

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1795 OF 2023

Tanya Aniruddh Kasliwal

...Petitioner

Versus

Aniruddh Ambuj Kasliwal

..Respondent

Mr. R. T. Lalwani a/w Mr. J. K. Shah and Ms. Pooja Shah i/b. RJ Law for the Petitioner.

Mr. Karl Tamboly a/w Ms. Zahra Padamsee a/w Ms. Mythili Gosavi i/b. Vashi and Vashi for Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 20th July , 2023.

P. C. :

1. At the outset learned counsel appearing for the Respondent has tendered affidavit-in-reply which is taken on record.
2. By the present Petition the challenge is to three orders passed by the Family Court below Exhibit 42, 47 and 48. As far as the order below Exhibit 47 is concerned the same need not detain this Court any longer in view of the statement which has been made by the learned counsel for the Respondent that one car park will be made available to the Petitioner whenever she is in Mumbai.
3. Learned counsel for the Respondent further submits that the number of the car parking will be intimated to the learned counsel for

the Petitioner. It is made clear that the Petitioner is entitled to park her car in the said car park without any hindrance. Learned counsel for the Respondent submits that the Petitioner is not residing in Mumbai but in Bangalore and whenever she is in Mumbai she will be permitted to park her car in the car parking, which has been disputed by the learned counsel for the Petitioner who submits that the Petitioner is residing in Mumbai and not in Bangalore. Be that as it may, it is clear that whenever the Petitioner is in Mumbai and wants to park her car she will be entitled to use the dedicated car park.

4. The second order which is under challenge before this Court is the withdrawal of the club facilities enjoyed by Petitioner for the last 20 years. As far as the withdrawal of the club facility is concerned learned counsel for the Petitioner has pointed out that the Respondent was the primary member and she was enjoying the facility as the spouse. Learned counsel appearing for the Respondent submits that as she has withdrawn the club facility where the Petitioner was a primary member as a counter the club facilities have been withdrawn. The contention of the Petitioner is that being the wife of the Respondent, the Petitioner is entitled to same status as that of the Respondent. It is not in dispute that the Petitioner is enjoying the club facility albeit at a different club but at this stage it is not necessary to go into the issue as to whether the clubs are

equivalent in status and the same can be decided at the time of final conclusion after adjudication and as such I am not inclined to consider the submission particularly when the Petitioner is enjoying club facilities.

5. The third order which has been challenged is in respect of order passed in the application for amendment filed by the Respondent-husband before the Family Court. Learned counsel appearing for the Petitioner has invited the attention of this Court to the proposed amendment. He would contend that the proceedings which were initially filed sought divorce on the ground of cruelty and by the proposed amendment the Respondent-husband is seeking to amend the Petition to add additional ground of adultery. He would submit that bare perusal of the proposed amendment which is at page 249 onwards of the Petition would indicate that an averment has been made that there is illicit relationship between the Respondent and the Co-Respondent. He would submit that such bare averment by itself is not sufficient to constitute adultery and as such the Respondent-husband cannot be permitted to introduce the ground of adultery.

6. *Per contra*, Mr. Karl Tamboly, learned counsel appearing for the Respondent submits that it is well settled that the merits of the amendment is not required to be given into and by the proposed amendment the Respondent-husband seeks to introduce an

additional ground in aid of his ground of cruelty which already forms part of his original pleading. To counter this learned counsel appearing for the Petitioner submits that Respondent-husband has sought decree of divorce on the ground of cruelty and that ground of adultery is introduced only to cause harassment and to tarnish the reputation of the Petitioner-wife.

7. I have considered the submissions.

8. As far as the proposed amendments are concerned, it is now well settled position in law that the merits of the amendment are not required to be gone into. The position is that if the Respondent-husband fails to substantiate his allegations of adultery, he would not be entitled to a decree on that ground. It is always open for the Petitioner-wife to adopt such proceedings as advised, if such false allegations are made which could not be proved by the husband at the time of trial. The fact remains that at the stage of deciding the application for amendment, the merits of the amendment cannot be gone into. As regards the contention that the same is for the purpose of harassment and tarnishing of reputation is concerned this Court is concerned with the legal aspect of the matter. In my opinion considering that the Petitioner seeks a decree of divorce and seeks to add an additional ground for seeking dissolution of the marriage the same does not amount to changing the nature of the suit which is the

consideration required to be taken into account while deciding the application for amendment. In that view of the matter there is no infirmity in the order of the Family Court allowing the application for amendment.

9. Writ Petition stands disposed of in above terms.

10. Needless to clarify that these observations made herein are only for the purpose of deciding the validity of the orders which were under challenge before this Court and all rights and contentions of both the parties are to be decided by the trial Court on its own merits after the final adjudication.

[Sharmila U. Deshmukh, J.]