additional facts could not be pleaded in the first Reply because the Petitioner is 'Kannada' speaking person and thus, could not elicit and communicate defence to her advocate in 'Marathi. In any case, the amendment sought by the Petitioner, is in the nature of introducing additional facts and nothing more. Therefore, I am inclined to grant the application. In consequence, Miscellaneous Civil Application No.155 of 2021 moved by the Petitioner is allowed. In the result, the impugned order is set aside. Petitioner shall apply to the Trial Court for carrying out consequential amendments. However, in view of peculiar fact that Succession Certificate is sought to collect/claim post death benefits payable to Late Ananda, the learned Civil Judge, Senior Division, Sangli shall endeavour to dispose of the Miscellaneous Civil Application No.155 of 2021 within six months from the communication of this order. The Petition is allowed and disposed of in above terms.

(SANDEEP K. SHINDE J.)