

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.1414 of 2013

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the petitioner/plaintiff is directed against the order dated 28.01.2013 of the learned Judge, Additional Family Court, Visakhapatnam passed in I.A.no.614 of 2013 in O.P.no.1175 of 2009 filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to amend the prayer portion in the original petition by inserting Rs.5,000/- in place of Rs.3,000/- and Rs.10 lakhs in place of Rs.3 lakhs and consequently amend the plaint.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the petitioner', for brevity) and the learned counsel for the respondent/defendant ('the respondent', for brevity). I have perused the material record.

3. To begin with the introductory facts, in brief, is as follows:

The petitioner had filed the original petition no.1175 of 2009 ('OP', for brevity) against her father for grant of maintenance of Rs.3,000/- per month and Rs.3 lakhs towards marriage expenses alleging *inter alia* that she has no sources of income and that she is not able to maintain herself. During the pendency of the said OP, she had filed the subject application seeking amendment of her OP in regard to the amounts claimed towards monthly maintenance and her marriage expenses. The said application was resisted by the respondent. On merits, the trial Court had dismissed the said application.

3.1 The case pleaded by the petitioner in her affidavit filed in support of the application for amendment is as follows: "There is hike in rental and daily expenses and also medical expenditure of the petitioner, who is under medical supervision during the past several years. She is pursuing her

studies for better opportunities and better living. She has to meet huge expenditure on her education i.e., towards purchase of books, education fee etcetera. The marriage expenses originally claimed by her are insufficient as by now, there is drastic change and as at present more money is required for meeting the marriage expenses. Further, the house in which the father of the petitioner is residing is constructed with the death benefits of the mother of the petitioner. Hence, the petition for amendment of the OP is filed to enable her to make an enhanced claim of maintenance of Rs.8,000/- per month and marriage expenses of Rs.10 lakhs.”

3.2 The respondent in his counter had *inter alia* contended as follows:

Originally, the petitioner filed as O.S.no.47 of 2004 in August, 2004 for maintenance. The same was re-numbered as O.P.no.1175 of 2009. The petitioner had left the company of the respondent in the year 2004 and had started living in a property, which is assigned to the respondent and in which the respondent had constructed a house. She had let out a portion of the said house and is getting rental income. The petition is filed only to cause physical and mental harassment to this respondent. Eight years after the institution of the OP, the present petition is filed to drag on the matter. The trial has commenced. The matter is coming up for cross-examination. At that stage, the present petition for amendment is filed with all false allegations. In her cross-examination, she had admitted that her sister's marriage was performed with the death benefits of her mother. She has no right to claim a share in the death benefits of the mother. The petitioner is residing in the house constructed by this respondent. It is difficult for him to pay Rs.3,000/- per month from out of his pension amount. However, he had agreed to pay the said amount out of love and affection towards the petitioner. Though the petitioner is having knowledge of the financial position of the respondent, she is trying to further harass him by taking advantage of his kindness. This respondent had educated all his children and had performed marriages of two of his daughters and one son and had constructed a house by availing a loan. He is still repaying the said loan. He is not holding any liquid cash. This fact is known to the petitioner. Knowing all these facts, the petitioner is

claiming the enhanced amount of Rs.8,000/- per month as maintenance and Rs.10 lakhs as marriage expenses with a view to harass this respondent. There is no change in the income of this respondent during the last eight years. Hence the petition is liable to be dismissed.”

4. At the time of enquiry before the trial Court, no oral and documentary evidence was adduced. On merits, the trial Court had dismissed the petition.

5. Dealing first with the preliminary facts, it is to be noted that the original petition was filed by the daughter in the year 2004. At that time, it was registered as a suit. Later, it was re-numbered as O.P.no.1175 of 2009. At the inception, the petitioner had claimed Rs.3,000/- per month towards maintenance and Rs.3 lakhs towards marriage expenses. Now, she is seeking amendment of the original petition to enable her to claim Rs.8,000/- per month towards maintenance and Rs.10 lakhs towards her marriage expenses. She had sought for the amendment of her OP on the grounds of increase of cost of living and increase in her expenses on accommodation, education and medical treatment. The trial Court had dismissed the petition seeking amendment by observing that the amendment petition is filed without proceeding further with the cross-examination of RW1 and that the petitioner is delaying the matter and that she cannot be permitted to take advantage of her own fault. The trial Court had also noted that the enquiry in the main OP had commenced long time back, i.e., on 05.11.2011 and that no specific reasons are assigned for not filing the petition seeking amendment at the earliest opportunity and that the petitioner could not offer any explanation for the delay in filing the present application. Thus the application for amendment was dismissed only on the grounds of delay and laches.

6. No doubt, the application for amendment was filed highly belatedly when the matter is pending for cross-examination of RW1, the father of the petitioner. In the original petition, which was filed originally as a suit in the year 2004, maintenance was claimed @ Rs.3,000/- per month besides Rs.3 lakhs towards marriage expenses. In view of long lapse of time and on account of increase in cost of living, the petitioner now intends to amend the

OP to enable her seek adequate maintenance @ Rs.8,000/- per month and marriage expenses Rs.10 lakhs. It is undisputed that during the last decade, there is an increase in the cost of living. No doubt, it is true, as rightly contended by the learned counsel for the respondent that even if the amendment is not permitted at this stage, the petitioner can always file an application for enhancement of maintenance after the disposal of the original petition. For whatever reasons, there was delay in disposal of the OP originally filed in the year 2004 and re-numbered in the year 2009. Whether the petitioner would be entitled to award of maintenance and marriage expenses, and if so, to what amounts is a question to be decided on merits in the main OP after full fledged enquiry. There is no need to go into the questions like the entitlement of the petitioner to claim maintenance and the quantum of maintenance, if any, she would be entitled to and also the financial capacity and status of the respondent at this stage. The said aspects will have to be considered at the appropriate later stage when the OP comes up for final adjudication. If the amendment is permitted, as it is based on subsequent events like increase in cost of living after the institution of the OP, it would avoid multiplicity of litigation, viz., driving the petitioner to file a fresh proceeding for claiming enhanced amounts, in case, her original claim for maintenance and marriage expenses stands allowed as prayed for. Since the request for amendment is based on subsequent events, namely, increase in cost of living subsequent to the year 2004, in the well considered view of this Court, the ends of justice would be met, if the amendment as sought for is permitted. As per the settled legal position, merely on the ground of delay or laches, the amendment sought for cannot be refused. In the present case the amendment is being sought for almost 9 years after the date of the institution of the suit/OP. However, if the amendment as sought for by the petitioner is permitted, the trial Court would be in a position to consider not only the question of entitlement of the petitioner to the claims made but also the quantum of maintenance and marriage expenses, if any, to be awarded keeping in view the present day cost of living. If the amendment as sought for is not permitted and the petitioner eventually is not satisfied with the awarded amounts, she would be required to seek enhancement of the

awarded amounts by filing a fresh proceeding. Therefore, in order to avoid multiplicity of proceedings it would be a sound exercise of discretion to permit the amendment being sought for in the pending OP. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. In the well-considered view of this Court, if the amendment is permitted, the amendment which is based on events subsequent to the institution of the OP, though sought belatedly, also helps in avoiding the multiplicity of the proceedings and in setting at rest the dispute between the parties, who are no other than the daughter and father.

7. Viewed thus, this Court finds that the order of the Court below dismissing the petition for amendment on the sole ground of delay warrants interference. Therefore, for all the aforesaid reasons, this Court holds that the granting of amendment of the OP really sub-serves the ultimate cause of justice and avoids further litigation and that therefore, the amendment sought for by the petitioner deserves to be allowed.

8. In the result, the Civil Revision Petition is allowed and the order dated 28.01.2013 passed by the Court below in I.A.no.614 of 2013 in O.P.no.1175 of 2009 is hereby set aside and the said application is allowed as prayed for. Since the matter is of the year 2004, the petitioner is directed to carry out the amendments in the OP and file a neat copy of the petition in the trial Court within twenty days from the date of receipt of a copy of this order. On filing of such amended neat copy of the original petition, the Court below shall give an opportunity to the respondent to file an additional counter, if any, and dispose of the OP as expeditiously as possible, preferably, within four months from the date of the receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

07th April, 2016
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