

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.

Writ Petition No. 7502 of 2006

Kishor s/o. Bhikansingh Rajput,
Aged : 30 years, .. Petitioner
Occupation : Social work, (Original
R/o. N-6, Sambhaji Colony, applicant)
Aurangabad.

versus

Preeti w/o. Kishor Rajput,
Age : 25 years, .. Respondent
Occupation : Nil, (Original
C/o. Anand Ambhore, Opponent)
R/o. H.No. E1/2, N-6,
Mathuranagar,
Mata Mandir, CIDCO,
Aurangabad.

Mr. B.L. Sagar Killarikar, Advocate,
for the petitioner.

Mr. S.S. Kazi, Advocate, for the
respondent.

CORAM : B.R. GAVAI, J.

FEBRUARY 7, 2007.

ORAL JUDGMENT :

1. Rule made returnable forthwith. Heard by
consent.

2. By way of present petition, the petitioner
challenges the order dated 15th September 2006 passed by
the learned Judge of the Family Court, Aurangabad, below
Exhibit 44 in Petition No. B-2 of 2005 by which the

application of the present petitioner for framing additional issues has not only been rejected but the amendment which has been granted earlier is disallowed and the order dated 25th September 2006 below Exhibit 45 by which the application for adjournment came to be rejected.

3. The petitioner / husband has filed a petition for dissolution of marriage. After filing of the petition, since according to the petitioner, he came to know about the fact of earlier surviving marriage of the respondent with somebody else, he filed an application for amendment. The same was allowed by the learned Judge of the Family Court vide order dated 3rd March 2006. Thereafter, the respondent / wife has also amended the written statement so as to incorporate the amended pleadings.

4. Thereafter, the present petitioner filed an application for framing additional issues in view of the amended pleadings. The same came to be rejected by order dated 15th September 2006. By the said order, the amendment which has been granted earlier, has also been disallowed. Thereafter, when the matter was fixed on 25th September 2006, the petitioner filed an application for adjournment on the ground that the petitioner had filed a petition challenging the order dated 15th September 2006. However, the learned trial court

rejected the said application on the ground that already last chance was granted to the petitioner. Vide order of the same date, the petition of the present petitioner has been dismissed in default. Being aggrieved thereby, the present petition.

5. Mr. B.L. Sagar Killarikar, learned Counsel appearing on behalf of the petitioner, submits that the procedure adopted by the learned Family Court is totally perverse. He submits that the amendment which was earlier granted and incorporated, cannot be disallowed. He further submits that the issue sought to be framed was necessary for adjudication the dispute between the parties.

6. Mr. S.S. Kazi, learned Counsel appearing on behalf of the respondent, submits that the petitioner is trying to protract the proceedings by taking adjournments after adjournments. He submits that the respondent is a poor lady and therefore, she has to suffer the prejudice due to the delay in the proceedings.

7. Perusal of the record would reveal that the procedure adopted by the learned Family Court is totally unknown to law. Once amendment was allowed, it is difficult to understand under what provision the learned Family Court has disallowed the said amendment by a subsequent order while considering the application of the

present petitioner for framing additional issue. The approach adopted is totally perverse. From the perusal of the pleadings, it can also be seen that the additional issue which was sought to be framed was necessary in view of the amended pleadings.

8. Normally, when this Court is seized of the matter, it is expected of the subordinate courts to stay their hands away. It is difficult to understand as to what was an alarming urgency to proceed further and dismiss the petition when the learned Judge of the Family Court was very well aware that the order dated 15th September 2006 was challenged before this Court by the present petitioner. No doubt, that the learned Family Court is right in observing that there was no stay by this Court. But as a matter of propriety and when the learned Judge was very much aware about pendency of the petition before this Court, the learned Judge ought to have stayed his hands away and waited till further orders to be passed by this Court. In that view of the matter, I am inclined to allow the petition.

9. In the result, the Writ Petition is allowed.

. The impugned orders dated 15th September 2006 and 25th September 2006 passed by the learned Judge of the Family Court, Aurangabad, below Exhibits 44 and 45, in Petition No. B-2 of 2005, rejecting application for

framing additional issue and dismissing the petition in default, respectively, are quashed and set aside.

. It is needless to state that the amendment which was granted earlier shall stand restored. The application of the present petitioner for framing additional issue stands allowed. The order of dismissal of petition in default stands quashed and set aside. The Petition No.. B-2 of 2005 is restored to the file of the Family Court, Aurangabad.

. However, it is made clear that hereafter, the parties shall not seek adjournments on unnecessary counts and shall cooperate with the learned Family Court in expeditious disposal of the petition. The parties are directed to present themselves before the learned Family Court on 15th February 2007 and thereafter the learned Family Court shall proceed with the petition.

10. Rule is made absolute in the above terms with no order as to costs.

(B.R. Gavai)
JUDGE

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