



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 464/2025

1. Smt. Rameshwari Wd/o Hiralal Sharma,
aged about 84 years, Occ: Nil,
2. Shri. Ramkailash S/o Hiralal Sharma,
aged about 50 years, Occ: Private,
3. Smt. Sarita W/o Ramkailash Sharma,
aged about 40 years, Occ: Household,
4. Shri. Santosh Kumar s/o Hiralal Sharma,
aged about 58 years, Occ: Nil,
5. Smt. Maxa W/o Santoshkumar Sharma,
aged about 51 years, Occ: Household,
6. Sagar S/o Santosh Sharma,
aged about 27 years, Occ: Student,
7. Shubham s/o Santosh Sharma,
aged about 24 years, Occ: Student,

All applicants are R/o, Plot no. 55,
Jaiwant Nagar, Lane No. 2,
Ajni, Nagpur – 44002.

...PETITIONERS
(Ori. Non-applicants)

VERSUS

Smt. Shyama Wd/o Shrinarayan Sharma,
aged about 48 years, Occ Household,
R/o, Plot no. 55, Jaiwant Nagar,
Lane No. 2, Ajni, Nagpur - 440024

...RESPONDENTS
(Ori. applicant)

Shri. S. N. Dongre, Advocate for petitioners.
Mrs/Ms. S.S. Dhone for the respondent (appointed).

CORAM : M. M. NERLIKAR, J.

DATE : 16.09.2025

ORAL JUDGMENT :

Heard.

2. Issue Rule, returnable forthwith. Mrs. S.S. Dhone, learned counsel waives service for respondents. With consent of learned counsel for the parties, the petition is taken up for final hearing.

3. By the present petition filed under Article 227 of the Constitution of India, the petitioners are seeking to quash and set aside the impugned order dated 01.04.2025 passed by the learned 11th Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Nagpur, in Criminal M.A. No.1836/2022.

4. The petitioners are the original non-applicants. The respondent original applicant filed the complaint under Section 12 read with sections 18, 19, 20, 22 and 23 of the Protection of

Women from Domestic Violence Act, 2005 against the petitioners. It appears that after filing of the reply by the petitioners, the petitioners came across one document which is a copy of judgment passed in A-Petition No.566/2011 on 05.01.2013. The said proceeding was initiated by one Kirti Shrinarayan Sharma against Shrinarayan Hiralal Sharma. As the marriage between Kirti Sharma and Shrinarayan Sharma was dissolved on 05.01.2013 therefore, the marriage between the present respondent with Shrinarayan Sharma which took place on 06.03.2010 was not a valid marriage. The petitioners sought permission to bring the judgment passed by the Family Court, Nagpur in A-Petition No.566/2011, being a crucial and important document on record. Therefore, the petitioners by filing an application on 23.01.2024 sought permission to file the document on record. The said application was allowed on 13.03.2024.

5. It is averred in the application by the petitioners in paragraph 4 that said copy of judgment has already been filed on record by non-applicants on 28.06.2023, however since the

document has been found out by the non-applicants after filing of the Reply at Exh.13, it is imperative to amend the said reply to add few facts on the record. Say was called and accordingly, it was filed, thereby praying to reject the application. By an order dated 13.03.2024 the learned 15th learned Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Nagpur was pleased to allow the application subject to deposit of Rs.3000/- as cost. It was further directed that cost shall be paid on or before the next date. The petitioners deposited cost on 15.04.2024 which was the next date and carried out the amendment on 19.06.2024.

6. Thereafter, the respondents herein filed an application at Exh. 23 contending that the amendment has not been carried out within time. Further, it is contended that without seeking the extension, the amendment is carried out by the petitioners and accordingly requested to delete the amendment which was carried out by the petitioners. After hearing the parties, learned 11th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Nagpur was

pleased to allow the application of the respondent at Exh.23 and thereby, directed to delete the amendment carried out by the petitioners. Against this order, the petitioners preferred the present criminal writ petition.

7. I have heard both the parties. Learned counsel for the petitioners submits that there is no specific time limit which was mentioned in the order dated 13.03.2024, wherein the amendment application was allowed and the cost was to be paid either on or before the next date. He further submits that it is only after paying cost, the amendment was directed to be carried out. The application filed by the respondent is misconceived for the reason that it was filed after carrying out the amendment and payment of costs. The Trial Court has miserably failed to take into consideration the order dated 13.03.2024 passed below Exh.20. He further submits that the Court has committed grave error by observing that the petitioners have not sought extension to carry out the amendment and accordingly prayed to quash and set aside the order dated 01.04.2025 passed below Exh.23. To substantiate

his contention, he relied upon the judgment of this Court in case of *Salmona Villa Co-operative Housing Society Limited Vs. Mary Fernades and others, 1997 (2) Bom.C.R. 470.*

8. On the other hand the learned counsel for respondent vehemently argued that Order VI Rule 18 of the Civil Procedure Code provides for time limit to carry out the amendment and in case of failure, the petitioners ought to have sought extension of time by filing an application in the Court. She further submits that within 14 days, the petitioners ought to have carried out amendment and therefore, the Court has rightly passed the order below Exh.23. To substantiate her contentions, she relies upon the judgment of Madras High Court in case of *Southern Ancillaries Pvt Ltd. Vs. Southern Alloy Foundries Pvt. Ltd, AIR 2003 Madras 416.* She further submits that if the time is not provided in the order while allowing the application for amendment, in that case, Order VI Rule 18 of the Civil Procedure Code would be applicable and within 14 days, the amendment will have to be carried out. She further submits

that otherwise extension ought to have been sought from the Court for carrying out the said amendment.

9. Upon careful perusal of the record, it transpires that the petitioners had filed an application for amendment in the written statement due to certain developments. The said amendment application was allowed subject to cost of Rs.3000/- which was to be paid on or before next date. The said order does not stipulate within how much time, the amendment was to be carried out after payment of cost.

10. The petitioners deposited cost on 15.04.2024 and thereafter, the amendment was carried out on 19.06.2024. However, the respondent herein filed an application at Exh.23 and requested the Court that the amendment which was carried out by the petitioners was not within time and as no extension was sought therefore, the said amendment be rejected. The learned 11th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Nagpur by its order dated 01.04.2025, allowed the application at Exh.23 by passing the

order and accordingly, deleted the amendment carried out in Exh.13.

11. It is necessary to mention at this juncture that Order VI Rule 18 of the Civil Procedure Code states that if a party who has obtained an order for leave to amend and does not amend within time limit or if no time is mentioned then the same ought to be amended within fourteen days from the date of the order. If he/she fails to do the same, he/she shall not be permitted to amend after the expiration of such time as aforesaid or of 14 days, as the case may be, unless the time is extended by the Court.

12. No doubt, Order VI Rule 18 of the Civil Procedure Code provides that if the time is not provided in the order then the time limit would be of 14 days from the date of order. However, in this peculiar facts and circumstances, when the order dated 13.03.2024 passed below Exh.20 is perused, it can be gathered that the application was allowed subject to deposit cost of Rs.3000/- on or before the next date. Meaning thereby, either the petitioners can deposit the cost on the coming next

date or prior to that and if the cost is deposited on the next date then amendment can be carried out. The next date in the case was 15.04.2024, the petitioner deposited the cost on 15.04.2024. However, the amendment was carried out on 19.06.2024. Therefore, Order VI Rule 18 of the Civil Procedure Code would be out of picture in the present peculiar facts.

13. Under such circumstances, it would be useful to refer to the judgment of this Court in case of Salmona Villa Co-operative Housing Society Limited (supra), wherein this Court observed in para 5 as under:-

“5 In my view, since the amendment has been allowed by the Court below holding that such amendment was necessary to decide real controversy between the parties because of some inaction in not carrying out amendment within time, the plaintiff should not be deprived of the amended pleading. The inconvenience caused to Defendant-1(b) could be compensated by awarding suitable cost. The trial Court is expected always to exercise the discretion which advances the cause of justice and does not lead to avoidable litigation by way of revision and appeal. The procedural law should not be applied so rigorously and with hypertechnical stress that it breaks the strings of substantial justice. After all procedure is

handmaid of justice and not its master. The amendment as allowed on 8-3-96 and time was granted by the trial Court to amend the pleadings by 24-4-96. I have already set-out few dates subsequent thereto by which the amendment was not carried-out, but the conduct of the plaintiff cannot be said to be so contumacious and gross, negligent or actuated with ulterior motive warranting rejection of chamber summons for extension of time in submitting amended plaint. Exercise of discretion by the trial Court, therefore, cannot be said to be in accordance with sound legal principles.

14. The above exposition of law clearly culled out the rigour of procedural law and held that it should not be applied so rigorously and with hyper-technical stress that it breaks the strings of substantial justice. After all, procedure is handmaid of justice and not its master. Further, it is held that the inconvenience cause to the other party could be compensated by awarding suitable costs.

15. Therefore, considering the above dictum of law, it is necessary to state that procedural laws does not thwart the course of justice. It is always to be seen that the rights of the parties shall be crystallized on the basis of merit and not on

hyper technical grounds. The paramount consideration is the crystallization of the rights of the parties.

16. Considering above facts, the order passed below Exh.23 would indicate that the Court has taken a hyper-technical view by ignoring the rights of the parties. Substantial justice is required to be done when the parties bring their cases to the Court and therefore, the observations in the order dated 01.04.2025 at Exh.23 does not sustain in law. Therefore, the following order is passed:-

(I) The petition is allowed.

(II) Order dated 01.04.2025 passed by learned 11th Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Nagpur is hereby quashed and set aside subject to cost of Rs.10,000/- to be paid by the petitioners to the respondent or the cost be deposited in the Trial Court, if the respondent is not available within four weeks from the date of uploading of this order. In case the cost is deposited in the Trial Court, the same shall be paid to the respondent..

III. Fees of appointed counsel be quantified as per Rules.

17. Rule is made absolute in above terms.

(M. M. NERLIKAR , J.)

Gohane