



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4978 OF 2023

NISHA SANJAY RAKH
VERSUS
SANJAY RAOSAHEB RAKH

Mr. Kshitij Surve, Advocate for the petitioner
Mr. P. M. Nagargoje, Advocate for the respondent

CORAM : R. M. JOSHI, J.
DATE : 11th JUNE, 2024

PER COURT :-

1. Heard.
2. This petition takes exception to the orders passed by the Trial Court in M.P. No. 6 of 2018 whereby application (Exhibit 36) for amendment under Order VI Rule 17 of the Code of the Civil Procedure (for short 'CPC') and application (Exhibit 37) for recasting of the issues were allowed
3. Learned counsel for the petitioner/wife raises objection to the impugned orders on the ground that in view of the provisions of Order VI Rule 17 of the CPC, after commencement of Trial due diligence needs to be shown by the party for carrying out any amendment to the pleadings. It is his submission that final arguments are already heard in the proceeding. Thus, according to him allowing the husband to amend his

petition and to recast issue would cause prejudice to the wife.

4. Learned counsel for the husband supported the impugned orders.

5. There cannot be any dispute made with regard to the power of the Court to add/reframe/recast the issues at any time before judgment provided the Court gives opportunity to the parties to be heard thereon or even to lead further evidence if they so desire.

6. As far as the amendment to the petition of the husband is concerned, perusal of the application indicates that amendment is sought to correct the provision of law mentioned in original petition. It is trite that the law is not required to be pleaded but the pleadings must include all relevant facts. It is always open for the Court to consider substance of the pleadings. Thus, it cannot be said that any prejudice or loss would cause to the wife if the provisions of law as mentioned in the petition of the husband are permitted to be corrected. No doubt in view of provisions of Order VI Rule 17 of CPC, after commencement of trial for the purpose of amendment to the pleadings due diligence is required to be shown. Due diligence means reasonable steps to be taken by a person. It cannot be said that deliberately wrong provisions of law are quoted. Moreover from the impugned order it indicates that the husband

has noticed the said mistake only after the same being pointed out during arguments. The wife has failed to show any prejudice being caused to her by passing of the impugned orders. Thus, this Court finds no reason or justification to cause any interference in the impugned order. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp