

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11494 OF 2018

Vinod George ...Petitioner
vs.
Nita Vinod George ...Respondent

Mr. A.S. Tamhane, for the Petitioner
Mr. Hitesh Vyas, for the Respondent

CORAM : M. S. SONAK, J.

DATE : DECEMBER 22, 2018

JUDGMENT:

. Heard Mr. Tamhane, learned counsel for the Petitioner and Mr. Vyas, learned counsel for the Respondent.

2. The challenge in this Petition is to the order dated 12th September, 2018 by which the learned Family Court has rejected the Petitioner's application for amendment of his written statement.

3. Mr. Tamhane, learned counsel for the Petitioner submits that the amendment is related to the permanent custody of the child and by incorporating some additional facts and grounds the written statement, the fundamental character and

nature of the written statement would not be changed. He submits that the amendment ought to have been allowed since the Petitioner obtained the custody of the minor son only in May, 2018 and only thereafter secured knowledge to back the amended pleadings. He therefore submits that the learned Family Court has failed to exercise the jurisdiction vested in it by refusing the amendment.

4. Mr. Vyas, learned counsel for the Respondent defends the impugned order on the basis of reasoning reflected therein. He points out that similar attempt was made earlier and the same was rejected. The said rejection was not even challenged in this Petition or otherwise. The Petitioner is only bent upon protracting the proceeding. He submits that the evidence in this case was closed on 6th July, 2017 and the application for amendment was made on 24th July, 2018. There is absolutely no explanation for such inordinate delay. He therefore submits that this Petition may be dismissed.

5. The rival contentions now fall for determination.

6. This is a case where the Petitioner seeks to amend his written statement after the evidence of the parties stands concluded. The proviso to Order VI Rule 17 of C.P.C. provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raise the matter before the commencement of trial. Therefore, a party who seeks leave to amend pleadings after the commencement of trial must plead and establish that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

7. In the present case, the evidence of the parties concluded on 6th July, 2017. The application seeking leave to amend was made only on 24th July, 2018. If the application is perused, there is absolutely no explanation as to why such leave was not applied for prior to the commencement of the trial. In fact, there is no explanation as to why leave is applied for almost one year after the conclusion of the evidence in the matter as well.

8. The explanation for this inordinate delay, now stated across the bar, was not even referred to in the application seeking

leave to amend. There is obviously no basis to support such explanation. There is accordingly no compliance whatsoever with the proviso Order VII Rule 17 of C.P.C. or the principles set out therein. On this short ground, this Petition is required to be dismissed.

9. Even otherwise, the learned Family Court has correctly held that the proposed amendment is not necessary for determining the real question of controversy between the parties and the purpose of seeking leave at the belated stage was only to protract the final decision in the case. From the perusal of the application seeking leave to amend, there is no case made out to disturb this observation made by the learned Family Court.

10. There is no jurisdictional error in the impugned order. This Petition is therefore liable to be dismissed and is hereby dismissed.

11. There shall be no order as to costs.

(M. S. SONAK, J.)