

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO. 2706 OF 2015

AND

C.R.P.M.P.No.5193 of 2015

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India by the petitioner challenging the order dated 25.11.2014 in I.A.No.946 of 2013 in O.P.No.322 of 2013 passed by the Judge, Additional Family Court, Hyderabad, whereby, the petition filed under Order VI Rule 17 r/w Section 151 C.P.C was dismissed.

Initially, the petitioner filed a petition under Section 10(1) of Hindu Marriage Act (for short 'the Act') for judicial separation raising various grounds. After appearance of the respondent, the petitioner filed an application for amendment of the main petition, including change of section of law and relief claimed, mainly for dissolution of marriage under Section 13(1)(ia) of the Act and requested to permit to add paragraphs 2A, 2B, 2C, 2D, 2E, 2F, 2H, 2G, 2I, 2J. 2K, 2L, 4A, 5A, 6A and 6B of additional affidavit to main petition to convert the petition filed for judicial separation into petition for dissolution of marriage on various grounds.

The main ground for seeking such amendment mentioned in the affidavit is that, the petitioner was put under tremendous pressure due to mental agony and he was subjected to cruelty at the hands of the respondent and also on account of the fact that the petitioner and his father were driven to the police station, who manhandled his father. Hence, he could not mention certain facts.

That apart, there are certain subsequent events which caused great mental agony to the petitioner and warrant dissolution of marriage. Therefore, the petitioner decided to obtain a decree of divorce by dissolution of marriage on the ground of cruelty and other grounds and prayed to permit the petitioner to amend the petition adding various paragraphs.

The respondent filed counter affidavit denying material allegations, mainly contending that this petition is not maintainable, either under law or on facts and the same is liable to be dismissed at the threshold. The respondent opposed the proposed amendment on the ground that the proposed amendment would change the nature and character of the claim which is impermissible under Section 151 C.P.C or under Order VI Rule 17 of C.P.C. On this ground alone, the petition is liable to be dismissed. The petitioner filed an amendment petition with a view to counter the pleadings in D.V.C and if the amendment is allowed, it will cause prejudice to the respondent and thereby the petition is liable to be dismissed and prayed for dismissal of the petition.

Upon hearing the arguments of both counsel, the petition was dismissed by the Judge, Additional Family Court, Hyderabad by impugned order dated 25.11.2014 passed in I.A.No.946 of 2013 in O.P.No.322 of 2013. Aggrieved by the said order, the petitioner preferred the present revision petition under Article 227 of the Constitution of India, on various grounds, mainly contending that the application for amendment, which is pre-trial amendment can be allowed at any stage to do substantial justice to the parties. It is also

contended that the cause of action for judicial separation as well as the divorce is one and the same, but the observation of the Family Court that it will change the nature of the case and it does not amount to change of cause of action, based on technicality the petition was dismissed and thus, the Family Court erroneously dismissed the petition filed under Order VI Rule 17 without considering the law in proper perspective and committed error.

During hearing, learned counsel for the petitioner Smt.D. Pramada would contend that though the proposed amendment would change the nature of relief, the Court can allow such amendment, the Court can do substantial justice as the procedures are hand made and the Court can deviate the procedure, if necessary, to achieve the very object of Family Courts Act and purpose of filing petitions. Learned counsel for the petitioner relied on the judgment of the Division Bench of this Court in **Devika (Bhagya Lakshmi) v. N. Narasing Rao**¹. Learned counsel for the petitioner also contended that on account of subsequent events, a petition can be amended and relied on the judgment of the Calcutta High Court in **Smt. Sundari Dasi v. Basudeo Lal Guralia**². On the strength of the these two judgments, learned counsel for the petitioner contended that the order under challenge is illegal and prayed to set-aside the impugned order.

Learned counsel for the respondent while supporting the order dated 25.11.2014 in I.A.No.946 of 2013 in O.P.No.322 of 2013 passed by the Judge, Additional Family Court, Hyderabad, drawn the

¹ 2014 (2) ALD 630 (DB)

² AIR 1977 CALCUTTA 193

attention of this Court to the judgment reported in **Dr. N. Shiva Mohana Reddy v. Smt. Aparna Reddy**³.

The main grievance of the petitioner before this Court is that, initially the petitioner filed petition under Section 10(1) of the Act seeking judicial separation, but later filed I.A.No.946 of 2013 in O.P.No.322 of 2013 under Section 13(1)(ia) seeking a decree for divorce by dissolving the marriage between the petitioner and the respondent on the ground of cruelty. The only reason assigned by the petitioner for his failure to disclose those facts initially was that he was under tremendous pressure at the time of filing the original petition and that the petitioner and his father were taken to police station and his father was manhandled in the police station. But, particularly, these two incidents are not the grounds, muchless, sufficient grounds to seek conversion of the petition from judicial separation to dissolution of marriage to obtain a decree of divorce. The grounds for grant of judicial separation under Section 10(1) of the Act are totally different from the grounds for grant of divorce under Section 13(1)(ia) of the Act. The original petition was running into 2 to 3 pages, but the proposed amendment petition consists about 7 pages, which totally changes the cause of action and nature of the claim by substituting more than 12 paragraphs. Therefore, such amendment is impermissible under law, as it would totally change the nature of the claim in the petitions.

Learned counsel for the petitioner Smt. D. Pramada mainly drawn the attention of this Court to the judgment of this Court to

³ 2005 (1) ALT 44

Devika¹ case, where this Court held in paragraph 12 that the very purpose of establishing Family Courts was to ensure that disputes between spouses are resolved through informal mechanism and to relieve proceedings of stringent rules of evidence or strict application of provisions of law. The ultimate objective is to make an attempt to sustain the family, if necessary by diluting the procedure, that is otherwise applicable to the proceedings before the ordinary Courts. Even according to the principle laid down in the above judgment, to sustain the family, the Family Court can dilute the ordinary procedure and pass appropriate orders. But here, it is not for sustaining the family and initially the intention of the petitioner was to sustain family by obtaining decree for judicial separation. But, later, developed an idea of obtaining divorce making serious allegations of cruelty against the respondent to put an end to marital relationship. So, the principles in **Devika**¹ case has no direct application to the present case, since the object of establishing Family Courts to sustain a family, but not dissolving the marriage by diluting the procedures. Even if the principle laid down in **Devika**¹ case is applied, proposed amendment cannot be allowed by diluting the procedure to dissolve the marriage

The petitioner further relied on the judgment in **Smt. Sundari Dasi**² case, where the Division Bench of Calcutta High Court held that amendment can be allowed at any stage including at appeal stage. But, the facts of the present petition are totally different. Moreover, the principle laid down by the Calcutta High Court is not a binding precedent, however, in the facts of the above judgment, while

interpreting the statutes, the Division Bench held that if the amended provisions are made applicable at the appellate stage, it would result in denying the right of appeal to a party to the litigation. Further, the Division Bench held that, it is a situation which cannot be held if the Parliament has enacted a provision which is meant to apply to all pending proceedings, the Court has to apply the law as it stands and it is not for the Courts to go into legislative wisdom of the Parliament and thereby the amended provisions were applied on the ground of subsequent amendment to the provisions of Hindu Marriage Act. But, here, the situation is totally different.

In **Dr. N. Shiva Mohana Reddy³** case, this Court took a view that, to amend a petition to convert from judicial separation to divorce, what are the changed circumstances that led to filing of petition for judicial separation into a petition for divorce and what are the changed circumstances that led to the filing of the application for amendment, should be indicated in the affidavit. The affidavit merely reiterates the stand taken in the petition for judicial separation. No doubt, new facts can be brought to the notice of the Court. Merely because the amendment sought is not prejudicial to the rights of other party, it does not mean that such an amendment is to be accepted. In the absence of specific pleading made with regard to the changed circumstances and other relevant ingredients, the order passed dismissing the petition under Order VI Rule 17 by the Trial Court does not suffer from any infirmity.

In view of the principle referred in **Dr. N. Shiva Mohana Reddy³** case, if the proposed amendment is based on subsequent

changed circumstances, the Court can allow such amendment, if supported by material.

The allegations made in the affidavit or the reasons assigned by the petitioner for proposed amendment are extracted hereunder for better appreciation.

“Paragraph 3: I submit that at the time of filing the above OP, as I was under tremendous pressure due to the mental agony I was subjected to at the hands of the Respondent, so also on account of the fact that I and my father were driven to the Police, who manhandled my father. Hence I could not mention certain facts. That apart, there are certain subsequent events which caused great mental agony to me and warrant dissolution of marriage. In view of the said facts, the marital relationship has lost its sanctity and I have decided to pray that my marriage be dissolved by a decree of divorce on the ground of cruelty of the Respondent. Hence I may be permitted to add the following paragraphs and amend the prayer seeking dissolution of marriage instead of judicial separation. otherwise I shall suffer heavy and irreparable loss.”

One of the allegations among other allegations is subsequent events which caused mental agony to the petitioner which warrants him to seek dissolution of the marriage. But, what are the subsequent events and instances that led him to seek dissolution of marriage on the ground of cruelty were not mentioned. Even if those allegations are mentioned in the proposed amendment, it must be clear and unequivocal. Such subsequent events should give rise to cause of action on the day that the petitioner was subjected to cruelty to seek divorce under Section 13 (1)(ia) of the Act, but not on the day when the original petition i.e. petition under Section 10(1) of the Act was filed. Therefore, the cause of action for the petitioner for judicial separation can never be a cause of action for dissolution of marriage on the ground of cruelty, if the proposed amendment is based on the subsequent events. In such a case, the amendment cannot be

permitted, as such subsequent events would give rise to a fresh cause of action and that too, the proposed amendment would totally convert a petition filed under Section 10(1) for judicial separation into a petition for divorce filed under Section 13(1)(ia) for dissolution of marriage on the ground of cruelty.

According to Order VI Rule 17 C.P.C the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. However, the principles to allow amendment petitions under Order VI Rule 17 of C.P.C are well settled; viz., that the proposed amendment shall not alter the basic structure or nature of the claim and that the amendment shall not take away the valuable right that accrued to the respondent or such amendment will not take away the unequivocal admissions made in the pleadings.

But, in the present case on hand, the intention of the petitioner is only to convert the petition filed for judicial separation to dissolution of marriage by decree of divorce and the proposed amendment would change the entire nature structure of the claim and it would take away the valuable right that accrued to the respondent.

In **Rameshkumar Agarwal v. Rajmala Exports Private Limited and others**⁴, the Apex Court, relying on **Revajeetu Builders**

⁴ 2012 (4) AL 1 (SC)

and Developers v. Narayanaswamy & Sons and others⁵ to decide the scope of proviso to Order VI Rule 17 of C.P.C, held in paragraph nos.10 and 11 as follows:

“On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the cases;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are illustrative and not exhaustive.”*

As per point nos.1, 3 & 5 referred supra, the amendment sought should be imperative for proper and effective adjudication of the case and the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money and the proposed amendment shall not constitutionally or fundamentally changes the nature and character of the case. Here, in this case, the proposed amendment is not imperative for proper and effective adjudication of the case i.e., petition filed under Section 10(1) of Hindu Marriage Act. But the petitioner wanted to convert the petition filed for judicial separation into dissolution of marriage by granting decree of divorce, it would constitutionally and fundamentally change the nature and character of the claim in the petition pending as on that date. In such circumstances, the Court

⁵ 2009 (8) SCJ 401

can refuse grant permission to amend the pleadings and in fact, it is not an amendment covered by Order VI Rule 17 C.P.C, but it is a conversion of a petition from judicial separation to dissolution of marriage. In such a case, the Court cannot permit such amendments which lead to constitutional change of the character of the proceedings. In view of the law declared by the Apex Court referred supra, as the proposed amendment would change its fundamental character and cause prejudice to the respondent and such fact may give rise to a separate independent cause of action subsequent to filing of the petition, if any. But, such cause of action cannot relate back to the date of filing petition which is totally for different reliefs. Therefore, the proposed amendment virtually changes the nature of the proceedings and if such amendments are allowed, it would frustrate the very purpose of amendment of the pleadings and it is nothing but camouflaging the power under Section Order VI Rule 17 C.P.C to convert the petition from one relief to another under different sections of law.

If it is a pre-trial amendment, normally the Courts will allow said amendment as a matter of course, subject to other conditions i.e. change of nature of proceedings and taking away the valuable right that accrued to the other side. But, here, on account of the proposed amendments, the nature of the proceedings is totally changed and the relief claimed by way of amendment is based on subsequent cause of action. Such cause of action will not go back to the date of original petition for dissolution of Marriage under Section 13(1)(ia) of the Act. Hence, dismissal of petition by Judge, Additional

Family Court, Hyderabad cannot be faulted to interfere with the order under challenge, in view of limited power under Article 227 of Constitution of India.

This Court while exercising power under Article 227 can exercise its discretion to interfere in the following circumstances:

- a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise.

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India:

- a) Where the only question involved is one of interpretation of deed;
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;
- e) to correct an error of law, not being an error apparent on the face of the record;
- f) to interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice.

Article 227 deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the

power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in *certiorari* jurisdiction and such power can also be exercised *suo motu*.

It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in “**State (N.C.T. Of Delhi) vs Navjot Sandhu@Afsan Guru**”⁶, that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds. Therefore, I am unable to exercise power under Article 227 of the Constitution of India to interfere with the findings recorded by the Trial Court, since, the trial Court acted within its bounds and passed the order, which is under challenge.

In view of the limited powers of this Court under Article 227 of the Constitution of India, having found no error in the order under challenge in the revision petition, this Court cannot interfere with the findings and consequently liable to be dismissed.

In the result, the civil revision petition is dismissed.

⁶ 2003 (6) SCC 641

Consequently, miscellaneous petitions pending if any, shall stand dismissed. No costs.

C.R.P.M.P.No.5193 of 2015

This petition is filed to vacate the interim granted by this Court on 17.07.2015 in C.R.P No.2706 of 2015.

In view of the detailed order passed in C.R.P.No.2706 of 2015, the interim order passed on 17.07.2015 shall stand vacated.

JUSTICE M. SATYANARAYANA MURTHY

Dated:02.06.2017

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