

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.751 OF 2013

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.22.01.2013 in IA.No.24 of 2012 in FCOP.No.779 of 2011 of the Additional Metropolitan Sessions Judge-cum-the Court for trial of JHCBBC-cum-XIII Additional Chief Judge, Hyderabad.

2. The petitioner herein is the respondent in the said OP which had been filed by the respondent herein under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights.

3. In the said OP, the respondent had alleged that petitioner is his wife and that a child was also born to them, but the petitioner had initiated petty quarrels with him on trivial issues and had imposed unreasonable and irrational restrictions on him and did not care for his feelings. He also allege that she used to belittle him not only within the house but also in the presence of family members, relatives and her staff; that she used to threaten him that he deserves to live only at her mercy, that he is not fit to be her husband and that she would continue to humiliate him before her relatives. He also alleged that she deliberately caused inconvenience and discomfort to his aged parents without providing them food

and other basic necessities and when the respondent's mother used to take it upon herself to cook the food, the petitioner used to pounce on her and abuse her in filthy language denying right to touch anything in the petitioner's kitchen much less cook food. He also alleged that she did not lose any opportunity to subject him to mental or psychological agony. Other allegations were also made against the petitioner including the fact that she filed a criminal case for the offence under Section 498A IPC and Sections 3 and 4 of Dowry Prohibition Act against the respondent, his mother and his younger sister. He however stated that he was hoping that the petitioner would change her attitude even though she deserted him on 28.07.2010 and he sought the relief of restitution of conjugal rights.

4. Counter affidavit was filed by the petitioner to the said petition denying the said allegations. She alleged that the respondent, his mother and sister did not allow her even to appoint a servant maid to look after her son. She also alleged that respondent was in the habit of drinking and having relationship with others and that the respondent used to make her beg even for her minimum necessities and compel her to account for each and every rupee by keeping her ATM card in his custody. Other allegations were also made against the respondent by the petitioner blaming him for the failure of the relationship.

5. On 09.09.2012, the respondent herein filed an application IA.No.24 of 2012 under Order VI Rule 17 CPC to amend the prayer in the OP seeking relief of dissolution of marriage between himself and the petitioner alleging that after filing of the OP by him, the petitioner had made several complaints against him to the Department of Endowments for which he was Special Counsel forcing him to leave the said assignment; that even though he got selected to the post of Assistant Commissioner of Endowments on 16.08.2011, petitioner met the Director, AP Public Services Commission and questioned how he could appoint the respondent and tried to stop the respondent's appointment; that she filed applications under Right to Information Act, 2005 in relation to his attendance, his outside duties, etc and even sought information about a lady colleague of the respondent; and thus attempted to harass him and defame him. He therefore contended that these acts of the petitioner have shaken his trust in her and it would be impossible for him to live with her any more in a matrimonial relationship; that it had broken down irrevocably on account of the conduct of the petitioner leaving him with no alternative but to seek dissolution of marriage on the ground of cruelty of the petitioner. He also sought custody of their son apart from incorporating certain paragraphs in the body of the OP about the cruelty alleged to have been committed by the petitioner against him.

6. This application was opposed by the petitioner denying

the allegations made against her and contending that the application should be dismissed on the ground that Rule 28 of Civil Rules of Practice for consequential reliefs was not complied with by petitioner. She also reiterated the allegations made by her against him in the counter filed by her in the OP.

7. By order dt.22.01.2013, the Court below allowed the said application.

8. The Court below recorded that the respondent and the petitioner, who were husband and wife, were admittedly living separately since 28.7.2011. It held that all the facts as stated in the OP originally on 21.04.2011, on which date it was filed, remain same; and the respondent, although initially thought that the marriage could be saved by seeking restitution of conjugal rights, having noticed that there is no change in the attitude of the petitioner, and there is no scope of reconciliation, sought for relief of dissolution of marriage and custody of child. Having regard to the allegations leveled by the respondent against the petitioner in the application for amendment, the Court came to the conclusion that these allegations might amount to harassment of the respondent and he is entitled therefore to seek the dissolution of marriage and thereby allowed the application to the extent of seeking dissolution of marriage. It however held that custody of the minor child cannot be granted in this OP and it is better for the respondent to file a separate petition.

9. Challenging the same this Revision is filed.

10. Counsel for the petitioner vehemently contended that allowing the amendment sought for by the respondent would change the nature of the OP which had been filed for restitution of conjugal rights into one for dissolution of marriage and it is not permissible in law to permit such amendment. He also contended that Rule 28 of the Civil Rules of Practice has not been complied with.

11. Counsel for the respondent on the other hand refuted the above contentions and supported the order passed by the Court below.

12. Order VI Rule 17 CPC states:

“O.VI R.17 CPC: Amendment of Pleadings – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

13. In ***Abadul Rehman and another v. Mohd. Ruldu and others***^[1] the Supreme Court considered the said provision and held that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceedings

for the purpose of determining the real question in controversy between them and Courts have to be liberal in accepting the same, if the same is made prior to the commencement of trial. It also held that main purpose of amendment is to minimize the litigation; a change in the nature of relief claimed shall not be considered as a change in the nature of suit; and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

14. In ***Rajesh Kumar Aggarwal and others v. K.K.Modi and others***^[2], the Supreme Court had held that Court should allow amendments that would be necessary to determine the real questions of controversy between the parties subject to the condition that no prejudice is caused to other side.

15. Technicality of law should not be permitted to hamper the Courts in the administration of justice between the parties as held in ***Usha Balashaheb Swami and Ors. V. Kiran Appaso Swami and Ors***^[3] wherein the Supreme Court reiterated that if it is not a fit case of withdrawal of the admission or a case of washing out an admission, amendment of pleadings can be permitted.

16. In the present case, since the trial has not yet commenced, even if the amendment is allowed no prejudice is caused to the petitioner because the petitioner would have an opportunity to file an amended counter or an additional

counter to the amended OP and contest the same.

17. Also the petitioner has retained the allegations made originally in the O.P. and is seeking to add certain subsequent events and alter the relief sought by him earlier in view of the alleged subsequent events. This is not only not prohibited but permissible in law.

18. Coming to the plea of counsel for the petitioner regarding compliance of Rule 28 of the Civil Rules of Practice are concerned, the said provision states that an application for amendment made under Order VI Rule 17 CPC should also contain a prayer for all consequential amendments and that an application filed for amendment without containing the consequential amendments cannot be considered.

19. Having perused the affidavit and the petition filed by the respondent in I.A.No.24 of 2012, I am satisfied that Rule 28 has been complied with.

20. Therefore, I do not find any merits in this Civil Revision Petition and is accordingly dismissed with costs of Rs.2,000/- (Rupees Two thousand) to be paid to the respondent by the petitioner. There shall be no order as to costs.

21. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

14th August, 2015.
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[\[1\]](#) 2013(1) ALD (SC) 1

[\[2\]](#) 2006(4) SCC 385

[\[3\]](#) AIR 2007 Supreme Court 1663(1)