

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

CIVIL REVISION APPLICATION NO.79 OF 2025

Ashwini Yogesh Deshmukh Applicant

Versus

Yogesh Shankarrao Deshmukh Respondent

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Mr.Bhushan Walimbe a/w. Mr.Mayank Tripathi, Advocate for the Applicant.

Mr.Ajinkya Jaibhave, Advocate for Respondent.

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CORAM : MANJUSHA DESHPANDE, J.

DATED : 18.07.2025.

P.C. :

1. The Petitioner who is the wife of the Respondent, challenges the order dated 27th July 2024 passed by the learned Civil Judge, Senior Division, Islampur, below Exhibit-19, rejecting her application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC").

2. The Petitioner is the original defendant in Marriage Petition No. 9 of 2024 filed by the Respondent-husband before the learned Joint Civil Judge, Senior Division, Islampur, seeking divorce under Sections 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, 1955. The marriage between the parties was solemnized on 9th

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March 2008 as per Hindu rites. The Respondent-husband was working in the USA prior to marriage, and the Petitioner joined him there thereafter.

3. After the birth of their son, the Respondent allegedly failed to pay attention to the child, leading to differences between the parties. Efforts of reconciliation failed, hence the Respondent filed Marriage Petition No. A/171/2020 before the Family Court, Pune, seeking divorce. In the memo of the petition, the date of marriage was mentioned as 9th March 2008, whereas in the prayer clause it was stated as 9th June 2008.

4. The Petitioner filed an application under Order VII Rule 11 CPC before the Family Court, Pune, raising a preliminary objection to territorial jurisdiction. During its pendency, the Respondent filed an application under Order XXIII Rule 1(3) CPC seeking withdrawal of the petition with liberty to file a fresh petition before the Civil Judge, Senior Division, Islampur. By order dated 20th October 2023, the Family Court permitted the withdrawal with liberty to file a fresh petition on the same cause of action.

5. The Respondent thereafter filed a fresh petition before the Civil Judge, Senior Division, Islampur, wherein in the Memo of Petition the cause of action was stated to have arisen on 9th March

2008, as against 9th June 2008 as per the averment made in the earlier petition. Feeling aggrieved, the Petitioner has filed an application for rejection of plaint (Exhibit-99) contending that the change of date amounted to a change in the cause of action also in breach of the liberty granted the Petitioner. The learned Civil Judge, rejected the application on 10th June 2024, holding that the date of marriage constituted the cause of action in view of the liberty granted, there was no breach of liberty.

6. Learned counsel for the Respondent submitted that there is no change in the cause of action. It was merely clarified that on 9th March 2008, a registered marriage has taken place for processing VISA Application, followed by a marriage as per Hindu rites on 9th June 2008, both the dates form part of the same cause of action.

7. I have considered the submissions and perused the record. Liberty was granted to the Respondent to file a fresh petition on the same cause of action as stated in the earlier petition, wherein the date of marriage was mentioned as 9th June 2008. In the subsequent petition, averment was made that the cause of action arose on 9th March 2008, the averment is also made that the marriage as per Hindu rites took place on 9th June 2008.

8. This clarification does not alter the substance of the

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cause of action and does not cause prejudice to the Petitioner. Any disputed question of fact can be adjudicated at the trial by leading evidence. I find no infirmity in the impugned order dated 27th July 2024 passed by the learned Civil Judge, Senior Division, Islampur, below Exhibit-19.

9. The Writ Petition is, therefore, dismissed. No order as to costs.

[MANJUSHA DESHPANDE, J.]