



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO. 884 OF 2023

Jayshree Chandraprakash Chavan

VERSUS

Chandraprakash Kailas Chavan

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Advocate for Petitioner : Mr. R.B. Ade

Advocate for Respondent : Mr. S.B. Solanke

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 10, 2025

PER COURT :-

1. The petitioner impugns the order dated 18.11.2022 passed by the learned Civil Judge S.D., Aurangabad below Exhibit-47 in Marriage Petition no.14 of 2016, whereby application of petitioner filed below Exhibit-47 seeking issuance of the witness summons has been rejected.

2. Mr. Ade, learned advocate appearing for petitioner submits that respondent instituted proceeding under section 13 (1)(ia) of the Hindu Marriage Act, 1955 seeking decree of dissolution of marriage. Petitioner appeared in the proceeding and filed her written statement and specifically pleaded that respondent has contracted second marriage with one Asha Rathod, r/o Ner, Tq. & District Jalna. In pursuance of the

defence, petitioner wanted to examine four witnesses i.e. Sarpanch of Ner Grampanchayat, Doctor of Jalna Hospital and others. However, her request is turned down.

3. Mr. Shrikrashna Solanke, learned advocate appearing for respondent submits that entire burden to prove case of desertion is upon husband. Proceeding of divorce is pending for almost eight years and present application is moved at the stage when matter was posted for arguments. According to him, petitioner is protracting the matter. Application was not bonafide. Therefore, he supports the impugned order.

4. Having considered submissions advanced, it cannot be disputed that petitioner has taken a specific defence that respondent has contracted second marriage during subsistence of first marriage and deserted petitioner/wife. Perusal of impugned order shows that application for issuance of witness summons is rejected mainly on the ground that there is no pleading that said Asha had begotten child from second marriage or no record is produced from Grampanchayat, Ner to show the entry recording birth or second marriage.

5. On considering overall conspectus of the matter, when respondent/husband sought divorce on the ground of desertion, petitioner/wife was certainly entitled to put up her defence that she is residing away from husband for valid reasons. If husband has contracted second marriage, that may constitute good defence. In her endeavor to prove defence, she wants to examine four witnesses including Sarpanch from Grampanchayat, Doctor from Jalna Hospital and other two to establish her case. In that view of the matter, Trial court ought to have allowed the application and granted fair opportunity to petitioner to prove her case.

6. In result, the impugned order cannot be sustained in law. Hence, writ petition is allowed in terms of prayer clause 'B' and **disposed of**. It is made clear that, petitioner shall examine all witnesses within a period of two months from today and co-operate learned Civil Judge S.D. in his endeavor to dispose the proceeding within a period of four months thereafter.

(S. G. CHAPALGAONKAR, J.)

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