

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

WRIT PETITION NO.135 OF 2023

Kamlesh Shrimalani	 Petitioner
Vs.	
Anita Kamlesh Shrimalani	 Respondent

Mr. Ajinkya A. Badar for the Petitioner.
Ms. Minal Chandnani a/w. Mr. Bhavesh C. Sawant i/b Jaiwant S. Chandnani & Associates for Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 13 JULY 2023.

P. C.

1. Heard.

2. The challenge in the petition is to the order dated 11/8/2022 rejecting the petitioner's application for amendment of the plaint seeking to add grounds of nullity under section 12(1)(c) of Hindu Marriage Act to the petition claiming divorce on the ground of cruelty under the provisions of section 13(1)(i-a) of the Hindu Marriage Act.

3. Learned counsel for the petitioner submits that the relief sought in the proceedings will not change the nature of the

suit. He would further submits that the fact of respondent's earlier marriage came to the knowledge of the petitioner during pendency of the proceedings and as such amendment being pre-trial amendment ought to have been liberally allowed. In support of his contentions he relies upon the decision of the Apex Court in *Sampath Kumar vs. Ayyakannu & Anr., Appeal (Civil) 5839/2002*.

4. *Per contra* learned counsel appearing for the respondents submits that the petitioner now seeks to introduce fresh cause of action which will change the nature of the suit. She would further submit that it is open for the petitioner to withdraw the present petition and file a fresh petition based on nullity.

5. Considered the submissions.

6. The proposition of law cannot be disputed that all amendments are to be liberally allowed for effective determination of controversy between the parties the caveat being that the proposed amendment will not change the nature of the suit or

introduce any fresh cause of action. In the present case, the suit has been filed seeking dissolution of the marriage solemnized between the parties on the ground of cruelty. The proposed amendment seeks to introduce ground of nullity and seek declaration that the marriage is null and void

7. Considering the nature of the proposed amendment, in my opinion the same changes the basic nature of the suit from one seeking dissolution of the marriage by admitting that there is marriage solemnized between the parties and by reason of cruelty same is required to be dissolved to one seeking declaration of nullity on the ground that the marriage itself is void by reason of previous marriage.

8. In that view of the matter, in my opinion the basic structure of the suit would change. Reliance placed on the decision of the Apex Court is clearly distinguishable on the facts inasmuch as in that case the suit was filed for permanent injunction which after amendment was sought to be converted into suit for declaration of title and recovery of possession. The basic structure

of the suit in that case was not changed and there was no introduction of fresh cause of action. The facts in that case as such does not assist the petitioner.

9. In light of above the petition being devoid of merits stands dismissed.

SHARMILA U. DESHMUKH, J.