



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.7094/2024

Suhas V Payal

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. Shukla, Adv. for petitioner.
Mr. S.D. Chande, Adv. for respondent.

CORAM : R.M. Joshi, J.

DATE : 25-06-2025.

This petition takes exception to the order below Exhibit-17 passed by the Family Court, Nagpur in petition No.A-724/2022 whereby the application for the amendment of the petition came to be rejected.

2. There is no dispute about the fact that the petitioner filed petition under Section 13(1)(b) of the Hindu Marriage Act for seeking decree of divorce against the respondent-wife in Petition No.A-724/2022. Prior to the filing of the said petition the petitioner had issued notice dated 10-04-2022 to the respondent. This notice is duly replied by non-applicant. In response to the said notice, respondent made allegations against the petitioner. It is after receipt of the said reply, petition for the divorce came to be filed.

3. Petitioner filed application exhibit-17 for amendment to the pleadings under Order 6 Rule 17 of the Code of Civil Procedure on the ground that inadvertently and on account of the mistake on the part of the advocate, the grounds which are sought to be raised now were not taken up earlier.

4. This application is opposed by the respondent by contending that after filing of the written statement it is not permissible for the petitioner to amend the plaint by way of counterblast to the written statement. The Family Court accepted the contention of the respondent and rejected the application by passing impugned order.

5. Perusal of order impugned indicates that the trial Court has held that the petitioner can amend the petition pertaining to the additional grounds of cruelty to him but not the way sought to be done by the petitioner. It is observed that the propose amendment pertains to the contention of the respondent in the written statement.

6. This observation of the learned Family Court would have been correct provided that there was no notice/ reply given by the respondent to the notice issued by the petitioner before

filing of the petition before the Family Court. So this is not the case wherein the pleadings are sought to be amended on the basis of the written statement.

7. Wherein the petitioner claims that he had given the notice and notice/reply to the advocate for preparing writ petition and then says that the allegations in the notice reply are not included in the pleading, there is reason to believe that this has occurred either by inadvertence or on account of the mistake of the advocate. The petitioner cannot be made to suffer on both counts.

8. In the facts of the case, Family Court therefore ought to have allowed the amendment application. However, as the amendment application has been moved after about two years of the filing of the petition, the petitioner is directed to pay costs of Rs. 10,000/- to the respondent. Subject to the payment of the costs amendment application exhibit-17 stands allowed.

9. Needless to say that it would be open for the respondents to file reply to the amended petition.

(R.M. Joshi, J.)