HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 12287/2026

----Petitioner

Versus

----Respondent

For Petitioner(s) : Mr. Ankit Somani
For Respondent(s) : ---

HON'BLE MR. JUSTICE SANJEET PUROHIT (VACATION JUDGE)

Order

02/06/2026

1. By way of present writ petition, petitioner has challenged legality, validity and propriety of order dated 15.05.2026 passed by learned Additional District & Sessions Judge, Gangapur, District Bhilwara, *("learned Trial Court")* in Case No. 49/2024 (*Nidhi Jingar v. Bihari Lal Jingar*), whereby application filed by petitioner under Order XVIII Rule 17 read with Section 151 of Code of Civil Procedure, 1908 ("CPC"), was rejected.

2. Explaining facts of case, learned counsel for petitioner submitted that respondent–wife instituted petition under Section 13(1)(2) of the Hindu Marriage Act, 1955 (*"Act of 1955"*), seeking a decree of divorce on the grounds of desertion, cruelty and allegations pertaining to incapacity of petitioner–husband.

2.1 Petitioner–husband filed a reply to said petition raising counter-allegations against respondent–wife and it was averred that despite efforts made by petitioner-husband to preserve the matrimonial relationship, respondent-wife was unwilling to live in matrimonial cohabitation with him.

2.2 Learned counsel submitted that respondent–wife used to give petitioner-husband threats of instituting and implicating him in false criminal and civil proceedings. It is further contended that, despite an order having been passed by competent Court under Section 9 of the Act of 1955, respondent failed to resume cohabitation with petitioner. The allegations regarding impotency of petitioner are stated to be false and it is argued that the same have been levelled solely with the objective to malign and harass him.

2.3 Learned counsel further submitted that during the pendency of proceedings, petitioner moved an application dated 08.05.2026 under Order XVIII Rule 17 read with Section 151 of CPC, wherein, in view of the allegations of sexual incompetence, impotency and other sexual infirmities levelled against petitioner, it was prayed that both parties be directed to undergo joint narco-analysis test, polygraph test, medical examination as well as DNA testing and that the applicant (husband) would bear entire cost of aforesaid tests.

2.4 In the reply filed to said application on behalf of non-applicant, it was averred that evidence of both parties had already been concluded and matter was pending for final arguments, and that the present application had been filed at such belated stage only with a view to delay the proceedings. It was further

submitted that petitioner had failed to produce any documentary evidence during the course of trial to rebut the allegations regarding his sexual incapacity and impotency and, therefore, the application was merely an attempt to fill lacunae in the evidence already led. It was also contended that respondent–wife could not be compelled to undergo narco-analysis test, polygraph test, medical examination or DNA testing against her will.

2.5 Said application has been dismissed by learned Trial Court vide order dated 15.05.2026 and, aggrieved thereby, petitioner has approached this Court by way of present writ petition.

3. Learned counsel for the petitioner argued that learned Trial Court has failed to consider aforesaid application in its proper perspective and, without appreciating substantial issues raised therein, proceeded to dismiss the same.

3.1 It is contended that that said application filed for bringing additional evidence on record was *bona fide* and necessary for just and complete adjudication of dispute; however, the same was rejected in a predetermined and mechanical manner. Learned counsel argued that allegations of sexual incapacity and impotency levelled against petitioner could effectively be rebutted only by conducting tests prayed for of both the parties. Learned counsel submitted that refusal of said prayer amounts to denial of fair and adequate opportunity to adduce evidence and is likely to cause serious prejudice to petitioner's defence in the proceedings pending before learned Trial Court.

3.2 In support of his submissions, learned counsel for petitioner has placed reliance upon judgments of the Hon'ble Supreme Court passed in the cases of ***Deep Mukherjee v. Sreyashi Banerjee,***

reported in **2024 SCC OnLine SC 502**, and ***K.K. Velusamy v. N. Palanisamy***, reported in **2011 (11) SCC 275**.

4. Heard learned counsel for petitioner and perused material available on record.

5. A perusal of the record reveals that, in the divorce proceedings before learned Trial Court, evidence of both parties had already been concluded and matter had been posted for final arguments when the application under Order XVIII Rule 17 read with Section 151 of CPC was filed. Furthermore, there is nothing on record to show that, during the course of his own evidence, any endeavor was made by petitioner to place on record any medical evidence to rebut allegations pertaining to physical incapacity or impotence levelled against him.

5.1 Learned counsel for the petitioner has placed reliance upon judgment passed by Hon'ble Supreme Court in ***K.K. Velusamy*** (supra). However, a holistic reading of said judgment reveals that Hon'ble Apex Court has held that where the circumstances of the case show that a party had sufficient opportunity to adduce evidence at appropriate stage but failed to do so, the application seeking re-opening of evidence / recalling of witnesses deserves to be rejected if it appears that the same has been filed with the oblique motive of causing unnecessary delay, and in appropriate cases, with costs. Relevant portion of said judgment is quoted hereinbelow: -

> *"19. We may add a word of caution. <u>The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking.</u> If so used, it will defeat the very purpose of various amendments to the Code to expedite trials.*

But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

20. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application..."

5.2 Reliance may also appropriately be placed upon the observations of the Hon'ble Supreme Court in the case of ***Gayathri v. M. Girish*, (2016) 14 SCC 142**, relevant paras of which are reproduced hereinbelow: -

"8. In this context, we may fruitfully refer to Bagai Construction v. Gupta Building Material Store. In the said case the Court had expressed its concern about the order passed by the High Court whereby it had allowed the application preferred under Order 18 Rule 17 that was rejected by the trial court on the ground that there was no acceptable reason to entertain the prayer. Be it stated, this Court set aside the order passed by the High Court. In the said case, it has also been held that it is desirable that the

recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. That apart, it has also been held that the courts should constantly endeavour to follow such a time schedule so that the purpose of amendments brought in the Code of Civil Procedure are not defeated. Painfully, the Court observed: (SCC p. 7, para 15)

"15. ... In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC."

9. …A counsel appearing for a litigant has to have institutional responsibility. The Code of Civil Procedure so command. Applications are not to be filed on the grounds which we have referred to hereinabove and that too in such a brazen and obtrusive manner. It is wholly reprehensible. The law does not countenance it and, if we permit ourselves to say so, the professional ethics decries such practice. It is because such acts are against the majesty of law."

5.3 It thus follows that while the Court possesses inherent power to permit additional evidence or recall a witness where the same appears necessary for just and effective adjudication of the matter

at hand, however, such power is exceptional in nature and cannot be invoked in a routine manner to enable party to fill omissions in evidence already led or to improve its case or delay the proceedings. Applicant must demonstrate relevance of proposed evidence as well as bona fide necessity for its production at the stage at which the application is made.

5.4 Coming to the factual matrix of the case at hand, this Court finds that the application in question was filed after conclusion of evidence of both parties and when the matter had already reached the stage of final arguments. Other than making bald assertion that proposed tests are necessary to rebut allegations levelled by respondent-wife, petitioner has failed to furnish any satisfactory explanation as to how such tests are relevant and necessary and why such a prayer was not made at appropriate stage of the proceedings.

5.5 Significantly, petitioner sought directions in respect of both parties to undergo DNA testing, polygraph examination, narco-analysis and other medical tests. However, neither the application nor the submissions advanced before this Court disclose any facts that may establish any relevance whatsoever of DNA testing, polygraph examination or narco-analysis to the issue of alleged sexual incapacity or impotence raised in the matrimonial proceedings.

5.6 Learned counsel for petitioner has placed reliance upon the judgment of Hon'ble Supreme Court in ***Deep Mukherjee*** (supra). However, this Court finds that said judgment does not advance the case of petitioner. Bare perusal of said judgment reveals that Hon'ble Apex Court had set aside the High Court order dismissing

a similar interlocutory application on the ground that the High Court had passed the order merely on the basis of the conduct of the parties. Moreover, no directions have been passed by the Hon'ble Apex Court directing the parties to undergo joint medical examination for wife to undergo tests against her consent. Relevant extract of aforesaid judgment is reproduced hereinbelow for ready reference:

> *"7. In the course of arguments in this Court, learned counsel for the appellant/husband submitted that when the appellant/husband is willing to undergo potentiality test, there is no reason why the High Court should set aside the entire order. The learned counsel for the appellant would refer to the decision of this Court in the case of "Sharda vs. Dharmpal" (2003) 4 SCC 493. Per contra, the learned counsel for the respondent/wife would submit that when the respondent/wife is not willing to undergo any test be it fertility test or mental health check-up, she cannot be compelled to undergo such tests.*
>
> *8. While allowing the revision petitions preferred by the respondent/wife the High Court has not assigned any cogent reason as to why the appellant/husband cannot be sent for potentiality test. Instead of dwelling on the contentions of the parties qua the merits of the interim applications decided by the Trial Court, the High Court focused on the conduct of the parties which was not at all germane for deciding the issue as to the validity of the order passed by the Trial court.*
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> *9. Considering the fact situation of the present case, we are satisfied that when the appellant/husband is willing to undergo potentiality test, the High Court should have upheld the order of the Trial Court to that extent. Accordingly, we allow the present appeals in part maintaining the order passed by the Trial Court dated 27.06.2023 insofar as it directs the appellant/husband to take the medical test to determine his potentiality. Let the test be conducted in the manner indicated by the Trial Court within a*

period of four weeks from today and the report be submitted within two weeks thereafter. Impugned order passed by the High Court stands modified to the above extent only."

5.7 In view of aforesaid judgment, this Court is of considered opinion that prayer made by petitioner seeking a joint medical examination of husband and wife is wholly misconceived and legally untenable. Respondent wife cannot be compelled to undergo such tests without her consent. Petitioner has failed to establish either relevance or necessity of Narco Test, Polygraph Test, DNA Test, etc., with regard to allegations of sexual incapacity. Consequently, such a prayer cannot be allowed in the proceedings pending before the learned Family Court under the provisions of the Act.

5.8 In the considered opinion of this Court, these circumstances lend credence to the contention of respondent that the application is not bona fide and has been filed at a belated stage with the sole view to delay the proceedings. The same amounts to a gross abuse of the process of law. This Court, therefore, finds that the learned Trial Court was justified in declining to entertain such a request.

6. This Court has duly considered findings recorded by learned Trial Court and records its concurrence therewith. Learned Trial Court has rightly held that the allegations regarding sexual incapacity and impotence have been levelled by respondent-wife and, therefore, the burden of establishing such allegations primarily rests upon her. The Court cannot be called-upon to collect evidence on behalf of a litigant or to fill gaps in evidence, i.e., which a party is under legal obligation to establish. Learned

Trial Court has also rightly held that the petitioner failed to establish either the relevance or necessity of proposed tests for effective adjudication of the dispute.

7. It is trite that the supervisory jurisdiction of this Court under Article 227 is limited and does not extend to re-appreciation of evidence or substitution of findings because another view is possible. Interference is warranted only where the impugned order suffers from patent perversity, manifest illegality or jurisdictional error. In the case at hand, this Court finds no error, much less an error apparent on the face of record, in the impugned order passed by learned Trial Court. Petitioners has failed to demonstrate any jurisdictional error, perversity or patent illegality in the impugned order. Mere dissatisfaction with the conclusions arrived at by learned Trial Court cannot, by itself, constitute a valid ground for interference under Article 227 of the Constitution of India.

8. Accordingly, present writ petition is hereby **dismissed**.

9. Stay application and all pending applications, if any, are also **dismissed.**

10. Registrar (Judicial) is directed to forthwith transmit a copy of this order electronically to the Court of the learned Additional District & Sessions Judge, Gangapur, District Bhilwara, through e-mail.

(SANJEET PUROHIT),VJ

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