

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.432/2022

Priyanshu W/o Nikhil Shende @ Priyanshu D/o Prabhakar Rao Mahajan
(Meshram)
...Versus...
Nikhil S/o Bisaram Shende

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri N.B. Kalwaghe, Advocate for petitioner
Shri A.V. Muley, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 10/10/2022

1. Heard Shri Kalwaghe, learned counsel for the petitioner and Shri Muley, learned counsel for the respondent. The petition challenges the order passed on the application below Exh.50 filed by the husband/respondent, the petitioner in Petition No.A-89/2020 seeking to amend the Hindu Marriage Petition filed by him which was originally under Section 11 of the Hindu Marriage Act, 1955 (for short, "the H.M. Act", hereinafter) by inserting Section 12 (1) (c) of the H.M. Act along with amendment in support of them. The learned Trial Court by the impugned order has allowed the same.

2. Shri Kalwaghe, learned counsel for the petitioner submits that the petition raises three grounds (i) that the

amendment application was barred on account of Section 12 (2) (a) (i) of the H.M. Act as the application was filed one year after the fraud was detected, which according to him, was so done on 05/06/2020 and the application having been filed on 29/10/2021 was beyond period of one year, (ii) that the application changed the nature of the proceedings and (iii) that there was no due diligence and therefore, the proviso to Order VI Rule 17 of the Code of Civil Procedure stood attracted.

3. Shri Muley, learned counsel for the respondent opposes the same and relies upon the order of the Hon'ble Apex Court dated 23/03/2020 in *Suo Motu Writ Petition (Civil) No.3/2020* and the subsequent orders passed therein to contend that the limitation was extended by the Hon'ble Apex Court and so also the same would have equal effect upon the due diligence.

4. Insofar as the first ground is concerned, though Section 12 (2) (a) (i) of the H.M. Act prescribes a limitation for filing proceedings under Section 12 (1) (c) of the H.M. Act, within a period of one year from the discovery of the fraud, admittedly in the instant case, even according to Shri Kalwaghe, the learned counsel for the petitioner, the fraud was discovered on 05/06/2020 and the application for amendment was filed on 29/10/2021, the entire duration is covered by the order of the Hon'ble Apex Court in *Suo Motu*

Writ Petition No.3/2020 extending the limitation for filing petitions/applications/suits/appeals under the General Law or under Special Laws, on account of which, the restriction of one year as contained in Section 12 (2) (a) (i) of the H.M. Act, would not come in the way of filing of the application for amendment and for the same reason, the due diligence clause would not operate.

5. Insofar as the contention regarding change of nature of proceedings is concerned, it is necessary to note that the proceedings are between the same parties, and therefore, in order to avoid multifarious litigations, the law contemplates clubbing of causes of action in which case as the amendment has been allowed, it would not be appropriate to drive the respondent to another set of litigation on the same cause of action, considering which, I do not see any reason to interfere with the impugned order. The writ petition is therefore dismissed. No order as to costs.

6. Needless to say that the petitioner shall have liberty to file consequential amendment on account of application Exh.50 having been allowed.

(AVINASH G. GHAROTE, J.)