

*Arjun*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.5374 OF 2024

Kiran Vasant Khamitkar

...Petitioner

Versus

Anagha Kiran Khamitkar

...Respondent

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Mr. Prafulla Paranjape, for the Petitioner.

Mr. Bharat M. Sarda, for the Respondent.

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CORAM: MADHAV J. JAMDAR, J.

DATED: 10 MARCH 2025

P.C.:

1. Heard Mr. Paranjape, learned Counsel for the Petitioner and Mr. Sarda, learned Counsel for the Respondent.
2. By the present Writ Petition filed under Article 227 of the Constitution of India the challenge is to the legality and validity of the Order dated 17th February 2024 passed by the learned Judge, Family Court, Satara below Exhibit - 143 in Petition No.A 104 of 2019 ("impugned Order"). The Respondent - wife has filed said Application bearing Exhibit - 143 seeking that full body check up of the Petitioner - husband be conducted. By the impugned Order, the said Application bearing Exhibit - 143 has been allowed.
3. Mr. Paranjape, learned Counsel for the Petitioner submitted that Sassoon Hospital, Pune has already conducted the investigation and

submitted a Report pursuant to the Order passed by the learned Civil Judge, Senior Division, Satara (before transfer of the Hindu Marriage Petition No.540 of 2017 to the Family Court), similar Application filed by the Respondent - wife and therefore conducting another medical examination is not required.

4. On the other hand, Mr. Sarda, learned Counsel for the Respondent submitted that the first Report submitted by the Sassoon Hospital, Pune is not a proper Report and therefore it is necessary to have the second Report.

5. Before considering the rival contentions, it is necessary to set out relevant factual aspects as follows :-

- (i) The marriage between the Petitioner and the Respondent took place on 5th June 2017 and admittedly both of them stayed together for a period of 17 days. It is also relevant to note that at the time of marriage age of the Petitioner - husband was 47 years and that of the Respondent - wife was 40 years. At present husband is about 54 years old and wife is about 47 years old.
- (ii) Immediately within a period of less than 4 months, wife filed on 23rd October 2017, Hindu Marriage Petition No.540 of 2017 in the Court of Civil Judge, Senior Division, Satara seeking nullity of marriage under Section 12(1)(a) of the Hindu Marriage Act, 1955 on the ground that the marriage has not been consummated owing

to the impotence of the husband.

- (iii) The Respondent - wife has filed an Application bearing Exhibit - 25 in the said Hindu Marriage Petition No.540 of 2017 seeking that the medical examination of the Petitioner be conducted at Civil Hospital, Satara. As the necessary experts were not available at Civil Hospital, Satara, the learned C.J.S.D., Satara by the Order dated 21st May 2019 directed the Sassoon Hospital, Pune to conduct the medical examination.
- (iv) In the meanwhile, as the Family Court has been established at Satara, said Hindu Marriage Petition No.540 of 2017 has been transferred to the Family Court at Satara and numbered as Petition No.A 104 of 2019.
- (v) The Sassoon Hospital, Pune conducted the medical tests of the Petitioner - husband pursuant to the said Order dated 21st May 2019 passed by the learned C.J.S.D., Satara and submitted a letter to the Registrar, Family Court on 7th August 2019 enclosing a copy of the medical Report dated 2nd August 2019 regarding the potency examination of the Petitioner. Perusal of the said Report shows that various experts have examined the Petitioner. The said medical Report records that there is nothing to suggest that the said individual is incapable of performing sexual intercourse at present.

(vi) As certain questions have been asked to DW-2 – Abhijit Bandgar, Doctor of Sassoon Hospital, Pune during cross-examination by the learned Counsel appearing for the wife and in view of certain answers given, another Application bearing Exhibit - 143 has been filed on 1st December 2023 by the wife seeking that full body check up of the Petitioner - husband be conducted and by the impugned Order dated 17th February 2024 passed by the learned Judge, Family Court, Satara the said Application has been allowed.

The rival contentions are required to be examined in view of the above factual position.

6. It is required to be noted that the Petitioner has been examined by the Doctors of Sassoon Hospital, Pune and the Report dated 2nd August 2019 has been submitted. The said examination is conducted pursuant to the Order dated 21st May 2019 passed on the Application filed by the Respondent - wife. It is required to be noted that the said Application bearing Exhibit - 143 is filed at the stage when the matter has been posted for arguments on the basis of certain answers given by DW-2 – Abhijit Bandgar, Doctor of Sassoon Hospital, Pune during his cross-examination conducted by the learned Advocate appearing for the Respondent - wife.

7. It is also required to be noted that the contention of the Petitioner - husband is that presently his age is 54 years. In view of advanced age,

there is likelihood of changes. It is further submission of the Petitioner that in fact it is required to be proved that the marriage has not been consummated owing to the impotence of the husband and the same is to be shown at the date of the marriage or at least at the time of filing of the Petition. Admittedly, the Petition is filed on 23rd October 2017. Pursuant to the Order dated 21st May 2019, medical examination of the Respondent - husband has been conducted and Report dated 2nd August 2019 is submitted by the Sassoon Hospital, Pune. Therefore, the Application bearing Exhibit - 143 has been filed on 1st December 2023 and the impugned Order is passed on 17th February 2024. Thus, allowing medical examination after a period of about 8 years to ascertain whether the husband was impotent in the year 2017 will not be proper and legal. In fact, it is well established that aging changes the sexual behaviour and sexual response may become slower and less intense. In any case, advancing of age will affect the medical test. Thus, directing another medical test after a period of about 8 years will not be useful and relevant.

8. Accordingly, Order dated 17th February 2024 passed by the learned Judge, Family Court, Satara below Exhibit - 143 in Petition A 104 of 2019 is quashed and set aside.

9. The Writ Petition is disposed of in above terms with no order as to costs.

10. At this stage, Mr. Sarda, learned Counsel for the Respondent seeks stay for a period of 4 weeks. Mr. Paranjape, learned Counsel for the Petitioner opposes the said request.

11. However, in the interest of justice, the learned Judge, Family Court, Satara is requested not to proceed with the said Petition No.A 104 of 2019 for a period of 4 weeks.

**[MADHAV J. JAMDAR, J.]**