

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8309 OF 2025

Dr. Vikram Vincent

...Petitioner

Versus

Richa Mishra & Anr.

...Respondents

Ms. Ankita Bamboli a/w Ms. Priya Mehta, for the Petitioner.
Mr. Ajaay S. Jajodia i/b Mr. Amrendra Sinha, for Respondent No.1.
Ms. Vaishali Nimbalkar, AGP, for the Respondent No.2-State.

CORAM: MADHAV J. JAMDAR, J.

DATED: 31st JULY 2025

JUDGMENT:

1. Heard Ms. Bamboli, learned Counsel appearing for the Petitioner, Mr. Jajodia, learned Counsel appearing for the Respondent No.1 and Ms. Nimbalkar, learned AGP, appearing for the Respondent No.2-State.

2. The challenge in this Writ Petition is to the order dated 29th March 2025 passed by the learned Judge, Family Court No.2, Pune in Civil Miscellaneous Application No.64 of 2024. The said Civil Miscellaneous Application No.64 of 2024 has been filed for restoration of Petition No. A 611 of 2018, which has been filed for seeking divorce.

3. By the impugned order, the said Divorce Petition has been restored to the file. Consequently, the order dated 20th November 2021 by which said Petition No. A 611 of 2018 has been dismissed for want of prosecution, has been recalled.

4. It is the main submission of Ms. Bamboli, learned Counsel appearing for the Petitioner that, adequate and sufficient explanation is not given by the Respondent No.1. She relies on the *Roznama* annexed at Page No.60 and submits that from 31st August 2019 onwards the Respondent No.1 was not present and therefore, rightly the said Divorce Petition has been dismissed for non-prosecution. She submits that without taking into consideration this aspect, the learned Judge of the Family Court has restored the Divorce Petition bearing P.A. No.611 of 2018.

5. On the other hand, Mr. Jajodia, learned Counsel appearing for the Respondent No.1 submitted that at that time the Petitioner was in United States of America and due to COVID-19 pandemic, the evidence affidavit could not be filed. He submitted that even when the matter was dismissed for non-prosecution by order dated 20th November 2021 passed by the learned Judge of the Family

Court, Advocate has appeared on behalf of the Petitioner and filed application seeking adjournment. However, the same was rejected.

6. Perusal of the record shows that although it is the contention of Ms. Bamboli, learned Counsel appearing for the Petitioner that on 31st August 2019, 5th October 2019, 30th November 2019, 17th January 2020 and 14th February 2020, the Respondent was absent, however, it is an admitted position that on these dates the Respondent's Advocate was present throughout. On 31st August 2019, the stage was for filing written statement and therefore, it was not necessary for the Respondent who is the Petitioner in said Divorce Petition to remain present. In fact, on 5th October 2019 and 13th November 2019 also the matter was adjourned for filing say on Exhibit-10 application. The said say was to be filed by the present Petitioner. Therefore, there was no necessity that the Respondent shall remain present.

7. Perusal of the record further shows that on 13th March 2020, the Petitioner filed application stating that evidence affidavit kindly be allowed to be filed through Video Conferencing as the Respondents was currently pursuing her Ph.D. in United States of

America. The said application has been allowed by the order dated 13th March 2020. Thereafter, the entire world has been affected due to COVID-19 Pandemic. In fact, when P.A. No.611 of 2018 was dismissed by the order dated 20th November 2021, at that time also complete normalcy has not been restored. Thereafter again normal working was affected due to the second wave of COVID-19 Pandemic. In this background of the matter, it is required to note the following reasons given by the Respondent in her restoration application, which has been filed on 23rd February 2022:

“A. It is submitted that, as the Applicant was in USA, it was highly impossible for her to attend this Hon'ble Court even through VC. It is further submitted that, since 2020, due to Covid-19 situation, it was not possible for the Applicant to take steps and give instructions to her previous Advocates.

B. It is submitted that, in the wake of Covid-19 pandemic, when everyone was forced to be locked into their houses, it couldn't be possible for the Applicant to even come out of her residence.

C. It is submitted that, the Applicant was worried or rather scared to even step out of her residence in USA and come down to India for the case because she was uncertain as to whether she would ever be able to go back to complete her studies etcetera. Due to the said reasons, it was nearly impossible for the Applicant to attend the Court proceedings.

Moreover, Applicant had totally locked herself in her residence because of the ongoing pandemic. It is submitted that, it is a well known fact now that during past 2 years the pandemic situation has affected the entire world very dreadfully.

D. It is submitted that, in the United States of America, from January 2020 to February 2022, there have been more than 77,521,589 confirmed cases of the Covid-19 with almost 921,984 deaths, these numbers have been reported to the WHO. Thus, it is submitted that, the condition till date was and is horrific. In such a situation, it would be like suicidal to travel all along merely to attend the court proceedings on each date.

E. It is submitted that, moreover, the flights were paused, no passengers were allowed in and out of the United States because of increased number of patients falling prey to the Covid-19 pandemic.

F. It is submitted that, due to the said pandemic situation, Applicant couldn't travel back to India and attend this Hon'ble Court on the given dates. There was some unavoidable communication gap between the Applicant and her lawyers.

G. It is submitted that, since the application for Amendment was rejected by this Hon'ble Court, a Writ Petition by number WPST/17257/2021 has been filed before the Hon'ble High Court of Mumbai on 15.09.2021 praying for amendment in the divorce petition. The same is still pending and is at the stage of pre-admission. The Applicant is hopeful that the said Writ Petition would be allowed and if the same is allowed, it would be helpful for better adjudication of the divorce petition in hand. The divorce petition filed by Applicant did not contain all the allegations, contents and averments which

are otherwise required to be incorporated in the petition so as to reach a decision on its own merits.”

(Emphasis added)

8. Thus, it is clear that adequate and sufficient reasons are given by the Respondent for setting aside order dated 20th November 2021 passed by the learned Judge, Family Court and restoration of the said P.A. No.611 of 2018 filed by the Respondent against the Petitioner seeking divorce.

9. In fact, it is required to be noted that on 20th November 2021 when the said P.A. No.611 of 2018 was dismissed for non-prosecution, Advocate had appeared on behalf of the Respondent i.e. the Petitioner in the said Divorce Petition and filed an adjournment application which was rejected.

10. In view of the various reasons given by the Respondent for restoration of her matter, it is the submission of Ms. Bamboli, learned Counsel appearing for the Petitioner that the Petitioner could give instructions to prepare Writ Petition (ST) No.17257 of 2021 which was filed on 15th September 2021, however, she could not appear in the Divorce Petition and file the Evidence Affidavit.

However, it is required to be noted that generally Writ Petitions filed under Article 227 of the Constitution of India are prepared by the Advocates on the basis of the case papers made available to them. However, for preparing Affidavit-in-lieu of Examination-in-Chief, extensive deliberations are required between the Advocate and the party. Thus, there is no basis in the contention raised by Ms. Bamboli, learned Counsel appearing for the Petitioner.

11. By the impugned order, what has been done by the learned Judge, Family Court is that the Divorce Petition has been restored to the file and while passing the said order cost of Rs.20,000/- has been imposed.

12. The impugned order is a discretionary order. The discretion has been exercised in judicious and proper manner. Therefore, no case is made out for interference in the impugned order under Article 227 of the Constitution of India.

13. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]

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