



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1676 OF 2022

Hemant s/o Suresh Sundecha
Age 44 years, Occu. Private Service,
R/o Balika Ashram Road,
Ahmadnagar, Tq. & Dist. Ahmadnagar

... PETITIONER
[Ori. Respondent]

VERSUS

1] Priyanka w/o Hemant Sundecha
Age: 41 years, Occu: Household,
R/o Nandanvan Colony,
Behind Naresh Complex, Ambad Road,
Jalna, Tq. And Dist. Jalna

2] Bhumika d/o Hemant Sundecha,
Age: 17 years, Occu: Education
Minor under guardianship of her
Real mother Respondent No.1,
R/o Nandanvan Colony,
Behind Naresh Complex, Ambad Road,
Jalna, Tq. And Dist. Jalna

... RESPONDENTS
[Ori. Applicants]

....
Mr. Aakash D. Gade, Advocate for the Petitioner
Mr. A. S. Kakade, Advocate for Respondent No.1
....

CORAM : Y. G. KHOBRAGADE, J.

DATE : 14.01.2025

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard at length the learned counsel for both the parties.

2. The Petitioner has invoked jurisdiction of this Court under Article 227 of the Constitution of India and takes exception to the order dated 13.09.2022 passed by the learned Family Court, Jalna, below Exh.32 in Petition E- No. 3 of 2022 thereby permitted the present Respondent to amend the Petition under Section 125 of Cr.P.C. as well as application for interim maintenance.

3. The learned counsel for the Petitioner canvass that, the marriage of the Petitioner and Respondent No. 1 was solemnized on 06.05.2013 as per the Hindu rites and rituals on second time. The Respondent No. 2 born to Respondent No. 1 from her earlier husband. During course of settlement of second marriage it was informed by the Respondent no. 1 to the Petitioner that, she obtained divorce from her earlier husband, but divorce papers never shown to him. After the 2nd marriage, Respondent No. 1 cohabited with the petitioner for the period of 7 years, however, Respondent No.1 has deserted him w.e.f. 13.01.2020. Therefore, the petitioner had issued a legal notice on 30.11.2021 and called upon the Respondent No. 1 for restitution of conjugal rights. On 07.12.2021, the Respondent No.1 replied said notice and stated that, on 20.09.2009 she blessed with female child Respondent no. 2 out of her first wedlock.

Thereafter, she obtained divorced from her first husband and she married with the petitioner on 06.05.2013.

4. The learned counsel for the petitioner further canvass that, since the Respondent called upon the petitioner to take for cohabitation, therefore, the petitioner issued rejoinder-reply on 15.12.2021 disclosed fact that about his visit with his relatives at the parental house of the Respondent no. 1 on 12.12.2021. But the Respondent's parents told the petitioner that, he would require to stay separately from his mother and he would not ask for divorce papers of the Respondent No.1 and her birth certificate. However, Respondent No. 1 filed the proceeding under Section 125 of Cr.P.C., without disclosing fact of her divorce from her first husband nor the Respondent No.1 disclosed fact of missing her first husband prior to seven years of marriage with the petitioner. The Respondent No. 1 has filed Exh.32 an application and sought permission to amend main application U/s 125 of Cr.P.C. and application for interim maintenance and first time trying to bring new facts on record that her first husband missing prior to seven years of marriage with the petitioner. Therefore, proposed amendment is not necessary for adjudication of claim of maintenance.

5. The learned counsel for the petitioner further canvass that, by the proposed amendment, the Respondent trying to bring new story about missing of her first husband, which is contrary to the pleadings in the complaint. Therefore, the learned trial court ought to have reject the application, however, the learned Family Court, Jalna, passed the impugned order on 13.09.2022 and permitted the Respondents to amend the application u/s 125 of Cri.P.C., and application for interim application. Therefore, the impugned order is illegal and bad in law.

6. To buttress these submissions, the learned counsel for the Petitioner relied on case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others, (2009) 10 SCC 84***, wherein, the Hon'ble Supreme Court settled principles while dealing the application for amendment which reads as under:-

“63. *On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.*

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

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(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

64. *The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”*

7. It further relied on case of ***Sau. Kavita Vinayakrao Dhopte Vs. Vinayakrao Ramchandra Dhopte, 2015 ALL MR (Cri) 1370***, wherein the amendment to the composite reply and written statement was sought after commencement of trial. Under these circumstances, this Court considered case of ***Revajeetu Builders and Developers***, cited (supra) and held that the amendment which is allowed is in the nature of additional defense, therefore, the Petitioner therein not entitled to claim any maintenance as she is living in adultery and order of amendment was set aside.

8. Per contra, the learned counsel for the Respondents canvass that, since question the petitioner raised the question, whether the Respondent no. 1 obtained divorce from her earlier

husband or earlier husband of Respondent No. 1 was missing prior to 7 years of her second marriage with the Petitioner or not. However, this question raised by the Petitioner on the basis of averment made in the reply to legal notice. Therefore, the Respondent no. 1 wanted bring true story occurred while settlement of 2nd marriage with the petitioner and this fact need not requires for consideration while deciding the quantum of interim maintenance and no prejudice would cause to the the petitioner, hence, prayed for dismissal of the petition.

9. It is further canvass on behalf of the Respondents that, the Petitioner has not denied about solemnization of his second marriage with the Respondent No.1. The Petitioner is very much aware about first marriage of Respondent No.1. The petitioner was very much aware that, prior to 2nd marriage of the Respondent no. 1 divorce formalities are not completed but the present Petitioner was himself assured the Respondent no. 1 about completion of divorce formalities after performing 2nd marriage with the Respondent no. 1 Therefore, the learned Family Court passed the impugned order without going into merits of the matter and permitted the Respondent only to amend pleadings that, whether 1st husband of the Respondent

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no. 1 is missing prior to 7 years of solemnization of her second marriage or even after lapse of seven years, no one knows whereabouts of her first husband. Therefore, these facts needs to consider during the course of trial. Therefore, impugned order is just and proper,hence, prayed for dismissal of the Petition.

10. Having regard to the rival submissions canvassed on behalf of both the side, I have gone through the petition paper book. It is not in dispute that, on 06.05.2013, a second marriage between present Petitioner and Respondent No. 1 solemnized with consent of both the sides. Further, it is not in dispute that the first wife of the present Petitioner died and the Petitioner blessed a male child out his first marriage. Similarly, the Respondent No.1 was married and she blessed with a female child i.e. Respondent No.2 from her first marriage. The fact of blessing of Respondent No.2 to the Respondent No.1 was disclosed to the Petitioner while finalizing of 2nd marriage between the petitioner and Respondent no. 1. It is an admitted fact that, after 2nd marriage, the Respondent No. 1 cohabited with the Petitioner at her matrimonial home for the period approximately 7 years. Under these circumstances, question arises that, whether Respondent No.1 had obtained divorce from her first husband or

whether first husband of the Respondent No.1 is missing prior last seven years of her 2nd marriage with the Petitioner?

11. The Respondents want to amend the proceeding u/s 125 of Cri. P. C., and Application for Interim maintenance to bring factual story which may or may not disclosed to the petitioner while settlement of 2nd marriage between him and the Respondent no. 1. Since the petitioner himself alleged in his legal notice and certain facts of notice admitted by the Respondent no. 1 in her reply, hence, the Respondent no. 1 wants to clarify that, her first husband is missing 7 years prior to her second marriage and she waited for her husband from last seven years, but she has not been made aware where about of her first husband, hence, she has solemnized second marriage with the present Petitioner and said fact disclosed to the Petitioner while settlement of the marriage. But, the Petitioner assured her for completion of the legal procedure subsequent to solemnization of their marriage. Therefore, the proposed amendment does not change nature of dispute. So also, the Respondent no. 1 not withdrawing any any admission given earlier by her.

12. On 13.09.2022, the learned Family Court passed the impugned order and permitted the Respondents to amend the

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pleadings, which does not change nature of claim of maintenance. The trial of proceeding yet to commence. Therefore, I find that proposed amendment would cause any prejudice to right of the Petitioner. In view of above discussion, I do not find any merit in submissions canvassed on behalf of the Petitioner. Therefore, Writ Petition is dismissed. Accordingly, Rule is discharged.

13. However, the learned trial Court is hereby requested to expedite the Application for interim maintenance.

[Y. G. KHOBRADE, J.]

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