



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

WRIT PETITION NO. 4310 OF 2025

Harshal Madhukar Khakse, Aged 40 years, Occ: Private job,
R/o 380/I, Near Corporation Privary Lal School,
Bezonbag, Nagpur.

PETITIONER

VERSUS

Sanjiwani Harshal Khakse, Aged 38 years, Occ: Private job,
R/o 288, Deshpande Layout, Near Nagoba Mandir,
Bagadganj, Nagpur.

RESPONDENT

Shri S.P. Sonwane, A.A. Thakur and Ms Shiba Thakur, counsel for the petitioner.
Shri Lubesh Meshram and Shri Saurabh Singha, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : JANUARY 30, 2026

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. By this petition, the petitioner-Husband challenges the common order dated 05.05.2025 passed by the Family Court, Nagpur rejecting two applications at Exhibits 52 and 54 filed by the petitioner in the matrimonial proceedings.

3. The petitioner has filed the petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955') for grant of divorce in which the respondent-Wife appeared and filed her written statement. The petition proceeded for evidence and after the evidence of the parties was closed, the husband filed application (Exhibit 52) under Section 12 of the Family Courts Act, 1984 and sought for direction for conducting his medical examination to determine whether he is capable of

performing sexual intercourse. This application was opposed by the wife on the ground that the earlier application for similar relief was not pressed by him, however the wife conveyed her no objection for medical examination if the same is conducted by two different hospitals. The application was heard by the Family Court and by order dated 05.05.2025, it came to be rejected.

4. The petitioner-Husband had also filed a separate application (Exhibit 54) for grant of permission to lead further evidence which was also resisted by the wife and the said application also came to be rejected by the common order dated 05.05.2025. Both these orders are challenged by the husband by way of instant petition.

5. It has to be noted that the Family Court has observed in the impugned order that the husband has earlier filed an application for getting himself medically examined vide Exhibit 38 which was not pressed by him and since there is no change in circumstances, the subsequent application at Exhibit 52 was unwarranted. Pertinent to note, the controversy involved in the petition before the Family Court revolves around the issue as to whether the husband was medically fit and capable of performing sexual intercourse. The medical examination of the husband is thus vital for deciding the issue which goes to the root of the controversy.

6. The counsel for the respondent-Wife submitted that since the earlier such application was withdrawn by the husband, the attempt on the part

of the husband for direction for medical examination is to prolong the matter and brush out the admissions given by the husband during cross-examination. The application filed at the stage of final arguments was for delaying the outcome of the litigation. As regards the application for permission to lead further evidence, he submitted that the application does not mention any cogent reasons for granting permission to lead further evidence either by recalling the respondent or otherwise. He therefore supported the impugned order.

7. While considering the controversy involved in the petition, it has to be seen that in the wake of allegations about incapacity of the husband to perform sexual intercourse, the medical examination of the husband appears to be necessary and it will enable the Court to render findings on that aspect and particularly considering the no objection given by the wife, the rejection of the said application was unwarranted. As such, the application at Exhibit 52 filed by the husband for his medical examination deserves to be allowed, however by considering the contentions of the wife, it is directed that the husband will have to get himself medically examined from two different hospitals, viz. (1) a Government Hospital; and (2) a Private Hospital (with specialized facilities of expert Doctors from the field). With these directions, the application at Exhibit 52 is allowed.

8. As regards the application at Exhibit 54 filed by the husband for permission to lead additional evidence, it has to be seen that the husband

has prayed for a direction to recall the respondent-Wife for further cross-examination. It has to be noted that the evidence of the wife was already over and this application is filed at the stage of final arguments. Although the petitioner-Husband has made out a case for directions for his medical examination, the necessity of cross-examining the wife again is not demonstrated. The petitioner has referred to certain documents for which he seeks permission to lead further evidence and accordingly he is permitted to place on record the said documents, however no case is made out for further cross-examination of the wife. Hence, the application at Exhibit 54 filed by the husband for permission to lead further evidence needs to be partly allowed to enable him to file on record the additional documents on which he wants to rely. However, the prayer for further cross-examination of the respondent-Wife is rejected.

9. In view of the above, the writ petition is partly allowed in following terms.

- I. The impugned common order dated 05.05.2025 passed by the Family Court on applications at Exhibits 52 and 54 is quashed and set aside.
- II. The application filed by the petitioner-Husband at Exhibit 52 for his medical examination is allowed and the husband is directed to get himself medically examined from two different hospitals, viz. (1) a Government Hospital; and (2) a Private Hospital (with speciliazed facilities of expert Doctors from the field).

- III. The application filed by the husband at Exhibit 54 for leading further evidence is partly allowed only to the extent of granting permission to file on record the documents mentioned in the said application. Needless to state that, the petitioner-Husband is at liberty to examine any other witness to prove the additional documents which are permitted to be placed on record.
10. The writ petition is disposed of in above terms with no order as to costs. Rule accordingly.

(PRAFULLA S. KHUBALKAR, J.)