

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CR-8899-2015(O&M)

Date of decision : 05.01.2016

Rajbir Kaur @ Ranjit Kaur

... Petitioner

Versus

Gurdeep Kaur (since deceased) through L.R.

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Tushar Sharma, Advocate
for the petitioner.

REKHA MITTAL, J.

The present petition filed under Article 227 of the Constitution of India lays challenge to order dated 25.09.2015 passed by the District Judge (Family Court), Barnala whereby the application filed by the petitioner for amendment of written statement under Order VI Rule 17 of the Code of Civil Procedure (in short 'CPC') has been dismissed.

Counsel for the petitioner would contend that Gurdeep Kaur (since deceased) respondent has filed a suit for declaration claiming herself to be legally wedded wife of Niranjana Singh (since deceased) proforma respondent and challenged marriage registration certificate No.171 dated 18.09.2003 issued by the office of Registrar, Hindu Marriage, Barnala being wrong, illegal, collusive and nullity, having no affect upon rights of the plaintiff. The petitioner and his co-defendant

Niranjan Singh (her husband) engaged Sh.Raj Dev Singh Khalsa, Advocate to contest the case and the entire facts were narrated to the counsel but later she came to know that some important and necessary facts are not mentioned in the written statement.

The suit filed by Gurdeep Kaur was decreed by the trial Court but in the appeal preferred by the petitioner before the Ist Appellate Court, the judgment and decree passed by the trial Court was set aside and the case was remitted to the trial Court for adjudication afresh after providing opportunity to the petitioner to lead evidence. It is argued that in the court of appeal, an application for amendment of the written statement under Order VI Rule 17 CPC was filed on 31.08.2012 but as the learned appellate Court (Additional District Judge, Barnala) had set aside the judgment and decree and remanded the case to the Additional Civil Judge (Senior Division), Barnala for adjudication afresh, no order was made on the application for amendment of the written statement.

An application for amendment of the written statement on the same set of allegations was filed before the District Judge (Family Court), Barnala but the same has been dismissed erroneously and without correct appreciation of the scope of amendment of pleadings. It is further argued that by way of amendment, the petitioner merely seeks to explain certain facts and raise legal issues in regard to the suit being barred by estoppel and under Order II Rule 2 CPC. It is further contended that a serious prejudice is likely to be caused to the petitioner in case the amendment is

not allowed.

I have heard counsel for the petitioner and gone through the records.

Smt.Gurdeep Kaur was married with Niranjn Singh and Niranjn Singh obtained an ex-parte decree of divorce against Smt. Gurdeep Kaur vide judgment dated 01.06.1991 passed by the Additional District Judge, Barnala. The said ex-parte judgment was challenged by Smt.Gurdeep Kaur by filing civil suit No.86 dated 18.04.2001 which was decided in her favour vide judgment dated 10.11.2005. The said litigation between Smt. Gurdeep Kaur and Niranjn Singh has attained finality between the parties. Thereafter, Smt. Gurdeep Kaur filed the instant suit in the year 2007 giving challenge to the registration certificate issued by Sub Registrar, Hindu Marriage, Barnala in regard to marriage of Niranjn Singh and Smt. Rajbir Kaur (present petitioner). The defendant filed the written statement. On completion of pleadings of the parties, issues were framed on 07.02.2008. Smt. Gurdeep Kaur adduced her evidence but no evidence was led by the defendants and evidence of the defendants was closed by the Court and the suit was eventually decided by the trial Court in favour of Smt. Gurdeep Kaur vide judgment and decree dated 01.03.2012.

Smt. Rajbir Kaur (present petitioner) appealed against the judgment and decree dated 01.03.2012 and the same was allowed by the Court of Additional District Judge, Barnala vide judgment dated

28.08.2014 primarily on the ground that evidence of the defendant-appellant was closed on 3rd date of evidence whereas the plaintiff was given 14 effective opportunities to lead evidence. It was also noticed by the Court that issues in the case were reframed on 27.02.2012 and thereafter the defendant was not given any opportunity to lead evidence.

Indisputably, the case remained pending before the trial Court for a period of more than four years after filing of the written statement which eventually was decided by the trial Court in the year 2012. This Court is conscious that mere delay in filing an application for amendment of the pleadings may not be a ground for its dismissal. However, plea of the appellant that she had explained the facts in detail to her counsel but counsel did not mention those facts in the written statement, if taken as a valid ground for amendment, the Court may not be able to dismiss any application for amendment of the pleadings. As plea of the petitioner for amendment of the written statement is false on the face of it, therefore, the same would justify rejection of her claim for amendment of the written statement after more than 5 to 6 years since the original written statement was filed. This apart, claim of the plaintiff to challenge the registration of marriage between Niranjana Singh and Rajbir Kaur is based on the judgment and decree passed by the civil Court whereby the ex-parte decree of divorce obtained by Niranjana Singh has been set aside thus restoring status quo ante in regard to marital status of Smt. Gurdeep Kaur being wife of Sh.Niranjana Singh. That being so, no fault can be found in

the order impugned.

Dismissed. No order as to costs.

(REKHA MITTAL)
JUDGE

January 05, 2016.
Davinder Kumar