

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4273 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful respondent is directed against the order, dated 04.08.2017, of the learned Judge, Additional Family Court, Hyderabad, passed in I.A.No.696 of 2017 in O.P.No.980 of 2008.

2. I have heard the submissions of *Sri Mohanlal Karran Kol*, learned counsel appearing for the petitioner/ wife, and of *Smt. K.Sesharajyam*, learned senior counsel appearing for Mrs. Deepika Gadde, learned counsel appearing for respondent/ husband.

3. I have perused the material record.

3.1 The parties shall hereinafter be referred to as respondent/wife and petitioner/ husband, as arrayed in the Original Petition for convenience and clarity.

4. To begin with it is necessary to state the introductory facts, in brief:

The petitioner-husband filed the afore-stated OP against the respondent-wife under Section 13(1)(i-a) and (iii) of the Hindu Marriage Act, 1955, requesting to dissolve the marriage, dated 15.03.2007/ 04.07.2007 between the parties. The wife filed a counter resisting the application. In the said pending OP, the wife filed the afore-stated Interlocutory Application to accord permission to amend her counter. The petitioner-husband filed a counter and resisted the said application. On merits and by the orders impugned in this revision, the Additional Family Court dismissed the petition of the wife and refused to accord permission to amend her counter. Therefore, the respondent-wife is before this Court.

5. The proposed amendment as sought for and to be incorporated in the counter of the respondent/ wife reads verbatim as follows:

“17A: This Respondent submits that the petitioner has gained her confidence in the name of love and has taken advantage of her emotional relationship with him, for acquiring a house by procuring house loan. It seems he applied for a house loan in April 2007 from ICICI Bank representing that the sale consideration of the flat is around 55 lakhs. The loan sanctioned for Rs.34 lakhs and assured her that he will pay the balance from his savings. But contrary to that assurance, he availed the loan under work order category without her knowledge and by misusing her identity/photo and forged her signatures on the loan documents and got loan approved for Rs.13.45 lakhs towards work order. In February 2011, the Respondent came to know of the fraud played and forgery committed by the Petitioner and obtained documents and confirmed that her signatures are forged. Then on 23.09.2011 she lodged a private complaint in IIIrd ACMM, Nampally Criminal Court. The Court directed the SR Nagar PS for investigation, who registered the same as FIR in Crime No.907/2011 for the offences under Sections 420, 406, 468, 471 r/w 34 IPC and during course of investigation all the material loan documents were referred to the APFSL for opinion on the questioned signature, who in turn have reported that the petitioner did not sign those documents and they are forged. The Police filed a Charge sheet before the Magistrate Court and the same is pending trial as CC 609/2014.

The petitioner by committing forgery and manipulation of loan documents, played fraud on the Respondent and acts of the Petitioner amounts to cruelty in law. The Respondent submits that the Petitioner having been guilty of cruelty towards her is not entitled to take advantage of his own wrong to get the marriage dissolved under the principles of Marriage laws and also of Common law.

This Respondent further submits that the Petitioner also demanded Rs.30 lakhs to clear the Home loan obtained from BNP Paribas towards Kondapur House on 9th August, 2008 and slapped and abused me when I denied. He even mounted pressure on me to take money from my parents to pay him Rs.30 lakhs. At an opportune time, I ran out of the flat with house key and mobile, escaped and hid myself in the building cellar fearing more abuses and later took shelter in a friend's residence and informed my parents. During this

time, he sent several SMS on my mobile. My parents immediately arrived to Hyderabad. Then the petitioner assured my parents of maintaining cordial and healthy relationship and that he loves me etc. But, immediately after their departure to my Home town, he abandoned me in 2nd week of August, 2008 and contrary to his assurance, he arranged for GPA on 3rd September, 2008 to his father and filed this divorce petition in the month of September, 2008. SMS for demand of Rs.30 lakhs is filed. The BNP Paribas Letter regarding pre-closure of Kondapur house loan is also filed. The BNP Paribas statement of accounts and the loan of Rs.60 lakhs is cleared by him in the month of September 2008 is also filed. Because I did not succumb to demand of Rs.30 lakhs, he sold away the property. After marriage I realised that the petitioner was in deep debt crunch as such he was demanding money from me every month when I get my salary.

This Respondent submits that she approached District Legal Services Authority (DLSA), City Civil Court, Hyderabad, seeking restitution of conjugal rights on 1st September 2008 and the notices were served on to Ramakanth V and his parents and they appeared before the DLSA through counsel, in meantime they arranged for filing of this OP 980/2008 and did not proceed before DLSA, hence the matter was closed on 3rd November, 2008.”

6. The case of the respondent-wife in support of her request for permission to amend the counter, in brief, is as follows:

The petitioner-husband filed the Original Petition for dissolution of the marriage on the ground of cruelty. The petitioner played fraud and used his undue influence against her and obtained her signature on certain blank papers and resorted to forgery and impersonation before the bank authorities and obtained housing loan and made her to pay equated monthly installments and finally jumped out of the wedlock and settled abroad leaving the respondent-wife to discharge the liability and face financial crisis & social stigma. The OP was filed by the petitioner-husband by making wild and unscrupulous allegations to get rid of this respondent. After coming to know of his misdeeds and criminal activities, this respondent made a private complaint and the

matter was referred to police of S.R. Nagar Police Station for investigation and for filing final report. A case in Crime No.907 of 2011 was registered for the offences punishable under Sections 420, 405, 468, 471 read with 34 IPC. During the course of investigation into the said crime, the investigating officer sent the signatures alleged to have been made by this respondent to a hand writing expert. The expert gave an opinion that the said signatures are not that of this respondent and that the same are forged. The police filed charge sheet against the petitioner-husband before the Court of the learned III Additional Chief Metropolitan Magistrate, Hyderabad, and the said case is pending. The petitioner-husband having obtained bail left the Country. Forging signatures, manipulating loan documents and playing fraud is cruelty under facts and in law. The petitioner-husband who is guilty of the cruelty cannot take advantage thereof and seek dissolution of marriage on the ground of cruelty. The acts of forgery etcetera came to the knowledge of this respondent only subsequent to the filing of her counter. Hence, she was advised to amend the counter to include the ground of cruelty. For almost a decade this respondent is roaming around the Courts and is running from pillar to post and is facing a stigma. The delay in making the application for amendment of counter to include the subsequent events does not cause any prejudice to the petitioner-husband more particularly as he is staying abroad and he is being represented by his father and GPA. Hence, the petition may be allowed.

7. The averments in the counter of the petitioner-husband, in brief, are as under:

All the material allegations in the affidavit of the respondent-wife are all false and are denied. The adverse allegations of forgery, cheating and impersonation with regard to obtaining housing loan etcetera made in the affidavit filed in support of her petition are false and denied. All the said

allegations are subject matter of the criminal case in C.C.No.609 of 2014 pending on the file of XIX Additional Chief Metropolitan Magistrate. The hand writing expert's opinion is not yet marked and no competent witness has authenticated the same. The application in I.A.No.649 of 2015 filed by the respondent-wife was dismissed by holding that the opinion of the expert is not germane for adjudication of the issues involved in the present *lis*. The said orders are confirmed by this Court in C.R.P.No.2454 of 2017. Therefore, the respondent-wife cannot reiterate the same contentions and seek amendment of her counter to plead the said contentions by way of amendment. She is delaying adjudication of the matter by filing petition after petition and is not allowing the trial Court to proceed in the matter despite directions of the Supreme Court in SLP No.15760-15761 to dispose of the matter preferably within three months. The said orders were passed on 12.07.2016. The amendment being sought for, if allowed, would altogether introduce a new case. It is for this petitioner-husband to prove the grounds mentioned in the Original Petition filed for dissolution of the marriage. The respondent has not pleaded and established any grounds much less valid grounds for allowing her request for amendment of the counter. Hence, the petition may be dismissed.

8. While reiterating the pleaded case, the learned counsel for the respondent-wife submitted as follows:

The learned Judge of the Additional Family Court failed to comprehend the nature of the dispute between the parties. The Court below must have noticed that the settled Rule of Law in matrimonial cases is that the petitioning spouse cannot take advantage of his own wrongs. The Court below ought to have seen that forging the documents in the name of the wife and manipulating the bank transaction is a fraud and that the said acts amount to cruelty towards the wife and that in such an event, the petitioner-husband cannot take advantage of his own cruel conduct and seek divorce. The learned Judge of

the Additional Family Court went wrong in observing that the acts that occurred subsequent to the filing of the petition are not relevant to dispose of the petition. The learned Judge of the Additional Family Court failed to take note of the fact that forging of documents as well as offering the same and obtaining the loan are the acts committed by the husband even prior to the ceremonial marriage of this respondent-wife, which was performed after the registered marriage; but, those facts came to the knowledge of this respondent-wife only after filing of the counter in the original petition. The Court below ought not to have dismissed the petition seeking amendment of the counter on the ground of delay. The law is well settled that the Courts should be liberal in allowing the amendment of pleadings in matrimonial cases in order to give a final adjudication of the dispute between the parties. The Court below ought to have seen that the petitioner alone is not the sole reason for pendency of the OP for a long time. The Court below went wrong in making observations that the application filed for amendment of the counter is an abuse of process of Court and that it is intended to cause delay in the disposal of the OP/ case. If the amendment as sought for is allowed, the Court below would be in a better position to adjudicate upon all the contentious issues between the parties. The Court below ought to have permitted the amendment.

9. Learned senior counsel appearing for the petitioner/husband, while supporting the orders of the Court below, submits as follows:

The OP is of the year 2008. The application seeking amendment of the counter was filed on 27.07.2017, that is, after a delay of more than nine years. The delay in seeking the amendment of the counter is not explained. The learned Judge of the Additional Family Court rightly held that there is absence of diligence on the part of the respondent-wife and that the delay in seeking the amendment of the counter is not explained and that allowing the

amendment would relegate the matter to the initial stages and therefore, the amendment cannot be permitted. The application for amendment of the counter is nothing but an abuse of process of Court. There is a direction of the Supreme Court to dispose of the matrimonial OP within a time frame. No amendment sought for shall be permitted when the trial is in progress. The averments in the proposed amendment are the subject matter of the criminal case pending against the petitioner-husband. If the amendment is allowed and the petitioner-husband is called upon to answer the said allegations in this OP, it would cause prejudice to his case and defence in the calendar case. The respondent-wife's earlier attempt to examine the expert was not considered by the additional Family Court and the said order of the additional Family Court was confirmed by this Court. The order impugned is justified and does not warrant interference. The petition may be dismissed.

10. Before proceeding further, it is apt to note that the learned counsel appearing for the respondent/ wife placed reliance on the following decisions: (i) Smt. Abnash Kaur v. Dr. Avinash Nayyar¹; (ii) B.K.N.Pillai v. P.Pillai²; (iii) Baldev Singh v. Manohar Singh³; (iv) Andhra Bank v. ABN Amro Bank N.V. and ors⁴.

(i) In Smt. Abnash Kaur v. Dr.Avinash Nayyar (1 supra), the Supreme Court in the facts of the said case held as follows:

"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated

¹ AIR 1975 DELHI 46

² AIR 2000 SUPREME COURT 614

³ AIR 2006 SUPREME COURT 2832

⁴ AIR 2007 SUPREME COURT 2511

for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side".

The extensive case-law under Order VI rule 17 has been studied and classified in Volume I of Mulla's Code of Civil Procedure, 13th Edition, and the result has been condensed into five classes of cases in which leave to amend would be refused at page 728 as follows :-

(1)Where the amendment is not necessary for the purpose of determining the real questions in controversy between the parties, as where it is-

(I)merely technical, or

(II)useless and of no substance.

(2)Where the plaintiff's suit would be wholly displaced by the proposed amendment.

(3)Where the effect of the amendment would be to take away from the defendant a legal right which has accrued to him by lapse of time.

(4)Where the amendment would introduce a totally different new and inconsistent case, and the application is made at a late stage of the proceedings.

(5)Where the application for amendment is not made in good faith.

It is to be noted that none of them says that amendment should be refused if it seeks to add a new cause of action which had arisen subsequent to the filing of the petition for eviction or of a suit. A successful objection to an amendment would be that it seeks to displace the suit wholly or that it introduces a totally different, new and inconsistent case or that it takes away a legal right from the defendant which has accrued to him by lapse of time if it cannot be compensated by costs."

(ii) In the case of B.K.N. Pillai v. P. Pillai and another (2 supra), the Supreme Court has held as under: - 'The principles applicable to the amendments of the plaint are equally applicable to the amendments of the

written statements. The Courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original is was raised or defence taken, Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.'

(iii) In *Usha Devi v. Rijwan Ahamd*⁵ a contention was advanced that the trial of the suit would commence with the settlement of the issues; and, in support of the said contention that the framing of issues marked the commencement of the trial of the suit reliance was placed on the decision in *Ajendraprasadji N.Pandey v. Swami Keshavprakeshdasji* [(2006) 12 SCC1]. However, while meeting the said contention, the attention of the Supreme Court was invited to the decision of the Supreme Court in *Baldev Singh v. Manohar Singh* (3rd supra) wherein it was held as follows:

⁵ (2008) 3 Supreme Court Cases 717

“Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion on the Court to allow an amendment of the written statement at any stage of the proceedings.

Further, the Supreme Court having referred to a three-judge Bench decision in *Sajjan Kumar v. Ram Kishan*⁶, had held as follows:

“Having heard the learned Counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial Court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial Court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the Plaintiff-Appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.”

Thus in *Usha Devi's* case (*Supra*), the Supreme Court, keeping in view of the decision in *Sajjan Kumar* (*supra*), held as follows:

“We may clarify here that in this order we do not venture to make any pronouncement on the larger issue as to the stage that would mark the commencement of trial of a suit but we simply find that the appeal in hand is closer on facts to the decision in *Sajjan Kumar* and following that decision the

⁶ (2005) 13 SCC 89

prayer for amendment in the present appeal should also be allowed.”

(iv) In *Andhra Bank v. ABN Amro Bank N V and others* (4 supra) it was held that it is well settled that delay is no ground for refusal of prayer for amendment and that it is permissible in law to permit to amend the written statement and allow an additional ground of defence to be taken.

11. Learned counsel appearing for the petitioner/ husband placed reliance on the following decisions: (i) *Ajendraprasadji N.Pandey v. Swami Keshavprakeshdasji N.*⁷; (ii) *Union Bank of India v. Venkatesh Gopal Mahishi*⁸; (iii) *Vidya Bai v. Padmalatha*⁹; (iv) *Gorparthi Suiyakantham, W.G.District v. Gonnuri Suramma*¹⁰

(i) In *Union Bank of India* the Supreme Court explained the meaning of the words ‘due diligence’. In this decision, the Supreme Court referred to the decision in *J.Samuel and others Vs. Gattu Mahesh and others*¹¹ wherein it was held as follows:

“In the given facts, there is a clear lack of “due diligence” and the mistake committed certainly does not come within the preview of a typographical error. The term “typographical error” is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.”

However, in *Chander Kanta Bansal Vs. Rajinder Singh*¹², the Supreme Court, taking note of the fact that ‘due diligence’ has not been defined in the Code, referred to the dictionary meaning of ‘diligence’ which is to the effect that it means careful and persistent application or effort or a continual effort

⁷ (2006) 12 Supreme Court Cases 1

⁸ (2006) 12 Supreme Court Cases 20

⁹ AIR 2009 SUPREME COURT 1433

¹⁰ 2017 (2) HLT 8

¹¹ (2012) 2 Supreme Court Cases 300

¹² (2008) 5 SCC 117

to accomplish something; care; caution; the attention and care required from a person in a given situation, and observed that 'due diligence' means the diligence reasonably expected from and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. Reference was also made to 'Words and Phrases' by Drain-Dyspnea (Permanent Edition 13-A) wherein 'due diligence' was defined in law to mean doing everything reasonable and not everything possible. The Supreme Court, therefore, concluded that 'due diligence' would mean reasonable diligence and would mean such diligence as a prudent man would exercise in the conduct of his own affairs.

(ii) In VIDYABAI V/s. PADMALATHA, the Supreme Court observed that the proviso to Order VI Rule 17 is couched in a mandatory form and, therefore, the court's jurisdiction to allow an application for amendment is taken away there under unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. The Supreme Court observed that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties and only if such condition is fulfilled, the amendment is to be allowed. Thus, the proviso appended to Order VI Rule 17 of the Code was held to restrict the power of the Court and that it placed an embargo on exercise of its jurisdiction and unless the jurisdictional fact as envisaged therein, is found to exist, the court would have no jurisdiction at all to allow the amendment.

12. Further, in the decision in Abdul Rehman and Another v. Mohd. Ruldu and Others¹³, the Supreme Court, having taken note of the provision of law in the Code had laid down that it is clear that the parties to the suit are permitted to bring forward amendment of the pleadings at any stage of the

¹³ 2013 (1) ALD 1(SC)

proceeding for the purpose of determining the real question in controversy between them and that the Courts have to be liberal in accepting the same, if such application for amendment is made prior to the commencement of the trial and that if such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that, in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In the above decision the Hon'ble Supreme Court reiterated the following proposition:

“All amendments which are necessary for the purpose of determining real questions of controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

In the above decision the Hon'ble Supreme Court further referred to the ratio in the decision in Pankaja and another v. Yellapa¹⁴ which runs as follows:

“If the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed.”

(iii) In Goraparthi Suryakantham case, our High Court referring to the decisions of the Supreme Court held that once the trial of the suit has commenced, an application for amendment of pleadings cannot be allowed unless the Court comes to the conclusion that inspite of due diligence, party could not have raised the matter before commencement of trial. It is a case where amendment of written statement was sought in regard to wrong mentioning of the date of the Will after the trial has commenced.

(iv) In Usha Balashaheb Swami and others v. Kiran Appaso Swami and others¹⁵ it is held that it is well settled principle that a prayer for amendment of the plaint and a prayer for amendment of written statement

¹⁴ AIR 2004 SC 4102

¹⁵ (2007) 5 SCC 602

stand on different footings and that the general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of the claim applies to amendments to plaints and it has no counter part in the principles relating to amendment of written statements and that, therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding or altering or substituting a new cause of action in the plaint may be objectionable. Therefore amendment of defence, be it a written statement or a counter in matrimonial OP, stands on a different footing.

13. I have carefully gone through the decisions cited. I have given earnest consideration to the facts and submissions.

14. Reverting to the facts of the case, it is to be noted that in a matrimonial matter, the wife is seeking amendment of the counter to bring on record certain acts, which according to her are acts of cruelty. The said acts are in fact already stated in her report lodged with the police and the same are subject matter of a calendar case, which is taken on file against her husband, the petitioner in the OP. Therefore, the proposed amendment is not a new case about which the petitioner-husband is not aware. Hence, it cannot be said that wife is introducing a new case which is not known to the petitioner-husband and that the same will take the husband by surprise. The ground urged by the petitioner-husband in support of his request for dissolution of marriage is cruelty meted out to him by his wife; whereas, the wife contends that the husband himself indulged in acts of cruelty and, therefore, he cannot take advantage of his own cruel conduct & acts and seek dissolution of marriage. The husband filed the OP under the provisions of the Hindu Marriage Act. The Family Courts Act, 1984, is passed with avowed objectives. Its functioning is different from that of a Civil Court because the procedure of

Civil Procedure Code, 1908, and principles of Indian Evidence Act, 1872 are not strictly adhered to and disputes are settled by way of conciliation and Additional Family Court's own simplified procedure. [See: Section 10 of the Additional Family Courts Act, 1984]¹⁶. The law is well settled that while considering the issue as to whether an amendment of a pleading should be permitted, the Court is not required to examine the merits of the proposed amendment and the jurisdictional issue, which arises in case the amendment is allowed, as the said aspects have to be examined at an appropriate later stage, but, not while considering the request for amendment of the pleading.

15. As rightly contended by the learned counsel appearing for the respondent/ wife, the Court's jurisdiction to allow amendment of the pleadings is wide enough to permit amendments even in cases, where there has been substantial delay in seeking amendments. The question as to whether amendment of the pleading should be permitted or not depends largely on the facts and circumstances of each case and the discretionary jurisdiction to allow or not to allow an amendment will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought and there can be no straight jacket formula for allowing or disallowing amendment of the pleadings and each case depends upon the factual

¹⁶ Section 10. Procedure generally.-

(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Additional Family Court and for the purposes of the said provisions of the Code, a Additional Family Court shall be deemed to be a civil court and shall have all the powers of such court. -(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Additional Family Court and for the purposes of the said provisions of the Code, a Additional Family Court shall be deemed to be a civil court and shall have all the powers of such court."

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Additional Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Additional Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

background of that case. The amendment sought for by the petitioner/ wife, if permitted, neither would introduce a fundamental or constitutional change in the nature and character of the defence nor would change its frame. Applying the settled legal principles, this Court finds that it is a fit case where the jurisdictional fact as envisaged in the proviso appended to Order VI Rule 17 of the Code exists and, that therefore, this Court could exercise the jurisdiction to allow the amendment. On an earnest consideration of facts and law, it emerges that the amendment sought is imperative for proper and effective adjudication of the *lis* and that the application for amendment is *bona fide* and that the refusal of the amendment would lead to injustice and that on the other hand the allowing of the amendment does not cause any prejudice to the respondent/ husband, who is working in Australia and is being represented by his GPA holder, none other than his father.

16. Further, if the proposed amendment is permitted, the trial Court would be in an advantageous position to examine the issues involved in the matter in proper perspective after duly considering the defence which the respondent/ wife really intend to advance in the case. The said course helps the trial Court to come to a just decision after considering the true import of the defence of the respondent/ wife. Therefore, this Court is of the considered view that it would be a sound exercise of discretion to permit the amendment of the counter and that on the ground of mere delay amendment cannot be refused. Since the dominant purpose of the Rule is to minimize the litigation and to enable the parties to have all the issues relating to one dispute resolved in one suit, the amendment sought for by the respondent/ wife can be allowed, in the considered view of this Court. As rightly pointed out, the question whether the respondent/ wife would be entitled to succeed on the proposed defence now being introduced by way of the proposed amendment cannot be prejudged while considering the instant application, filed for amendment of the counter.

17. Further, in view of the precedential guidance laid down supra, the amendment, if permitted even at the belated stage, helps in setting at rest the dispute between the parties once and for all. Further, if granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed and the Court has also to consider whether the proposed amendment is intended to determine the real dispute between the parties. By permitting the amendment, no right accrued to the respondent/husband would get defeated. Further, as per the ratios in the decisions, the opposite party by way of an amendment to the counter can be permitted to add a new ground of defence or substitute or alter a defence or take an inconsistent plea and the same is not objectionable. In view of the facts and the ratios in the decisions, which are squarely applicable to the facts of the case, this Court is of the considered view that the order of the Court below refusing the amendment of the counter is not justified and that therefore, the order of the Court below dismissing the petition seeking amendment brooks interference.

18. Viewed thus, this Court finds that the refusal to permit the amendment on the ground of delay would not be just and fair, in the facts and circumstances of the case.

19. On the above analysis, this Court finds that the request of the respondent/ wife in the application for amendment merits consideration and therefore, the said application deserves to be allowed after setting aside the orders impugned in this revision.

20. In the result, the Civil Revision Petition is allowed. As a sequel, order, dated 04.08.2017, of the learned Judge, Additional Family Court, Hyderabad, passed in I.A.No.696 of 2017 in O.P.No.980 of 2008 is set aside and the said IA is allowed. The petitioner-husband is at liberty file a rejoinder in answer to

the pleadings now permitted to be introduced by way of amendment in the counter of the respondent-wife. There shall be no order as to costs.

However, since the OP is of the year 2008, the learned Judge, Additional Family Court, Hyderabad, is directed to dispose of the said OP, as expeditiously as possible, keeping in view the directions of the Hon'ble Supreme Court, if necessary, by taking up the matter on day-to-day basis.

Pending miscellaneous petitions, if any, in this revision shall stand closed.

05.09.2017
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M. SEETHARAMA MURTI, J

