

Civil Writ Jurisdiction Case No.14728 of 2014

C.R. 109 of 2014

Village-Chahuta (Bandhopatti) P.S.-Bisfi, District-Madhubani.-**Petitioner.**

Versus

1. Archana Chaudhary, Wife of Prabin Kumar Chaudhary, Daughter of Ram Kumar Jha, Resident of Village- Chahuta (Bandhopatti) P.S.-Bisfi, District-Madhubani at present Smt. Archana Choudhary D/o Ram Kumar Jha, residing at Phulbarisarif Birla Colony Plot No.B-18 Post Office-Phulbarisarif, P.S.-Phulbarisarif C/o Building Owner Debendra Sharma District Patna near Police Chauki.
2. Ram Kumar Jha Son of Ram Balabh Jha at present employee in Apada Prabandhan Department Old Secretariat Routine Clerk, Patna.
3. Satyam Kumar Chaudhary Son of Prabin Kumar Choudhary (Minor) under the Guardianship of her mother Smt. Archana Chaudhary.

.... **Respondents.**

Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Shukla
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 07-04-2015 Heard Mr Ravindra Kumar Shukla, the
learned counsel for the petitioner. The learned counsel for the
opposite parties has also been heard.

Calling in question the impugned order by which the prayer for amendment in the petition in Matrimonial (Divorce) Case No.24/2010/33/2013 has been rejected, the petitioner has filed this application under Article 227 of the

Constitution of India.



The factual exposes' are that the petitioner and the respondent are husband and wife. Earlier the petitioner filed a petition for restitution of conjugal rights but later on the said petition was converted into a petition for divorce. It has been stated by the petitioner in the said petition for divorce that the respondent-wife has been acting with cruelty towards the petitioner and his family members. The proceeding for divorce continued and the petitioner examined himself as a witness and was also cross-examined by the respondent. Three more witnesses on behalf of the petitioner have been examined and cross-examined in the proceeding. At this stage the petitioner filed a petition for amendment in the petition for divorce with a prayer to include more facts therein as mentioned in the amendment petition. These facts admittedly pertain to the instances of cruelty said to have been committed by the respondent-wife. The learned court below by the impugned order has rejected the prayer.

Mr Shukla, the learned counsel appearing on behalf of the petitioner has strenuously submitted that the facts sought to be included in the main petition by amendment are



only explanatory in nature and they do not change the nature and scope of the proceeding. It has been canvassed by the learned counsel that the petitioner does not intend to introduce the allegation of cruelty as it is already there but only wants to elaborate the same by giving some instances. The learned counsel for the petitioner has thus propounded that such amendments which are only explanatory in nature should have been allowed in order to determine crucial issues arising between the parties. The reliance has been placed by the learned counsel for the petitioner on the decision of the apex court in the case of **K. Kannan Vs Jayalakshmi, 2004(13)SCC 41** in support of his submission.

Per contra, the learned counsel appearing for the opposite parties has submitted that the petitioner with malafide intention wants to introduce new facts at the belated stage of the proceeding and the same will certainly prejudice the case of the opposite party. It has been argued that even in his deposition the petitioner has not mentioned those facts and at this stage when the petitioner as well as three of his witnesses have already been examined, and cross-examined, the proposed amendments are demonstrably intended to fill up the lacunae

and take away the valuable right which has accrued to the opposite party. It has also been canvassed that the principle governing consideration for amendment, howsoever liberal may be, always frowns upon the amendments causing prejudice to the other side.

After careful consideration of the matter and perusal of the impugned order, it is limpid that the petitioner had earlier filed a petition for restitution of conjugal rights against the opposite party. The said proceeding was later on converted into a proceeding for divorce. It has been accepted during the submission that the petitioner as well as three of his witnesses have already been examined and only the father of the petitioner as a witness has remained to be examined.

The submission on behalf of the petitioner is that the cruelty as a ground for divorce is already mentioned in the main petition and the proposed amendments are only explanatory in nature. But there is no explanation at all as to why the facts sought to be introduced by way of amendment, were not mentioned earlier although they were within the specific knowledge of the petitioner. The petitioner has already been examined as a witness and cross-examined by the opposite



parties and his three witnesses have also been examined and cross-examined. These witnesses including the petitioner have also not stated these facts during their deposition and again there is no explanation with regard to this omission. In this backdrop, this Court does not find it in the interest of justice to allow the petitioner to introduce these facts which will turn the proceeding into de novo trial and give a chance to the petitioner to fill up the lacunae. The position would have been different, if the proceeding would have been at initial stage or if the petitioner could have come out with cogent explanation showing his due diligence in not preferring the amendment earlier. But there is no averment in the petition for amendment establishing due diligence on the part of the petitioner. The decision of the apex court in the case of **K. Kannan (Supra)** as relied on by the learned counsel for the petitioner does not appear to have laid down the law that the amendments can be allowed at any stage and particularly when the major part of the evidence on behalf of the party seeking for amendment has already been adduced. The submission on behalf of the respondent that valuable right has accrued to the opposite party and the amendment, if allowed, would lead to filling up the lacunae in his case by the petitioner to the prejudice of the opposite party appears to have substance.

Considering the entire facts and submissions,
this Court is not inclined to interfere in the impugned order.
Accordingly, this writ application is dismissed.

(V. Nath, J)

Nitesh/-

U			
---	--	--	--

