

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

WRIT PETITION NO. 6243 OF 2019

Satish Suryabhanji Akulwar__ Vs. __ Vaishali Satish Akulwar

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

Court's or Judge's orders

Mr. G.N.Khanzode, Advocate for the petitioner
Mr. R.L.Alone Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/07/2023

1] The petition challenges the order below Exh.22, which an application under Section 10 read with Section 11 of CPC, which has been rejected by the learned trial Court (pages 60 & 61).

2] In so far as Section 10 of the CPC is concerned, the earlier proceeding, namely HMP No. 15/2013 filed by the respondent-wife for seeking divorce on the ground of cruelty, the same has been dismissed by the judgment dated 26.6.2015, appeal against which also stands dismissed by the judgment dated 15.6.2017. Thereafter there is no further appeal carried and the lis has come to end. A new application for divorce under Section 13(1)(b) of the Hindu Marriage Act has been filed by the respondent bearing HMP No. 114/2018 in which the aforesaid

application has been filed and rejected by the impugned order.

3] Mr. Khanzode, learned counsel for the petitioner submits that in view of the earlier proceedings, the present proceedings cannot continue and therefore the same ought to have been stayed. He submits that even otherwise the ground of desertion was earlier available and since the same was not raised, Section 11 of the CPC would be attracted.

4] Mr. Alone, learned counsel for the respondent opposes the contention and supports the impugned order.

5] In my considered opinion, the argument canvassed by Mr. Khanzode, learned counsel for the petitioner is misconceived for the reason that Section 10 of the CPC requires two different lis to be pending, which is not the case here. That apart, a plea under Section 11 of CPC is not amenable to an application under Order 7 Rule 11 (d) of CPC as it is something which would require evidence, considering which I do not find any merit in the petition. The same is dismissed. No costs.

6] The learned Trial Court shall endeavour to decide the proceedings as early as possible.

JUDGE

Rvjalit