

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9406 OF 2025

Sachin Nandkumar Kumbhar ... Petitioner
V/s.
Shreyas Sachin Kumbhar & Ors. ... Respondents

Mr. Nagesh Y. Chavan for the petitioner.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : SEPTEMBER 16, 2025

PC.:

1. Learned advocate appearing for petitioner, after arguing for some time, submits that suit is at the stage of issues, and Trial Court rejected petitioner's prayer for a DNA test of petitioner-original defendant No.1 and respondent No.1 so as to bring on record their relationship.
2. Learned Trial Court relied upon exposition of law by the Supreme Court in case of *Smt. Kamtidevi & Another v. Poshiram*, reported in 2001 (2) Bombay C.J. 582 (SC). He further submits that the view taken in *Kamtidevi & Another* (supra) has now been deviated from by the judgment of the Supreme Court in the case of *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik & Another*, reported in (2014) 2 SCC 576, wherein the Hon'ble Supreme Court, after considering the exposition of law in case of *Kamtidevi & Another*, observed in paragraph No.20 as under:

“20. As regards the authority of this Court in *Kamti Devi*, this Court on appreciation of evidence came to the conclusion that the husband had no opportunity whatsoever to have liaison with the wife. There was no DNA test held in the case. In the said background i.e. non-access of the husband to the wife, this Court held that the result of DNA test “is not enough to escape from the conclusiveness of Section 112 of the Act”. The judgment has to be understood in the factual scenario of the said case. The said judgment has not held that DNA test is to be ignored. In fact, this Court has taken note of the fact that DNA test is scientifically accurate. We hasten to add that in none of the cases referred to above, was this Court confronted with a situation in which a DNA test report, in fact, was available and was in conflict with the presumption of conclusive proof of legitimacy of the child under Section 112 of the Evidence Act. In view of what we have observed above, these judgments in no way advance the case of the respondents.”

3. In light of aforesaid observations, learned advocate appearing for petitioner submits that after recording the evidence of parties, petitioner may be given an opportunity to make a fresh application for similar relief.

4. In that view of the matter, this Court deems it proper to dispose of present writ petition with liberty to petitioner to make a fresh application for DNA test after recording of evidence, and in case the Court finds that there is sufficient material to rebut the presumption under Section 112 of the Evidence Act, 1872, it can resort to passing a fresh order on such application.

5. The writ petition stands disposed of.

6. It is made clear that all contentions are kept open.

(S. G. CHAPALGAONKAR, J.)