

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.415 OF 2023

Jagdish Yadav Attarde

...Petitioner

Versus

Dipti Jagdish Attarde

...Respondent

Mr. S.R. Patil, Advocate for the petitioners.

Ms. Varsha Pichaya, Advocate for the respondent.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th APRIL, 2023

ORDER :

1. Petitioner/husband is aggrieved by the order passed by Joint Civil Judge, Senior Division, Bhusawal, below Exhibit-76 in Hindu Marriage Petition No. 20 of 2017, thereby rejecting the application filed by the petitioner under Order 6 Rule 17 of Code of Civil Procedure.

2. Husband has filed Hindu Marriage Petition No. 20 of 2017 under section 13 of Hindu Marriage Act, seeking divorce from the wife on the ground of mental cruelty. Wife opposed the petition by filing written statement. Husband thereafter filed application Exhibit-76 seeking amendment in the petition. Husband is aggrieved by rejection of said application.

3. Heard the learned advocate for the petitioner and learned advocate for the respondent. Perused the grounds in the petition, documents annexed thereto and the impugned order.

4. By way of proposed amendment husband has sought to bring on record subsequent developments which have occurred after filing of divorce petition. The pleadings about mental illness of wife are already made by husband in the divorce petition.

5. The Trial Court has rejected the amendment application holding that whether the wife is suffering from mental illness will be decided on the basis of evidence led by the parties. Merely, because the wife has filed proceeding under Domestic Violence Act and criminal proceeding under section 498-A, it cannot be said that she is suffering from mental illness. Husband cannot rely on subsequent events to prove his case. If the amendment is allowed nature of divorce petition would change.

6. The Trial Court has failed to take into consideration the settled legal position that amendment is to be liberally allowed. It is not in dispute that by the proposed amendment

husband was wanted to bring on record the subsequent developments. The foundation is already laid by the husband by making averments of mental illness of wife in the divorce petition. In that view of the matter, the Trial Court has erred in holding that husband cannot rely on subsequent events to prove his case. The amendment is necessary to effectively adjudicate the controversy between the parties. No prejudice is likely to be caused to eh wife if the said amendment is allowed.

7. For the aforesaid reasons, writ petition is allowed.

8. Impugned order dated 16.11.2022 passed by Civil Judge, Senior Division, Bhusawal, below Exhibit-76 in Hindu Marriage Petition No. 20 of 2017, is hereby quashed and set aside.

9. Application Exhibit-76 is allowed, subject to the petitioner paying costs of Rs. 10,000/- to the respondent/wife in the Trial Court.

[NITIN B. SURYAWANSHI, J.]