

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12199 OF 2024

Swapnil Surendra Tawade

.Petitioner

Vs.

Sneha Surendra Tawade

.Respondent

Mr. V. S. Jagdale, Advocate, for the Petitioner

Mr. Narayan G. Rokade a/w. Mr. Ramchandra Wagh & Mr. Siddharth Ghodke, Advocates, for the Respondent

CORAM : MANJUSHA DESHPANDE, J.

DATE : 08.07.2025

P. C.

1. The Petitioner has filed the present Petition seeking the following relief :-

“(a) That this Hon’ble Court be pleased passed directions to the Ld. Family Court, 5th Judge Bandra, Mumbai to set aside the order dated 2nd May 2024 and/or to decided the replication of the Petitioner in view of the Order VIII Rule I and allow the Petition to filed his Written Statement to the Counter Claim of the Respondent.”

2. According to the Petitioner, he has filed a Petition No. 3084 of 2022 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. In the said Petition, the Respondent has filed a counter claim along with written statement. The counter claim was objected by the Petitioner. The Petitioner has filed an Application for

replication on behalf of the Petitioner objecting the written statement-cum-counter claim filed by the Respondent. In the Application, the Petitioner has objected filing of written statement on the ground of delay. Considering an inordinate delay in filing the written statement itself was opposed, however, the Petitioner had reserved right to file replication to the written statement-cum-counter claim filed by the Respondent. It is on this Application, the Order impugned has been passed by the learned Judge, Family Court, Bandra, Mumbai. It is his further contention that in view of O. VIII, Rule I of the Code of Civil Procedure, 1908, the counter claim is not maintainable. It is contended that the written statement-cum-counter claim was allowed without giving an opportunity to the Petitioner to oppose it by filing response/say. It was further submitted during arguments that the Order of rejection and application was not uploaded by the Family Court, Bandra, Mumbai.

3. On her request, record and proceedings are called for by this Court. Record and proceedings are received from the Family Court, Bandra, Mumbai.

4. Today, after perusing the Application of the Petitioner which is at Exh. 15, it appears that hand written order was passed by the learned Judge, Family Court, Bandra on 02.05.2024. It was observed by the

learned Judge that parties were directed to follow the appropriate procedure and shall not move frivolous Applications.

5. Learned Advocate for the Respondent has also placed on record Exh. 15 i. e. Application of the Petitioner to the written statement-cum-counter claim filed by the Respondent. He submits that he does not have any objection, if the Application is allowed.

6. Considering the fact that an opportunity should have been given to the Petitioner to oppose written statement-cum-counter claim which is denied by the Family Court, Bandra, Mumbai, in my opinion, it would be appropriate to set aside the Order dated 02.05.2024 passed by the Family Court, Bandra, Mumbai.

7. The Family Court, Bandra, Mumbai shall make an endeavour to decide the Application at Exh. 15 alongwith the Petition No. A 3084 of 2022 filed by the Petitioner within a period of six months from today.

8. Record and proceedings be sent back to the Family Court, Bandra, Mumbai.

9. In view of the above directions, the Petition stands disposed of.

(MANJUSHA DESHPANDE, J.)