

---

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

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.121 OF 2024**

Sandhya Shekhar Zanjare  
Age :45 years, Occ: Household,  
Residing at C/o. Mukund Popat  
Pawar, At post Lakhalgaon,  
Taluka and District: Nashik

}

Petitioner

***Versus***

Shekhar Suresh Zanjare  
Age : 55 years, Occ: Service  
Residing at Digvesh Apartment  
Bodhale Nagar, Plot No. 9-A  
Nashik Pune Road, Nashik  
Road, Nashik

}

Respondent

---

Mr. Nikhil M. Pujari, Advocate for the Petitioner.

Ms Naiana P. Boraste a/w Mr. G.R. Agrawal, Advocates for  
the Respondent.

---

**CORAM: MANJUSHA DESHPANDE, J.**

**DATED : 09<sup>th</sup> JUNE 2025**

**J U D G M E N T**

1. Rule. Rule made returnable forthwith, the Writ Petition is taken up for final disposal with consent of the parties.
2. The Petitioner is challenging the Order dated 22<sup>nd</sup> November 2023, passed by the Judge, Family Court, Below Exhibit – 73 in

Petition No. A 534 of 2014, whereby the application for amendment of plaint as provided under Order VI Rule 17 of the Code of Civil Procedure, 1908 filed by the present Respondent has been allowed.

3. The Petitioner is the wife of the Respondent herein. They were married on 19<sup>th</sup> February 2006. After her marriage she started residing with her husband. Because of the matrimonial discord, the Respondent husband filed a petition for divorce under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act. The divorce proceedings were filed on 08<sup>th</sup> December 2014. The Petitioner filed her reply to the Petition for divorce on 02<sup>nd</sup> November 2015. Thereafter the affidavit in lieu of evidence was filed by the applicant husband on 07<sup>th</sup> October 2017. After filing of affidavit in lieu of evidence, the Respondent herein filed an application under Order VI Rule 17 of the Code of Civil Procedure, seeking amendment in the plaint. The applicant wanted to make additions in the pleadings to the effect that, the Petitioner was already married, when respondent married her. She married Respondent without obtaining divorce from her husband of previous marriage.

4. It was contended by the Respondent husband that, the fact of earlier marriage of wife was disclosed by her in Criminal Application No. 302 of 2015, filed by her and she has also admitted it in the FIR which was filed on 17<sup>th</sup> June 2015, that her marriage with the Respondent husband is the second marriage. The Respondent is claiming that he is cheated, due to suppression of material fact by wife, marriage between them needs to be declared null and void. Accordingly, the Respondent is also seeking leave to add prayer clause that, the marriage between the Petitioner and Respondent dated 19<sup>th</sup> February 2006 should be declared as null and void.

5. This application seeking amendment as per Order VI Rule 17 was filed by the Respondent husband on 13<sup>th</sup> April 2023. The application was opposed by the present Petitioner by filing the reply to the application on 09<sup>th</sup> June 2023. Upon hearing the parties, the Judge, Family Court, Nashik has allowed the application filed by the Respondent seeking amendment in the plaint vide Order dated 22<sup>nd</sup> November 2023, it is this order which is being assailed before this Court.

6. Heard learned Counsel for the respective parties.

7. Mr. Pujari, learned counsel appearing for the Petitioner submits that, in fact the Respondent husband was very much aware about the earlier marriage of the Petitioner. He has drawn the attention of this Court to the averments made in the petition for divorce filed by the Respondent husband. In paragraph 8 of the affidavit in lieu of evidence, the Respondent herein has categorically stated that, he came to know about her previous marriage from her relatives. It is stated that, while fixing the marriage neither the present Petitioner nor her relatives had informed the Respondent about her previous marriage.

8. According to learned counsel for the Petitioner, the petition for divorce was filed on 08<sup>th</sup> December 2014 and the affidavit in support of evidence has been filed on 07<sup>th</sup> October 2017. It is settled position of law that, trial commences upon filing of affidavit in lieu of evidence by the witnesses. It is further submitted that, after filing of affidavit in lieu of evidence, the Respondent herein has filed application seeking amendment to the plaint under Order VI Rule 17 on 13<sup>th</sup> April 2023, i.e. almost six years after filing of affidavit in support of evidence. Therefore, on account of delay itself the application should not have been entertained by the Judge, Family Court, Nashik.

9. According to him, it was well within the knowledge of the Respondent husband that, the present Petitioner was previously married and had obtained customary divorce prevalent in their caste. Considering the trial had already commenced, the Judge, Family Court should have outrightly rejected the application filed by the Respondent herein. However ignoring the settled position of law in this regard, the Judge has given an erroneous finding that, the affidavit in lieu of evidence of the Petitioner is filed in the year 2017, but the cross-examination has not yet started, hence the trial has not commenced. Therefore, no prejudice will be caused to the Respondent, in case the application for amendment is allowed, it will also not change the nature of Suit. It is further observed that, with an intention to decide all the issues between the parties finally the application Exhibit - 73 is allowed. Further directions are issued to the Petitioner to amend the Petition within 14 days from the date of the order.

10. It is contended by learned Counsel for the Petitioner that, the order passed by the Judge, Family Court, Nashik is erroneous, as is against the settled position of law and against the scope of Order VI Rule 17. Hence the order passed by the Family Court, Nashik requires to be quashed and set aside.

11. Learned counsel for the Petitioner has placed reliance on the judgment in case of **Nitaben Dinesh Patel V/s. Dinesh Dahyabhai Patel**<sup>1</sup>. The learned Counsel relies on paragraph 8 of the said judgment wherein it is categorically observed by the Hon'ble Supreme Court that, the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in issue between the parties. Proviso to Order VI Rule 17 of CPC provides that, no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

12. He further places reliance on the judgment of this Court in case of **Anil Ramsing Bilawar & Ors. V/s. Anita Gopal Kadam & Anr.**<sup>2</sup> wherein after taking into consideration the various judgments governing the issue, this Court has taken a view that trial commences from the date of filing of affidavit in lieu of examination-in-chief of the witnesses.

---

1 (2021) 20 SCC 210

2 Writ Petition No. 7721 of 2019

13. According to the learned counsel for the Petitioner, in the present case since the affidavit in lieu of examination-in-chief has already been filed in the year 2017 itself, the trial had already commenced. Same view is also taken by this Court previously in case of ***Mahadeo Maruti Bhanje V/s Balaji Shivaji Pathade & Anr.***<sup>3</sup> This court has categorically held that, the trial in a civil suit commences from the date of filing of affidavit in lieu of examination-in-chief of witnesses. The Petitioner herein therefore prays that the impugned order deserves to be quashed and set aside.

14. Ms Boraste, learned counsel appearing for the Respondent husband has strongly opposed the prayer made by the Petitioner. According to her, though there is averment made in the plaint about the information received by the Respondent about the previous marriage of the Petitioner, however that is only an allegation. Only after the proceedings were filed by the Petitioner under the Protection of Women from Domestic Violence Act, 2005, in which the Petitioner has filed an affidavit about her previous marriage, the Respondent came to know of her previous marriage. Only upon getting the knowledge of previous marriage

---

<sup>3</sup>Writ Petition No. 9659 of 2010

the Respondent herein has immediately filed application seeking amendment in the plaint. Taking overall view of the matter, the Judge, Family Court, Nashik has appropriately passed the order allowing the application of the Respondent herein. According to her, the amendment which is allowed will not in any manner change the nature of the Suit and no harm or prejudice will be caused to the present Petitioner, hence the impugned order does not deserve any interference. She therefore submits that the Writ Petition kindly be dismissed.

15. Order VI Rule 17 of the CPC reads thus:

***“17. Amendment of pleadings.-“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:***

*Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”*

16. So far as the present matter is concerned, it would be governed by the proviso to Rule 17, which provides that no



application for amendment shall be allowed after trial has commenced, unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before commencement of trial. The Judge, Family Court, Nashik has totally ignored and has not taken into consideration that the present case would be governed by the proviso. The Judge has not made any observation about the due diligence required to be shown by the party concerned who is claiming amendment in the pleadings. Considering that the affidavit in lieu of evidence was already filed by the Respondent on 07<sup>th</sup> October 2017, hence the trial had already commenced. The application of the Respondent herein would therefore be governed by proviso to Order VI Rule 17.

17. It is no more than res-integra that the trial commences from the date of filing of affidavit in lieu of evidence of the witnesses and the application seeking amendment to the plaint after filing of the said affidavit would be governed by proviso to Order VI Rule 17. This position of law has been totally ignored by the Judge, Family Court, Nashik. In fact, the following erroneous observation is made by the Judge in paragraph 4 while passing the order below Exhibit- 73:

*“4. The evidence affidavit of the petitioner is filed in the year of 2017 but as cross-examination has not started and therefore, trial has not commenced. Accordingly, no prejudice will be caused to the respondent, in case, the application for amendment is allowed, as prayed and it will also not totally change the nature of the petition. The respondent will have an opportunity to rebut the pleadings and evidence.”*

The aforesaid observation itself is contrary to the settled position of law as discussed hereinabove. The trial had already commenced after filing of affidavit in lieu of evidence, hence it was necessary for the Judge to decide the application in the light of proviso to Order VI Rule 17.

18. A useful reference can be made to the Judgment of the Hon’ble Supreme Court in ***Revajeetu Builders and Developers V/s. Narayanaswamy and Sons and Ors.***<sup>4</sup>, wherein the Hon’ble Supreme Court has culled out the various factors/principles to be kept in mind while granting or refusing the amendment. Though it is held that those factors are only illustrative and not exhaustive, however fact remains that the factors/principles have been laid down by the Hon’ble Supreme Court after taking into consideration earlier reported judgments of

---

4 (2009) 10 SCC 84

the Hon'ble Supreme Court governing the field. The relevant paragraph of the judgment of the Supreme Court is reproduced herein below which reads thus:

***“Factors to be taken into consideration while dealing with applications for amendments***

**63.** *On critically analysing 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;*

*(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 6 Rule 17. These are only illustrative and not exhaustive.”*

19. Similarly, in a recent decision of the Hon'ble Supreme Court in case of ***Basavaraj V/s Indira and Others***<sup>5</sup>, which again has taken into consideration the earlier decisions of the Hon'ble Supreme Court including the above referred decision in ***Revajeetu Builders and Developers*** (*supra*) has observed that, the important factors that needs to be considered are that whether amendment would cause prejudice to the other side; whether it would fundamentally change the nature and character of the cases or a fresh suit or amended claim would be barred on the date of filing of the application.

20. In the present case, the Respondent herein had filed the petition for dissolution of marriage under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, whereas by amendment in the plaint, the Respondent is seeking to add a prayer, of declaration that their marriage is null and void. If the prayer of the Respondent herein is granted, the very nature of the suit would change.

21. A liberal approach is adopted by the courts while granting amendment to the pleadings. Albeit Order VI Rule 17 itself provides that the amendment in the pleadings can be granted at

---

5 (2024) 3 SCC 705

any stage of the suit, however the proviso makes an exception to the rule. According to the proviso, if the trial has commenced the amendment is to be allowed only if the party demonstrates that, in spite of due diligence, the party could not have raised the matter before trial commenced. In the reported Judgment in case of ***Rajkumar Gurawara V/s. S.K. Sarwagi and Company Private Limited & Anr.***<sup>6</sup> the object behind the proviso is explained in paragraph 13 of the Judgment, which reads thus:

*“13. To put it clear, Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the court to satisfy the conditions prescribed in the proviso.”*

---

6 (2008) 14 SCC 364

22. In the present case, the application seeking amendment has been filed by the Respondent herein on 13<sup>th</sup> April 2023, wherein a prayer seeking declaration of marriage between the parties null and void is made. Such prayer is made on the ground that the Petitioner herein was previously married and without seeking divorce a marriage is solemnized between the Petitioner and the Respondent. Though the Respondent had filed the petition seeking divorce in the year 2014, the amendment is sought to be made in the year 2023, hence there is a huge delay in approaching the Court seeking amendment. The other ground which disentitles the Respondent herein from granting the prayer for amendment in the plaint is that, in the memo of divorce petition itself there is an averment made by the Respondent herein that, he got the knowledge of the previous marriage of the Petitioner, and that she was not divorced from her first husband, from her relatives, hence she has cheated him.

23. Though the Respondent has made an averment about the earlier marriage of the Petitioner, he has not made any prayer at the time of filing of the petition. The ground for seeking declaration of the marriage as null and void was very much available to him at the time of filing of the petition itself. He has

not shown any due diligence at the time of filing of petition. After a period of nine years such application is moved after the trial has commenced. The Respondent herein has failed to demonstrate before the trial Court that, in spite of due diligence, he could not have raised the issue before the commencement of trial. Neither such averment is made nor any finding is recorded by the trial Court about the due diligence, in spite of the fact that trial has commenced. A useful reference to the interpretation of “due diligence” can be made to the judgment of the Hon’ble Supreme Court in case of **Chander Kanta Bansal V/s Rajinder Singh Anand**<sup>7</sup>. Paragraph 16 of the Judgment which interprets the words “due diligence” is reproduced herein below, which reads thus:

*“16. The words “due diligence” have not been defined in the Code. According to Oxford Dictionary (Edn. 2006), the word “diligence” means careful and persistent application or effort. “Diligent” means careful and steady in application to one’s work and duties, showing care and effort. As per Black’s Law Dictionary (18th Edn.), “diligence” means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. “Due diligence” means the diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation.*

---

7(2008) 5 SCC 117

*According to Words and Phrases by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."*

24. In view of the various authoritative judicial pronouncements of the Supreme Court on the interpretation of Order VI Rule 17 and the 'due diligence' to be demonstrated by the party seeking amendment of pleadings on commencement of trial, in my opinion the order passed by the Judge, Family Court, Nashik cannot sustain, as it is passed in total disregard to the settled legal position, as can be gathered from the abovereferred judicial pronouncements. Hence, Rule is made absolute in terms of prayer clause (a) of the Writ Petition.

**[MANJUSHA DESHPANDE, J.]**

Digitally  
signed by  
RUSHIKESH  
YASHU  
PATIL  
Date:  
2025.06.13  
20:49:46  
+05'30