

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5439 OF 2015

Mithun Kishore Patadia	... Petitioner
Vs.	
Mrs. Sheetal Mithun Patadia	... Respondent

Mr. Rohan Cama i/b. Ms. Sapna Rachure, Advocate for the petitioner.
Mr. R.G. Merchant, Advocate for the respondent.

CORAM	: MRS.MRIDULA BHATKAR, J.
RESERVED ON	: JULY 7, 2015
PRONOUNCED ON	: JULY 15, 2015

ORDER:

Rule. Rule made returnable forthwith. By consent of the parties, the petition is heard finally at the stage of admission.

2. This Writ Petition is directed against the order dated 10th March, 2015 passed by the Family Court, Bandra below Exhibit 48 thereby rejecting the Application for amendment of the written statement (Exhibit 27). In the present case, respondent/wife has filed an Application for maintenance for herself and her son under section 18 of Hindu Adoption and Maintenance Act, 1957. The petitioner/husband, who is respondent in the original marriage proceedings, has filed written statement (Exhibit 27) on 12th September, 2008 denying the validity of marriage and stated that he was having live-in relationship with the respondent/wife. The Application for amendment under Order 6 Rule 17 of Code of Civil

Procedure was filed on 19th October, 2010.

3. In the present case, the Family Court, Bandra has delivered the judgment and decree on 28th April, 2014 interalia without deciding the Application of amendment in the written statement submitted by the petitioner. The petitioner filed Family Court Appeal Nos. 242 and 243 of 2014 before this Court challenging the judgment and decree of the Family Court. The Division Bench of this Court by its order dated 14th October, 2014 quashed and set aside the decree dated 28th April, 2014 and all orders striking of the petitioner's defence and remanded the matter to the Family Court, Bandra and directed the Family Court, Bandra to decide interalia the issue of the validity of marriage of the parties. The Family Court has passed an order dated 15th January, 2015 refusing to decide the Application for amendment of written statement (Exhibit 48). Therefore, the respondent/husband moved the High Court by filing Writ Petition No. 972 of 2015, and pursuant to directions of the learned Single Judge of this Court moved the Division Bench for clarification of the order dated 14th October, 2014 and a prayer was made that Application (Exhibit 48) was preferred in November 2010 for amendment of written statement but hearing of the said Application was rejected by the Family Court on the ground that parties can only lead evidence before the Family Court, The Division Bench of this Court by its order dated 13th February, 2015 clarified that the amendment application (Exhibit 48) would require to be decided .

Upon this clarification by an order dated 17th February, 2015, the learned Single Judge quashed and set aside the said order of the Family Court and directed the Family Court to decide all the pending applications according to law. The Family Court by its order dated 10th March, 2015 decided the Application for amendment of written statement and rejected the same.

4. The learned counsel Mr. Cama while challenging the order, submitted that the learned Judge has rejected the Application mainly on the ground that a new defence is created by withdrawing the earlier admissions and the learned Judge has taken a view that such admissions given in written statement cannot be allowed to be obliterated in the proposed written statement. He further submitted that the learned Judge has gone into the merit of the contents raised in the written statement so also he observed that it is very long and looks like a new written statement, therefore, it was not allowed. The learned counsel submitted that length of the amendment sought, cannot be a ground to reject the amendment. He submitted that though the evidence before the Family Court has commenced, the Application for amendment was filed much before, i.e. in 2010, so there is no delay in filing the Application. He submitted that the criteria for amendment in plaint cannot be applied for the amendment of the pleadings in the written statement. He submitted that it is a settled position of law that the Courts should be liberal in

granting the prayer of amendment unless serious indulgence or irreparable loss is caused to the other side and the full powers of the amendment must be enjoyed and they are all liberally exercised. He argued that though defendant has taken a particular stand in his earlier written statement, he may change his contention and make contrary or contradictory contentions by way of amendment. Inconsistent stand taken by way of amendment cannot be a ground to reject the amendment. He submitted that it is open for the defendant to take a contrary or contradictory stand. In support of his submissions, he relied on the following judgments of the Hon'ble Supreme Court:

- (i) Sushil Kumar Jain vs. Manoj Kumar & Anr., reported in (2009) 14 SCC 38.
- (ii) Damu Maruti Dadhe and Anr. vs. Limba Maruti Dadhe & Ors., reported in 2011 (5) Mh. L.J. 738.
- (iii) Baldev Singh & Ors. vs. Manohar Singh & Anr., reported in (2006) 6 SCC 498.
- (iv) Panchdeo Narain Srivastava vs. Kum. Jyoti Sahay & Anr., reported in AIR 1983 SC 462

He submitted that the order passed by the learned Family Court Judge is illegal and, therefore, is to be set aside.

5. The learned counsel Mr. Merchant vehemently opposed this Writ

Petition and supported the order passed by the learned Judge of the Family Court. He submitted that the view taken by the learned Judge of the Family Court is legal and correct. In the earlier written statement, the petitioner has given admission of live-in relationship with the respondent and now he wants to substitute it by word "friendly". If these words are deleted, then the respondent would not be in a position to show contradictory stand taken by the petitioner, as new written statement will be on record. He submitted that by the proposed written statement, the petitioner not only has taken a contradictory stand but he suppressed the material fact in order to gain advantage. The written statement is false, incorrect and the petitioner is not to be allowed to take such stand in the written statement. He submitted that the respondent/wife is having a responsibility of a child begotten from the petitioner, who is trying to avoid the responsibility of his wife and child. He submitted that allowing such amendment will lead to abuse of process of law and will prejudice the respondent to a great extent, as there will be absence of admissions given by the petitioner. The petitioner should not be permitted to substitute the written statement and not to allow to resile from the admissions made in the written statement. This will be abuse of the process of law. He further submitted on merit that the respondent/wife had been to Dubai to stay with the petitioner. He submitted that the petitioner is staying in Dubai and not coming to India to prosecute this matter but gave power of attorney to his mother, who has filed criminal case against the respondent in which

specific submissions addressing the respondent as daughter-in-law and their stay in Dubai are made. He submitted that it is entirely a false stand taken by the petitioner in his proposed amendments. The petitioner is deliberately protracting the trial and the respondent has a liability of the child and she cannot pull on for a long time without any support. He relied on the following judgments of the Hon'ble Supreme Court:

- (i) Moti Lal Songara vs. Prem Prakash alias Pappu & Anr., reported in (2013) 3 SCC (Cri) 872.
- (ii) Union of India & Ors. vs. Ramesh Gandhi, reported in (2012) 1 SCC 476.

The learned counsel also produced a bunch of papers with photocopies of 8 rulings, out of which he referred to the Hon'ble Supreme Court in the case of **S. Malla Reddy vs. Future Builders Co-operative Housing Society & Ors., reported in 2014 (1) Mh. L.J. 771**

6. I have gone through the written statement (Exhibit 27) and amendments sought on Application (Exhibit 48). Though in paragraph 27 of his written statement, the petitioner has denied the fact of marriage and has made allegations that the marriage certificate is fabricated, he wants to amend the written statement in respect of his admission that it was a live-in relationship and the respondent had all intentions that it would work. The petitioner wants to substitute "friendly" and to add many contentions that a fraud was played on the petitioner in preparing the Memorandum of

Marriage. The petitioner also denied any kind of relationship and wants to mention that there was no sexual relationship between the two. Substantial additions and substitution is sought by way of amendment.

7. In **Moti Lal Songara** (*supra*), the issue pertains to Criminal Procedure Code where fraud was played on Court by suppressing material and therefore, the accused was not allowed to gain advantage of the factual suppression.

8. The case of **Union of India & Ors. vs. Ramesh Gandhi** (*supra*) also pertains to playing fraud on the Court. A judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eye of the law. In the said case, in the criminal proceedings the accused intentionally suppressed some crucial facts in respect of payment of money towards the sale price of coal in the case filed before the Calcutta High Court and the Hon'ble Supreme, which resulted in orders passed in the Supreme Court and Calcutta High Court favourable to the private company. In that case, the Hon'ble Supreme Court has made observations and laid down the ratio in respect of fraud, however, it is not helpful in the present case.

9. In the case of **S. Malla Reddy** (*supra*), earlier applications were made by the defendant under Order 6 Rule 16 of CPC for striking out certain pleadings and under Order 8 Rule 9 of CPC for supplementary

written statement. The matter went up to Hon'ble Supreme Court and the Hon'ble Supreme Court has not allowed those applications. Subsequently, under Order 6 Rule 17, another application was made for some amendment of the written statement and that application was allowed by the trial Court. It was set aside by the High Court and the order of the High Court was confirmed and written statement was not allowed. The amendment was preferred in the said matter 13 years after filing of the written statement. Therefore, the view taken by the High Court that filing of subsequent application for same relief is an abuse of process of Court was upheld by the Hon'ble Supreme Court. Therefore, the facts of case of **S. Malla Reddy** are distinguishable.

10. In the case of **Sushil Kumar Jain** (*supra*), the Hon'ble Supreme Court while discussing the scope under Order 6 Rule 17 of CPC, has taken a very broad view and held as thus:

“Even assuming that there was admission made by the appellant in his original written statement, then also, such admission can be explained by amendment of his written statement even by taking inconsistent pleas or substituting or altering his defence.”

11. The stand taken by the petitioner/husband, therefore, is contradictory and inconsistent and it may be dishonest. However, this Court cannot go into that aspect, as the Division Bench of this Court by its order dated 14th October, 2014 has directed the trial Court to go into the

issue of validity of marriage by considering all the aspects and give its finding. The trial Court is in a position to record evidence, consider the demeanor and also marshal the evidence. The major grievance expressed by the learned counsel for the respondent/wife is that once relevant portion is deleted, then the respondent/wife cannot be able to bring these contradictions in the evidence because the said matter may not be available on record due to substitution. It is true that it is a material inconsistency or contradiction, the respondent wants to bring on record. However, it is not correct that due to substitution or deletion in written statement, the respondent cannot show the contradiction and bring it on record. The respondent can invoke relevant provisions of the Evidence Act which are helpful to her and can bring the contradiction from the previous statement which may not be on the record but it is very much available with her. In view of this, Rule is made absolute and order of the trial Court is hereby set aside.

12. Writ Petition is accordingly disposed of.

(MRS.MRIDULA BHATKAR, J.)