

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.2457 of 2015
and
M.P.No.1 of 2015

Dr.Priya .. Petitioner

vs

Dr.Karthikeyan .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 06.02.2015 passed by the learned Principal Subordinate Judge, Attur in I.A.No.112 of 2014 in HMOP No.111 of 2014.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.N.Ramesh

ORDER

The wife, in a matrimonial dispute, is the revision petitioner. Aggrieved by the order passed by the court below in dismissing the application filed by her under Order VI Rule 17 of the Code of Civil Procedure seeking to amend para No.7 by

including Para Nos.VII A to D in the HMOP No.111 of 2014 filed for divorce as against the respondent/husband, the present revision has been preferred.

2. The petitioner/wife filed HMOP No.111 of 2014 before the Sub Court, Attur against the respondent/husband seeking divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty. Pending HMOP, the petitioner filed I.A.No.428 of 2013 seeking to amend the petition by incorporating para Nos.VII A to D by setting out various allegations against the respondent/husband and his family members.

3. The respondent/husband contested the said application by stating that the marriage between the petitioner and the respondent was a love marriage and the allegations levelled by the petitioner are false. It is further alleged by the respondent/husband that only the petitioner by threatening him had cut her hand with blade and attempted for suicide by

taking sleeping pills.

4. The Court below, after considering the submissions made on either side, had dismissed the amendment application by holding that the amendment sought for by the petitioner changes the very nature of the case. It has further held that the petitioner has filed the above amendment application after five months of filing the original petition and the delay has not been properly explained and the facts set out also has not been stated earlier by the petitioner in the original petition.

5. Challenging the said order, the present revision has been filed.

6. Heard both sides.

7. The learned counsel appearing for the petitioner/wife submitted that the Court below ought to have allowed the amendment application considering the fact that the same has

been taken out before trial and that too before filing of the counter by the respondent. It is further submitted that the Court below erroneously dismissed the application by stating that the averments made in the amendment application has not been stated in the original petition. He also submitted that as held by the court below, the amendment sought for, if allowed, will not change the nature of the case. Accordingly, he prayed for setting aside the order passed by the court below, by allowing this revision.

8. Per contra, the learned counsel for the respondent/husband submitted that the averments stated in the original application as well as the amendment application are entirely different and if it is permitted to be carried out, the respondent would be greatly prejudiced. Hence, the court below has rightly dismissed the same, warranting no interference in this revision.

9. It is settled principle that amendment of pleadings is

basically for the purpose of bringing about final adjudication in a suit and to avoid multiplicity of proceedings. It is in the interest of justice that a suit shall be decided on all points of controversy and accordingly, it is needed that the party shall be allowed to alter or amend their pleadings during the pendency of the suit. There can be a situation where there is change of circumstances in the course of pendency of a proceeding and if a matter in issue arises upon such change of circumstance, then amendment becomes necessary.

10. However, in the case on hand, the petitioner for the first time has introduced new facts, which are well within her personal knowledge even as on the date of the filing of the original petition and there is no typographical error or change of circumstances in seeking the amendment.

11. A plain reading of the amendment sought to be introduced after para No.VII, viz., VII-A, B, C and D with that of the original petitioner, makes it clear that the amendment

sought to be introduced are new set of facts and totally contra to the earlier set of facts. In para No.5 of the original petition, it is stated that on the date of marriage, there were problems that nuptial ceremony will not be allowed to happen, unless the balance of jewels were brought and that the petitioner's parents solved the problem by promising to give the jewels after the marriage of the petitioner's sister. Whereas in the amendment, in para VII A, it is stated that the nuptial function did not take place and the marriage was not consummated. Even otherwise, so far as the matrimonial proceedings are concerned, the facts are personal and that the petitioner being a Doctor ought to have known and could have stated all the facts at the time of filing of the original petition itself. The amendment seems to introduce only a new facts giving rise to different cause of action and altering the very scheme of the original petition. The Court below, considering all these facts, have correctly dismissed the application, warranting no interference in the revision.

12. Accordingly, the Civil Revision Petition fails and the

same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index: yes/No

Internet: yes

To

The Principal Subordinate Judge, Attur

PUSHPA SATHYANARAYANA,J.,

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