

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2357 OF 2016

Uma Ashish Ghatе	]	
C/o. Col. D.M. Purandare,	]	
B-20 Amar Aashiyana,	]	
Wanowrie, Pune- 411 040	]	... Petitioner.

V/s.

Ashish Anil Ghatе	]	
A-204 Paranjpe Magnolia,	]	
Near Kumar Sahawas,	]	
Opp. Mont Vert Biarritz,	]	
Baner Pashan Link Road,	]	
Pashan, Pune- 411 021	]	... Respondent.

- Mr.Sanjay Bhojwani for the Petitioner.
- Mr.Abhijit D. Sarwate for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATED : 9th OCTOBER, 2017.

JUDGMENT :-

1] Rule. Rule made returnable forthwith.

2] Heard learned counsel for both the parties finally at the stage of admission itself.

3] By this Writ Petition, the Petitioner-wife is challenging the order dated 04/01/2016 passed by the Principal Judge, Family Court No.1, Pune, in P.A. No.746 of 2011. By the said order, the trial Court has rejected the Petitioner's application filed under Order 6 Rule 17 of the Civil Procedure Code (C.P.C.) for amendment of the petition.

4] It is submitted by the learned counsel for the Petitioner that the Petitioner has filed P.A. No.746 of 2011 seeking dissolution of marriage with the Respondent. The issue of maintenance for the child, his continued education expenses, permanent alimony and maintenance of the Petitioner, all these reliefs, however, remained to be claimed by the Petitioner in the said petition, as she was not advised by her previous Advocate-on-record that these reliefs can be claimed by her in the same petition. Hence now the Petitioner desires to claim the said reliefs and for that purpose, she wants to amend the present petition to add paragraph No.14-A and 14-B in the petition. Accordingly, consequential amendment is also sought in the prayer clause.

5] It is submitted that the said amendment was sought, only to avoid multiplicity of proceedings and application for amendment

was filed without any laxity on the part of the Petitioner. The moment she came to know after the new Advocate has advised that such reliefs can be claimed in the proceedings for divorce also, she has filed the said application.

6] This application was strongly resisted by learned counsel for the Respondent submitting that it is barred by the Proviso to Order 6 Rule 17 of C.P.C., which lays down 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 the trial. In the instant case, it is submitted that, the recording of evidence has already commenced and the Petitioner is cross-examined on three occasions. Moreover, she has already sought these education expenses and alimony of the child and for herself in the application of interim maintenance. Therefore, she was very much aware that these reliefs can be claimed in this proceeding. In such situation and at this stage, without any ground and reason being made out, merely because of the change of Advocate, if such application for amendment is allowed, it is as good as setting the clock back to its original position, because after the

petition is amended, the Respondent will have to file the written statement, then the additional issues will have to be framed and again the cross-examination of the Petitioner would be necessary.

7] As regards the ground of avoiding multiplicity of the proceedings, it is submitted that at the time of filing the petition for divorce, no liberty was sought reserving the right to claim reliefs under Section 26 of Hindu Marriage Act. Hence unless the liberty was sought and reserved, there cannot be further application also for maintenance and other reliefs under Section 26 of the Hindu Marriage Act. According to learned counsel for the Respondent, the Hon'ble Supreme Court has held that the change of Advocate cannot be a ground for recall of the witness. The same analogy will apply in this case also that the change of Advocate cannot be a ground for seeking amendment in the petition and that too after the recording of evidence has commenced, in view of bar of the Proviso under Order 6 Rule 17 of C.P.C..

8] In this respect learned counsel for the Petitioner has relied upon the judgment of the Andhra Pradesh High Court in the case of *Vallala Yasodha vs. Vallala Naga Venkata Laxmi*, (2013) 5 ALD 166, to submit that when the relief claimed by way of

amendment can be granted in the same proceeding by the same Court, the amendment can be allowed. It is submitted that in this judgment, the Andhra Pradesh High Court has held that the Proviso to Order 6 Rule 17 of C.P.C. does not contain a rigid prohibition. The initial rigidity was watered down by the Parliament itself by later part of the Proviso to the effect that “unless the Court comes to the conclusion that in-spite of due diligence, the party could not have raised the matter before the commencing of trial”, thereby indicating that the amendment is not directly prohibited but it is entirely in the discretion of the Court, having regard to the various aspects, one of them being, to avoid multiplicity of the proceedings.

9] In the instant case, it may be true that the trial has commenced and the petition is filed way back in the year 2011 for divorce; whereas the application for amendment of the petition is filed in the year 2015 on 29.07.2015. Now the cross-examination of the Petitioner is also part-heard. But in my considered opinion the fact remains that the reliefs which the Petitioner is claiming in this application are that of seeking the permanent alimony and educational expenses of the minor son, which she has not sought, in the petition and it was only according to her, on account of no such

advise being given to her by the previous Advocate. Even if she has not reserved that liberty to file the fresh petition for seeking these reliefs, the law is clear that she can always seek those reliefs as and when the necessity arises, as cause of action for the same is continuing one. Hence it cannot be said that she is totally barred from filing such petition. Therefore, when the reliefs can be awarded in this proceedings itself, in order to avoid the multiplicity of the proceedings, it is always desirable that all the issues and controversies between the parties should be decided at one and the same stage and in the same proceedings.

10] As regards the ground that change of Advocate cannot be a reason to allow such application for amendment, the fact remains that the parties to the litigation are not legally literate and therefore, they depend on the advise of their counsel. It is a matter of fact that till today the Petitions are drafted by the Advocates or the counsels and not by the litigants. Therefore, if at the time of drafting petition the Petitioner was not advised to include these reliefs in this petition for divorce by her previous Advocate and now with change of Advocate she has realized that these reliefs can be asked in this petition itself, she should not be denied the necessary amendment,

as it would be depriving her from raising these issues. After all, the Proviso to Order 6 Rule 17 of C.P.C. is not of an absolute nature and so rigid. It needs to be considered depending on facts of each case. Especially in matrimonial proceedings in order to lessen the number of litigation *interse* between the parties, which is already quite high, the approach of the Court has to be liberal.

11] The impugned order therefore passed by the trial Court of rejecting Petitioner's application for amendment cannot be called as just, legal and correct. Keeping in mind the substantive cause of justice and in order to avoid multiplicity of the proceedings the application for amendment needs to be allowed, by setting aside the order of the trial Court.

12] Writ Petition is therefore allowed. The impugned order passed by the trial Court is set-aside. The Petitioner's Application (Exh.150) for carrying out necessary amendment is allowed, subject to condition that the petitioner will file amended petition within a period of eight days from today.

13] Learned counsel for the Respondent submits that on 1st November, 2017 he will be filing the written statement. Statement

accepted.

14] It is expected that the trial Court will frame the additional issues within 15 days thereafter and proceed with further with the matter.

15] Rule is made absolute in above terms.

(DR. SHALINI PHANSALKAR-JOSHI, J.)