

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6653 OF 2024

Hemal Prafulchandra Shah,
Age : 55 years, Occu.: Self-Employed
C/o. Mukesh Rathod 605,
Green Wood Building, Kasarvadavli,
Thane-West, Maharashtra-400615.

...Petitioner

Versus

Rupali Hemal Shah @ Rupali Pratap Mehta,
Age : 54 years, Occu.: Tuition,
R/o.101, Green Wood Building,
Kasarvadavli, Thane-West,
Maharashtra-400615

...Respondent

Mr. Benimadhav H. Goswami, for the Petitioner.
Mr. Ajinkya Udane a/w Mr. Vinayak Pandit, for the Respondent.

CORAM : MANJUSHA DESHPANDE, J.
RESERVED ON : 13th NOVEMBER 2025
PRONOUNCED ON : 20th NOVEMBER 2025

JUDGMENT :-

1. **Rule.** Rule made returnable forthwith, matter is taken up for final disposal with the consent of parties.

2. The Petitioner assails the order dated 19.01.2024, passed by the Judge, Family Court, Thane, below Exhibit 49, in Marriage Petition No.A-422 of 2018. The Application for framing of additional issues under Order XIV Rule 5 read with Section 151 of the Code of Civil Procedure, 1908, (“**the CPC**”) was filed by the Petitioner herein, which came to be dismissed by the Judge, Family Court, Thane, vide order dated 19.01.2024, which is impugned in the present Writ Petition.

3. The Respondent-Wife has filed Petition for Divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955, (“**the HMA**”) before the Family Court, Thane, on 21.09.2018. The Petitioner filed his Written Statement to the Petition for Divorce on 17.08.2020. On the basis of rival pleadings of the parties, issues came to be framed by the Principal Judge, Family Court, Thane, on 03.03.2021. After framing of issues, evidence affidavit of the Respondent herein was filed on 06.07.2021 and her cross-examination was completed on 13.04.2022. The evidence affidavit of witness, i.e., the son of the parties was also filed on 05.05.2022, and his cross-examination has been completed on 18.07.2022. The Applications filed by the

Petitioner for recalling of witness under Order XVIII Rule 17 as well as the Application under Order XI Rule 14, for production of document dated 09.08.2023, have been dismissed by the Principal Judge, Family Court, Thane. In the midst of ongoing trial, the Petitioner, who is the Respondent in Hindu Marriage Petition (“HMP”), has filed an Application under Order XIV Rule 5 read with Section 151 of CPC, 1908, for framing of additional issues, which came to be dismissed by the Judge, Family Court, Thane, vide order dated 19.01.2024, is assailed in the present Writ Petition.

4. The learned Advocate Mr. Benimadhav Goswami, appearing for the Petitioner submitted that, after long cohabitation of 26 years, the Respondent has filed proceedings for Divorce against the Petitioner. According to him, the Petitioner and Respondent were residing at Flat No.D-28 Arvind Niwas, Chaupati, Mumbai. In the year 2015, the Petitioner purchased a flat of two bedroom hall and kitchen at Green Wood, Sai Nagar, Kasarvadavli, Ghodbunder Road, Thane West. The parties have jointly availed loan for purchasing the said flat. The Petitioner being a co-borrower is repaying the loan regularly with an EMI of Rs. 47,808/-.

Believing the false allegations made against him to be true, adopting a hostile approach, the Petitioner was driven out of his own house by the Respondent. The Respondent has, thereafter, filed Petition for Divorce in the Family Court, Thane. It is his submission that, there are pleadings in the Petition for dissolution of marriage, wherein the Respondent has claimed that, the flat standing in the joint name of the Petitioner and Respondent has been purchased with the financial assistance of father of the Respondent. In response to the pleadings in the Marriage Petition, he has filed his Written Statement by disputing the stand of the Petitioner about the financial assistance given by the father of the Respondent. However, while framing issues on 03.03.2021, the Judge, Family Court, has not framed necessary issues as per the pleadings of the parties.

5. The Judge, Family Court, has failed to frame issue as to whether, the Petitioner proves that, she has purchased Flat No.101, Green Wood, Ram Mandir Road, Hyper City at Kasarvadavli, Thane(W), by taking financial help of her father. It is submitted that, this issue is of immense importance since the Respondent is denying his contribution as well as the EMI borne by him while

purchasing the flat. Upon realizing the failure of the Court in framing appropriate issues, he has filed an Application under Order XIV Rule 5 read with Section 151 of the CPC, 1908, for framing of the additional issues. According to him, in spite of controverting the averments made by the Respondent in her Petition about taking financial assistance of her father while purchasing the flat in his Written Statement, by making specific averment about payment of earnest amount of Rs. 12,53,0000/- from his Axis bank Savings Account and having invested an amount of Rs. 76,76,334/- on the said flat, the Judge, Family Court, has failed to frame appropriate issues. The Judge, Family Court, has framed only two issues, which reads thus :

“a. Whether the Petitioner proves that the Respondent has treated her with cruelty?

b. Whether the Petitioner is entitled to a Decree of Divorce?”

6. The necessary issue regarding payment of consideration of the 2 BHK flat has not been framed in spite of the clear objections raised by the Petitioner in his ‘Written Statement’. The Judge, Family Court, has committed an error by rejecting his Application by holding that, the issue can be framed as per the pleadings and

denial of the respective parties, therefore, it is not necessary to frame the issue.

According to him, the ownership of the flat itself is the bone of contention between the parties. The issue as to who has paid the consideration of the flat is necessary for fair trial. Hence, the additional issues ought to have been framed by the Judge, Family Court, by allowing his application.

7. It is submitted that, no prejudice would be caused to the Respondent if the proposed additional issues were allowed since the Respondent would get a fair chance to defend the same. It is the contention of the Petitioner that, if the impugned order is not quashed and set aside, it would cause irreparable loss and great prejudice to the right of the Petitioner. Hence, the impugned order is required to be quashed and set aside.

8. *Per contra*, the learned Advocate Mr. Ajinkya Udane, appearing for the Respondent submits that, the issues were framed on 03.03.2021, on the basis of pleadings of the parties. After framing of issues, even the evidence of Petitioner and one more witness of the Petitioner is already over on 18.07.2022. Therefore,

there is no error in the order passed by the Judge, Family Court. Even otherwise, the Petitioner is claiming a relief of adding additional issues about the property jointly owned by the parties in a Petition for Divorce. Hence, the issue is not relevant for deciding the Petition for dissolution of marriage filed on the ground of cruelty. According to him, no interference is called for in the impugned order. Therefore, the Writ Petition filed by the Petitioner lacks merits and deserves to be dismissed.

9. I have heard the respective counsels and perused the material documents placed on record alongwith the Writ Petition.

10. The Petition for Divorce has been filed by the Respondent-Wife on 21.09.2018, with a following prayer :

“(a) That the Hon’ble Court be pleased to pass a decree for divorce and dissolve the marriage of the Petitioner with Respondent held on 03.12.1992, under Section 13[1(ia)] of the Hindu Marriage Act.”

11. The Application for framing of additional issues has been filed by the Petitioner on 06.01.2024, after completion of recording of evidence of the Respondent and her witness. The issues are

always framed on the basis of pleadings of the parties, as contemplated under Order XIV Rule 1, which reads thus :

“ORDER XIV –Settlement of Issues and Determination of Suit on Issues of Law or on Issues Agreed Upon

R. 1. Framing of Issues. –

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and '[after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.”

12. Admittedly, the additional issues can be framed any time before passing of a Decree as provided under Order XIV Rule 5 of the CPC, 1908, which reads thus :

“ORDER XIV –Settlement of Issues and Determination of Suit on Issues of Law or on Issues Agreed Upon

R.5. Power to amend and strike out issues.-

(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.”

13. The issue which is sought to be additionally framed, should be an issue necessary for determining the matters in controversy between the parties. Therefore, in the present case, whether the issue which is sought to be added by the Petitioner is a necessary issue requires consideration by this Court. The issues which are proposed to be added reads thus :

“(a) Whether the Petitioner proves that she has purchased Flat no. 101, Green Wood, Ram Mandir Road, Hypercity at Kasarwadavli, Thane (w) by taking financial help of her father.

(b) Whether the Petitioner proves that she has received Rs. 17,00,000/- from sale of her Mumbai flat flat no. D/28 Arvind Niwas, Chaupati Mumbai.

(c) *Whether the Petitioner proves that Respondent did not pay any money to the Bank for repayment of loan amount.*

(d) *Whether the Petitioner proves that she has faced huge losses of Rs. 51,00,000/- as alleged.”*

Even though in his Application the Petitioner has claimed addition of above issues, yet while making his submission the learned Advocate for the Petitioner submits that, at least issue at Serial No.(a) ought to have been additionally framed by the Judge, Family Court.

14. The Petition filed by the Respondent itself is for dissolution of marriage on the ground of cruelty and that is the only prayer made by the Respondent in her Petition for Divorce. In order to support her ground of cruelty, various averments have been made by her in her Petition for Divorce. Though the averments regarding the payments made while purchasing the Flat No.101, Green Wood, Ram Mandir Road, Hyper City at Kasarvadavli, Thane (W), have been made by the Respondent in her Petition and controverted by the present Petitioner in his Written Statement, the relief in the Marriage Petition as prayed by the Respondent is limited only to the extent of grant of Divorce. The Respondent has not claimed any other relief in the HMP for Divorce.

15. The Petitioner himself has categorically averred in the Writ Petition that apprehending that, the Respondent is trying to sell off the property to a third party, he has filed Special Civil Suit No.271 of 2019, before the Civil Judge Senior Division, Thane, for Declaration and Injunction. He could also obtain an order of *status quo* on 11.06.2019, even his application for injunction for injunction at '**Exhibit 5**' in the Suit, has been allowed by the Civil Judge Senior Division, Thane, vide order dated 14.02.2020. The two orders dated 11.06.2019 and 14.02.2020, have been obtained much prior to his filing of Written Statement on 17.08.2020, therefore, his rights *qua* the said property have been sufficiently protected in Special Civil Suit No.271 of 2019 filed by him. The rights of the parties to the subject property would be determined in the pending Suit.

16. On this background, the Petitioner has claimed that the additional issue as to "*whether the Respondent proves that she has purchased Flat No.101, Green Wood, Ram Mandir Road, Hyper City at Kasarvadavli, Thane(W), with the financial assistance of her father*", was necessary to be framed refusal of which would entail in irreparable loss to him.

But, the fact remains that, the Petitioner has already invoked appropriate proceedings by filing a suit for Declaration of the said property, in which he has been able to obtain favorable orders, even prior to filing of his Written Statement. Since the proposed issue is not necessary for determining the matter in controversy between the parties, which is the dissolution of marriage on the ground of cruelty, I do not find any case for interference made out by the Petitioner.

17. Although while issuing notice, this Court has granted interim relief to the Petitioner by directing the Family Court, Thane, not to proceed with the hearing of MP No.A-422 of 2018, till further orders, after due consideration of the merits of the matter, I find that, the **Writ Petition being devoid of any substance, hence, the Writ Petition is dismissed and resultantly, the interim relief stands vacated. Rule is discharged.**

(MANJUSHA DESHPANDE, J.)