

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

CIVIL REVISION APPLICATION NO. 248 OF 2024

Kailash Anna Atole
Aged 62 years, Occ:- Agriculturist,
R/o. Shivalay Bungalow, Virbhadra
Nagar, Baner, Pune – 411 045.

...Applicant

Vs.

Jayashri Kailash Atole
Aged 57 years, Occ.: Nil
R/o. Gojubavi, Tal. Baramati,
District: Pune.

...Respondent

Mr. Nagesh Chavan	Advocate for the Applicant
Mr. Sushant Prabhune	Advocate for the Respondent

CORAM : S. M. MODAK, J.

DATE : 09th OCTOBER 2024

ORAL JUDGMENT :-

1. Heard learned Advocate for the Applicant-Husband and learned Advocate for the Respondent-Wife.
2. This is not the first time wherein the Husband has approached this Court. Earlier there was an occasion wherein the Petitioner has challenged the order of the amendment of the plaint. Originally, suit

was filed under Section 25 of the Hindu Marriage Act. By way of an amendment, it is converted to a suit under Section 18 of the Hindu Adoption and Maintenance Act 1956. That Writ petition was dismissed on 06.11.2023 by observing “*amendment carried out by the Plaintiff shall not form part of the pleadings of the Parties*”. It means there is an amendment in the title clause by changing Section and the Act and there is no amendment in the averments and in the prayer clause,.

3. After this order, the Petitioner has filed an application under the provisions of Order 7 Rule 11 (a) of the Civil Procedure Code:-

- (i) on account of absence of the cause of action.
- (b) on account of bar of jurisdiction (because relationship is disputed).

It was rejected by the trial Court as per the Order dated 12.02.2024. Its correctness is challenged.

4. Learned Advocate Shri Prabhune submitted that the Petitioner is dragging the proceeding, and he has not paid cost imposed by the trial Court. This is recorded in para no. 4 of the Order of this Court passed on 03.10.2024.

5. When I have heard both the sides and gone through the record, I am satisfied that the trial Court has properly rejected the application on both the grounds. I will give reasoning.

6. In para no. 11 of the plaint cause of action mentioned is as follows:-

- a) The Respondent is awarded Rs. 200/- towards the maintenance and it is enhanced to Rs. 300/-. It is insufficient. There was oral request for enhancement of the maintenance. However, it is refused.

Further in earlier paragraphs of the plaint, there are averments about relationship, neglect by the Defendant.

7. According to learned Advocate Shri Chavan as per Section 18 of the Hindu Adoption and Maintenance Act, there has to be cause of action as per sub-section (2). I have read it. There are various grounds. One of the ground is clause (b) :-

“if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband”.

It means the husband has treated wife with cruelty as to cause a

reasonable apprehension in her mind that it will be harmful or injurious to live with her husband is the cause of action.

8. Prior to the amendment both the Parties have completed their evidence. After amendment, the Respondent does not want to give additional evidence, but the Petitioner wants to file an additional written statement. He can do so within two weeks. Considering the present state of facts, there is serious objection about exercise of power under Order 7 Rule 11(a) of the Civil Procedure Code. It can be decided not by way of such application, but it can be decided, when the suit will be decided finally.

9. So far as second ground about dispute in relationship, this ground was very much available prior to the amendment. So just because plaint is amended, it does not give any fresh cause of action for the Defendant to ask for rejection of the plaint on that ground. In fact trial Court has considered the averments in the written statement. The relationship is admitted. So, I am not with the Petitioner for that reason also.

10. In view of that following order is passed:-

ORDER

- (i) **Civil Revision Application is dismissed*.**
 - (ii) Petitioner is at liberty to file additional written statement within 15 days from today.
 - (iii) Trial Court is at liberty to recast the issues, if required.
 - (iv) If Respondent wants, she can give additional evidence, so also the Petitioner.
 - (v) Let trial be finished within two months from completion of additional evidence, if any.
 - (vi) If any of Party seeks adjournment (which is unjustified as per view of trial Court), trial Court to impose cost of Rs. 10,000/- on such litigant.
11. All contentions of the Parties are kept open.

[S. M. MODAK, J.]