

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4642 OF 2022

Vihita Aniket Waikar & Anr.

...Petitioners

Versus

Aniket Ajit Waikar & Ors.

...Respondents

Mr. Rohit D. Joshi for the Petitioners.

Mr. S. S. Pednekar, APP for State.

Mr. Prashant Darandale for Respondent Nos. 2 and 3.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 5, 2024

P. C. :

1. By this Petition filed under Article 227 of the Constitution of India challenge is to the order dated 22 June 2022 passed by the Judicial Magistrate First Class, Pune, (JMFC) below Exhibit 54 in Criminal Miscellaneous Application No. 1561 of 2017.

2. Exhibit 54 was filed by the Petitioner seeking amendment of the Application under Order 6 Rule 17 of CPC. The undisputed fact is that, the Application filed under the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) was allowed by the JMFC vide Judgment

dated 31st December, 2018. In Appellate proceedings, the Judgment was set aside and the matter was remanded to the learned JMFC for deciding afresh after giving an opportunity of hearing to Respondent Nos. 2 and 3. During the remand, certain subsequent events according to the Petitioner had taken place, which necessitated the filing of the Application under Order 6 Rule 17 of CPC.

3. Heard Mr. Rohit D. Joshi, learned counsel for the Petitioners and Mr. Prashant Darandale, learned counsel for Respondent Nos. 2 and 3.

4. Learned counsel appearing for the Petitioner submits that by way of the proposed amendment the Petitioner sought to bring on record the subsequent event of the bequest by the grandmother of the Respondent No. 1 bequeathing a property at Vakil Nagar to the Petitioner and consequent relief of declaration of the said property as share household and restraining orders in respect of the same. He would further submit that in the main application there was already a prayer sought as regards direction to hand over all ornaments, personal belongings and other articles which were at that time granted by the JMFC and by way of the proposed amendment, better particulars are now sought to be given. He would further submit that during the pendency of the proceedings, the Respondent No. 1-husband had sold certain properties and purchased certain other properties which was sought to be brought on record for

effective adjudication of the issue in controversy.

5. Per contra, learned counsel for Respondent Nos.2 and 3 submits that by the proposed amendment, the Petitioner is in fact seek restraining order against the Respondent Nos. 2 and 3 in respect of the Vakil Nagar property which belongs to Respondent No.1's father and Respondent No.2's husband. He would further submit that as far as the ornaments and other articles are concerned, the same was within the knowledge of the Petitioner and as such, there was no due diligence. He would further submit that against the order of JMFC, appeal was filed under Section 29 of the D.V. Act which came to be rejected on the ground of maintainability. According to him, a revision is maintainable against the order of JMFC. In support of his submission he relied upon the decisions of *Aditi Vivek Kumar Wadhera vs. Vivek Kumar Varinder Wadhera & Ors.*, [2014:BHC-AS:21497] and *Abhijit Bhikaseeth Auti vs. State of Maharashtra & Anr.*, [2008SCC OnLine Bom 1388].

6. Considered the submissions and perused the record.

7. Only issue which is required to be considered is whether the proposed amendment are necessary for effective adjudication of the issue in controversy. The admitted position is that after remand the matter is now before the JMFC to consider the prayer in the D.V. Act afresh. By the

proposed amendment, as far as the Vakil Nagar flat is concerned, admittedly the same is the subsequent event as the property has been bequeathed on 19th June, 2019, and which is sought to be brought on record. The relief sought is that same is the share household under the definition given under the D.V. Act, and restraining orders against the Respondent Nos. 2 and 3. It is open for the Respondents to raise all objections in the written reply as regards the said property. The settled position is that the merits of the amendment are not required to be gone into at the time of deciding the application for amendment. The allowing of the amendment application does not ipso facto amount to grant of the relief.

8. As regard better particulars of the ornaments and other articles which is sought to be brought on record, it is not disputed that the Trial Court had by the earlier order granted the relief. While granting relief, the particulars were not before the Trial Court and as such, it can be presumed that blanket order as far as return of article would have been passed. By the proposed amendment, the Petitioner seeks to give better particulars of the articles which would benefit both the parties as when the Trial Court decides the issue as regards the same will be specific articles sought from the Respondents. In my opinion, the amendment as far as giving the better particulars does not amount to change in the nature of

the proceedings and it is only that providing better particulars and nothing more. In my view, the proposed amendments are necessary for effective adjudication of issue in dispute.

9. As regards the contention that the revision is maintainable against the said order, perusal of the order in the case of *Aditi Vivek Kumar Wadhera vs. Vivek Kumar Varinder Wadhera & Ors.*, [2014:BHC-AS:21497] is concerned, the issue as to whether the revision would lie against the order of amendment do not stand concluded by the said order and liberty was granted to the Sessions Judge to decide as to whether the revision is maintainable against the impugned order. As far as the next decision is concerned, in the case of *Abhijit Bhikaseeth Auti vs. State of Maharashtra & Anr.*, [2008SCC OnLine Bom 1388] the learned single Judge has held that the appeal under Section 29 will not be maintainable against purely procedural orders which do not decide or determine the rights and liabilities of the parties. The decision cannot be said to be an authority for the proposition that against the impugned order revision is maintainable.

10. Now coming to the impugned order of the Trial Court rejecting the Application for amendment, the Trial Court has not considered whether the amendment is necessary for deciding the issue in controversy between the parties. The Trial Court by a very cryptic order has rejected the

amendment application by observing that it was sent by the Appellate Court with limited purpose to give opportunity of hearing to Respondent Nos. 2 and 3 in the main application. The Trial Court lost sight of the fact that even if the proposed amendment is allowed, the same can be permitted to be contested by the Respondent Nos. 2 and 3 by filing necessary response to the said amendment.

11. In light of the above, the order of the JMFC requires interference. The impugned order is hereby quashed and set aside. Resultantly, application below Exhibit 54 stands allowed.

12. As the matter has been remanded by the Appellate Court for deciding afresh, the Trial Court is requested to decide the application expeditiously and in any event within a period of twelve weeks from the date of production of the present order before the Trial Court.

(SHARMILA U. DESHMUKH, J.)