



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

WRIT PETITION NO.5395 OF 2025

Deepak S/o. Jagdishchandra Oberoi

Vs.

Sau. Smita Deepak Oberoi (Before Marriage Smita D/o Gopalrao Thakur)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Rajat Maheshwari, Advocate for the Petitioner (Appointed).

Mr. V.B. Palokkar, Advocate for the Respondent.

CORAM: PRAFULLA S. KHUBALKAR, J.

DATED : 09th FEBRUARY, 2026

1. Heard Learned counsel for the petitioner as well as learned counsel for the respondent.
2. Petitioner's challenge is to Order dated 02.04.2025 passed by the Family Court No.2, Nagpur in Petition A-680/2020 by which the application filed by the husband (respondent therein) for amendment of counter-claim is disposed of by observing non-compliance of Order dated 02.03.2023 passed on counter claim filed by the husband.
3. Learned counsel for the petitioner submits that in the divorce proceedings filed by the wife, the husband has filed written statement along with counter claim dated 02.03.2023, by which the husband has raised a counter claim for Rs.40,00,000/-. On this counter claim, the Family Court, Nagpur has passed an Order dated 02.03.2023 directing the husband to calculate his claim and pay Court Fees on the said amount. However, since, the husband was

not in a position to pay the court fees on the amount of Rs.40,00,000/-, he filed a separate amendment application dated 28.02.2025 by which, he sought amendment in the counter claim and proposed to amend the prayer clause (ii) restricting the counter claim to Rs.15,00,000/-.

4. On this application, the Family Court, Nagpur has passed an Order dated 02.04.2025 observing that the husband has failed to pay the Court Fees in accordance with the Order dated 02.03.2023 on the amount of Rs.40,00,000/-, the application is ordered to be disposed of. As a result, now, even though the petitioner-husband wants to restrict the counter claim to Rs.15,00,000/-, he is unable to prosecute the counter claim as the counter claim is filed and disposed of.

5. Learned counsel for the respondent-wife opposes the petition and submits that the husband has earlier prayed to prosecute the proceedings as an indigent person, however having failed to make out any case, the application was rejected. He submits that the counter claim raised by the husband is absolutely without any basis and it is raised only to prolong the proceedings.

6. While considering the controversy, it has to be seen that the impugned order is passed on the application dated 28.02.2025 filed by the husband for grant of permission to amend the counter claim. By this application the husband prayed for substitution of the earlier prayer clause (ii) restricting the counter claim to the tune of Rs.15,00,000/- and the Family Court, Nagpur has without considering the prayer for amendment, has ordered the 'filing and disposal' of the counter claim only for failure to

pay Court Fees in accordance with the Order dated 02.03.2023. It has to be noted that since, the counter claim was not disposed of earlier, the application for restricting the claim could have been entertained.

7. I find this order to be erroneous since, the Family Court has considered the counter claim of Rs.40,00,000/- which the petitioner-husband has specifically sought to substitute with the counter claim of Rs.15,00,000/-. As such, failure of husband to pay the Court Fees on the earlier amount of Rs.40,00,000/- cannot be made a reason to deny him of an opportunity to amend and prosecute the counter claim for Rs.15,00,000/-. Hence, the impugned order dated 02.04.2025 passed by the Family Court No.2, Nagpur in Petition No.A-680/2020 deserves to be quashed and set-aside.

8. In view of the factual and legal aspects, the writ petition is **allowed**. Order dated 02.04.2025 passed by the Family Court No.2, Nagpur in Petition No.A-680/2020 deserves to be quashed and set-aside. Application dated 28.02.2025 filed by the petitioner-husband for permission to amend the counter claim is hereby **allowed**.

9. Having regard to the controversy, being a matrimonial dispute, the Family Court, Nagpur is directed to decide the Petition bearing No.A-680/2020, expeditiously. Accordingly, the writ petition is **disposed of**.

(PRAFULLA S. KHUBALKAR, J.)

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