

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

WRIT PETITION NO.3712 OF 2024

Swati Vedant Jatia	... Petitioner
Vs.	
Vedant Vijay Jatia	... Respondent

Mr. Taubon F. Irani a/w Disha Shetty & Moksha Kothari for the Petitioner.
Ms. Firoza Daruwala i/by Sukhada Dalvi for the Respondent.

CORAM : N.R. BORKAR, J.
DATE : 08TH MAY 2026

P.C. :

1. This Petition takes exception to the order dated 24th January 2024 passed by the Family Court, Mumbai below Exhibit 22 in Petition No.A-141 of 2018.

2. By the order impugned, the Learned Family Court has allowed the application filed by the Respondent/husband under Order VI Rule 17 of the C.P.C. and permitted him to raise the ground of adultery and implead the alleged adulterer as party Respondent to the petition filed by him for divorce against the Petitioner/wife.

3. I have heard Learned Counsel for the Petitioner and Learned Counsel for the Respondent.

4. Learned Counsel for the Petitioner submits that the alleged adulterer is neither necessary nor proper party as divorce action is a lis

strictly between the spouses. It is submitted that the application was made under Order VI Rule 17 and not under Order I Rule 10. It is submitted that the learned Family Court thus erred in allowing the impleadment. In support of the submissions that alleged adulterer is neither necessary nor proper party, learned Counsel for the Petitioner has relied upon the judgement of the Delhi High Court in ***Shivi Bansal vs. Gaurav Bansal***¹

5. On the other hand, Learned Counsel for the Respondent submits that this Court may not interfere with the impugned order, as it is well settled that non-mentioning or wrong mentioning of provision is not a ground to reject the application. It is submitted that the alleged adulterer is necessary party. In support of the said submission, learned Counsel for the Respondent has relied upon the judgement of the Delhi High Court in ***Tanvi Chaturvedi vs. Smita Shrivastava & Anr.***².

6. It is well settled that while considering the application for amendment, the court should not go into the correctness or falsity of the case in the amendment. It should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.

7. As regards the submission that alleged adulterer is neither necessary nor proper party, Rule 5 of Rules framed by the High Court under Section 14 and 21 of the Hindu Marriage Act, 1955, as amended by the Marriage

1 MAT.APP.(F.C.)219/2024 & CM 39354/2024, CM 39355/2024, dated 16th July 2024.

2 2025 SCC OnLine Del 5712

Laws (Amendment) 1976 reads thus :

Necessary Parties : (a) In every petition for divorce or judicial separation on the ground that the respondent has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than the petitioner, the petitioner shall make such person a co-respondent.

8. Therefore, no error can be found with the order impugned allowing the impleadment of the alleged adulterer. Apart from it, the Delhi High Court in ***Tanvi Chaturvedi*** (*supra*) has held thus:

- “13. In the context of matrimonial disputes, this discretion is circumscribed by the statutory framework. Section 13(1)(i) of the HMA recognises adultery as a distinct ground for divorce. The procedural framework governing such petitions requires that full particulars of the alleged matrimonial offence be furnished, including the identity of the person alleged to be involved. Courts have consistently required Impleadment of such person to ensure fairness in adjudication.
- 14. This requirement is not one of mere procedural convenience, but stems from the principles of natural justice as consistently recognised by judicial precedent.
- 15. The rationale behind this mandate is twofold. First, allegations of adultery, if proved, entail serious civil consequences and stigma upon the alleged paramour. To record such findings without affording them a right of hearing would be contrary to the principle of audi alteram partem. Second, the Family Court cannot effectively or fairly adjudicate the ground of adultery without the presence of the alleged participant. This legislative mandate also underscores a policy choice that allegations of adultery, by their very nature, touch upon the reputation and dignity of a third party, and therefore justice requires that such person be given a fair opportunity to defend themselves.”

9. As regards non-mentioning of the provision, it is well settled that,

the application cannot be rejected on that ground. Considering the overall facts and circumstances, I am not inclined to interfere with the impugned order.

10. The present Writ Petition is therefore dismissed.

11. At the request of Learned Counsel for the Petitioner, to enable the Petitioner to approach the Hon'ble Supreme Court against this order, the interim order passed by this court shall remain in operation for a period of six weeks.

(N.R. BORKAR, J.)