

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 210 of 2014**

1. Smt. Preeti Kujur W/o Shri Ramprasad Kujur, Aged About 23 Years
R/o Qt. No. O.E. -55, C.S.E.B., Colony Korba East, Post, P.S. Tahsil
& Distt. Korba C.G. Pin 495677

---- Petitioner

Versus

1. Ramprasad Kujur S/o Jagdev Kujur Aged About 34 Years R/o Village
Batauli Umapur, Distt. Surguja C.G. Presently Residing At Office Of
The Loco Foreman, West Central Railway Station Bhopal, Post, P.S.
Tahsil & Distt. Bhopal, M.P. Pin 462001

---- Respondent

For Petitioner : Shri Abhijeet Sarkar, Advocate
Respondent- Ramprasad Kujur in person.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****25/02/2016**

1. The respondent, appearing in person submits that as he is aware of the entire facts and pleadings of the case, he will defend himself.
2. Heard on I.A.No.4/2016, application for urgent hearing. On due consideration, same is disposed of.
3. With the consent of both the parties, the matter is heard finally.
4. The brief facts required for disposal of the instant Writ Petition (227) are that the petitioner had filed Case No.68A/2010 (Smt. Preeti Kujur Vs. Ram Prasad Kujur) under the provisions of Sections 22 and 23 of the Divorce Act, 1869 (for short the Act 1869) for judicial separation. The same is pending before the Judge, Family Court Korba, District Korba(CG).

During hearing, the respondent had filed an interim application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short the Code) regarding the fact that the marriage was not solemnized within the jurisdiction of the Court; the respondent was not residing within the jurisdiction of the Court at the time of filing of the application; and also both the parties were not residing lastly within the jurisdiction of the trial Court, hence, the application filed on behalf of the applicant/petitioner is against the provisions of the Act 1869, therefore, the same may be dismissed.

5. On the other hand, the applicant/petitioner also filed an application under Order 6 Rule 17 read with Section 151 of the Code wherein she prayed for incorporation of the pleadings regarding applicability of the territorial jurisdiction of the trial Court i.e. as the same was of consequential nature.

6. For the amendment filed on behalf of the respondent/ non-applicant, the trial Court vide its order dated 13.3.2014 allowed the application filed by the respondent and on the other hand dismissed the application filed by the petitioner. Against the said order, the petitioner had approached to this Court praying that jurisdiction under Article 227 of the Constitution of India be invoked and the order passed by the trial Court be quashed so far as it concerns with the rejection of amendment application filed on behalf of the petitioner as the same is of consequential nature and also requires for the proper adjudication of the matter; and also when the respondent prayed for amendment in his pleading it was required to rebut the said pleading as prayed in the amendment application which was in due course allowed by the trial Court itself and the amendment which was consequential in nature was dismissed by the Court below.

7. Heard counsel for the petitioner, and the respondent, appearing in person.

8. Learned counsel for the petitioner had elaborately supported the grounds taken in the instant writ petition and submitted that as the opportunity to defend herself in the light of the allowed amendment prayed on behalf of the respondent, the application filed on behalf of the petitioner may also be allowed and she be permitted to amend the application pending before the trial Court accordingly.

9. On the other hand, the respondent had also filed a written reply/objection wherein it is submitted that the trial Court has not committed any illegality or impropriety and the order does not require any interference, hence, the petition may be dismissed.

10. The respondent also orally supported the reply and submitted that there is no force in the petition and the same may be dismissed.

11. For the purposes of appreciation regarding the petition, its reply and the documents annexed are perused.

12. On due consideration, it goes to show that the application filed on behalf of the petitioner for amendment in his application is more or less of the consequential nature substantially. As a natural law, when a party is permitted to plead regarding non-applicability of the territorial jurisdiction and if the other party rebuts it by putting facts that the application is well within the territorial jurisdiction of the Court, it shall be lawful for the trial Court to allow such prayer for amendment in the pleadings which are more or less consequential in nature. In the considered view of this Court, the impugned order passed by the Court below on 13.3.2014 so far as it relates to dismissal of the amendment application filed on behalf of the

applicant/petitioner is concerned, it requires interference.

13. Consequently, the instant Writ Petition (227) is hereby allowed. The impugned order dated 13.3.2014 passed by the Court below regarding rejection of the amendment application prayed on behalf of the applicant/petitioner is hereby quashed. The trial Court is directed to incorporate and amend the pleadings of the applicant as prayed by filing the amendment application under Order 6 Rule 17 read with Section 151 of the Code dated 28.2.2014. After incorporation of the pleadings, as prayed in the interim application, the Court below may afford an opportunity to file any consequential amendment if at all prayed on behalf of the respondent in the matter and thereafter, the Court below is directed to proceed with the trial of the case strictly in accordance with law. The trial Court is further directed to dispose of the matter expeditiously, preferably within a period of four months from the next date of hearing.

14. The parties may file copy of the order before the Court below for compliance.

15. Registrar (Judicial) is also directed to send the copy of the order to the Court below for compliance.

16. The petition is allowed.

17. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)

Judge