

VRJ

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

WRIT PETITION NO.2403 OF 2020

Minoti Anand	... Petitioner
V/s.	
Subhash Anand	... Respondent

Ms. Chandana Salgaonkar for the petitioner.

Mr. Chirag Mody with Mr. Rishikesh Soni i/by Prashant
S. Goyal for the respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 9, 2023

P.C.:

1. The petitioner has filed present petition challenging the legality of order dated 10th August 2018 passed below Exhibit-63 seeking a direction against the Family Court to exclude Flat No.2301-B and 2401-B on 23rd and 24th Floor of Walkeshwar, Om Vikas Co-operative Housing Society Ltd., 105/107, Walkeshwar Road, Mumbai.

2. The petitioner filed an application below Exhibit-63 based on order dated 25th September 2014 passed by this Court in Civil Revision Application No.699 of 2013. According to the petitioner, the counsel for the respondent herein did not press the relief of declaration about the gift deeds and rights of sons pertaining to

flat Nos.2301-B and 2401-B. The finding recorded by this Court in the said position is that the husband does not want any declaration pertaining to the said gift deed and does not want to touch any right and title of the children in the said property.

3. According to the petitioner, in addition to the such concession, filing of suit No.611 of 2017 seeking relief as regards the aforesaid properties disentitles him from proceeding with the reliefs before the learned Family Court.

4. In substance, the application of petitioner was for recasting of issues based on subsequent events. The effect of concession recorded by this Court and filing of substantive suit seeking relief in relation to the aforesaid properties are the matters of merit which the learned Family Court needs to decide at appropriate stage as is permissible in law.

5. However, while considering the application for recasting of issues, the scope of inquiry would be considered as to whether the issues as framed are based on material propositions of fact or law affirmed by one party and denied by other. If such material proposition of facts and law are said in the pleadings, the Court at the stage of framing of issues or recasting of issues would be bound by said pleadings.

6. The entitlement to the relief as per the issue is the matter of trial which the Court would be required to decide according to law. Therefore, in my opinion, considering the pleadings of the parties before the learned Family Court, the issues as framed by the learned Family Court arise for consideration. Therefore, in my

opinion, rejection of the application for recasting of issues does not suffer from error of law; however, it is made clear that the reasons pleaded by the present petitioner for recasting of issues can be considered by the Family Court at an appropriate stage of the suit. For aforesaid reasons, no interference is required with the impugned order.

7. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)