

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.1706 of 2016
Date of decision:18.5.2017**

Varun Singla

...Petitioner

Versus

Teena

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.P.K.Bansal, Advocate for the petitioner.
Mr.Vipin Sharma, Advocate for
Mr.S.M.Sharma, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 15.2.2016 passed by the learned Family Court, whereby application of the petitioner, filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure ('CPC' for short), seeking amendment in his divorce petition, was dismissed, husband-petitioner has approached this Court by way of instant civil revision petition, filed under Article 227 of the Constitution of India, for setting aside the impugned order dated 15.2.2016 (Annexure P-5).

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record that petitioner filed his divorce petition under Section 13 of the Hindu Marriage Act, 1955 ('the Act' for short) vide HMA No.246 dated 22.4.2013. During pendency of the divorce petition, petitioner filed an application under Order 6 Rule 17 read with Section 151

CPC, vide Annexure P-3 on 20.1.2016, i.e. after about three years of filing his divorce petition. Respondent-wife filed her written statement and after completion of pleadings of the parties, issues had already been framed by the learned Matrimonial Court, thus, trial had already commenced.

The entire case of the petitioner for seeking amendment in the divorce petition, was based on the fact that the events pertaining to the father of the petitioner, which took place in the months of July 2013 and May 2014, being later in point of time were necessary to be incorporated in the divorce petition. The learned Matrimonial Court has rightly turned down the abovesaid plea taken on behalf of the petitioner primarily for two reasons; firstly latter events were not pertaining to the husband-petitioner and secondly the petitioner was trying to delay the proceedings. Another reason recorded by the learned Matrimonial Court for dismissal of the application for amendment was that since the trial had already commenced and the petitioner has failed to exercise his due diligence, he was not entitled for amendment in his divorce petition at this belated stage. Reasons and findings recorded by the learned Matrimonial Court cannot be said to be illegal in any manner. Having said that, this Court feels no hesitation to conclude that the learned Matrimonial Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

In fact, no explanation is forthcoming as to why the petitioner could not seek this amendment at an earlier point of time, if it was so necessary. Further, if the amendment in the divorce petition is permitted at this belated stage and thereafter some more such events take place, as the

parties seem to have become fond of litigation, filing one after the other cases against each other, petitioner would again seek to amend his divorce petitions and it would be an unending process, which is not permissible in law. It is so said because the laudable object of speedy justice would get frustrated, besides such an amendment being contrary to the legislative intent clearly expressed in proviso to Order 6 Rule 17 CPC. In this view of the matter, it can be safely concluded that the learned Matrimonial Court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

So far as the following judgments of the Hon'ble Supreme Court as well this Court, relied upon by the learned counsel for the petitioner in **Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others, 2006 AIR (SC) 1647, K.Kannan Vs. K.Jayalakshmi, 2004 (13) SCC 41, Ramesh Kumar Aggarwal V. Rajmala Exports Pvt. Ltd. and others, 2012 (2) RCR (Civil) 739 (SC), Mahila Ramkali Devi and others Vs. Nandram (D) Thr. LRs and others, 2015 (5) RCR (Civil) 562 (SC), Durga Publicity Service and another Vs. Municipal Corporation, Jalandhar, 2015 (4) RCR (Civil) 515 (P&H), Vipin Sethi Vs. Dildar Singh, 2011 (5) RCR (Civil) 532 (P&H); Phumman Singh Vs. Sukhminder Kaur and another, 2010 (4) RCR (Civil) 185 (P&H), Kanta Devi etc. Vs. Hagian etc, 2015 (4) RCR (Civil) 935 (P&H); B.K.Aggarwal and another Vs. Avinash Grover and others, 2015 (1) Rent LR 19 (P&H) and Sh.Arjun Dass and others Vs. Sh. Ashok Kumar and others, 2015 (3) PLR 261 (P&H), are concerned, there is no**

dispute about the law laid down therein.

However, on close perusal of the cited judgments, none of them has been found to be of any help to the petitioner, being clearly distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533, **Union of India Vs. Amrit Lal Manchanda and others**, 2004 (3) SCC 75, **State of Orissa Vs. Md. Illiyas**, 2006 (1) SCC 275 and **State of Rajasthan VS. Ganeshi Lal**, 2008 (2) SCC 533.

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's case** (supra), reiterating its view taken in **Amrit Lal Manchanda's case** (supra) and **Mohd. Illiyas's case** (supra), which can be gainfully followed in the present case, read as under:-

11. "12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio

decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered

and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used

by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To

decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

In view of the peculiar fact situation of the case in hand, referred to hereinabove, this Court is of the considered view that neither the latter events sought to be incorporated by the petitioner-husband in his divorce petition by way of amendment were relevant nor necessary, for rendering an effective judgment by the learned matrimonial court. Intention seems to be only to delay the proceedings, causing maximum harassment to the respondent-wife. There is hardly any explanation for this delay of more than three years as to why the application for amendment could not be moved before commencement of the trial.

In such a situation, the learned Matrimonial Court was well justified in invoking the provisions of law contained in proviso to Order 6 Rule 7 CPC, while passing the impugned order, which has been found based on sound reasons. Not only the proceedings are unduly delayed, while repeatedly filing such kind of unnecessary applications, but these also waste valuable time of the court, which can be better spent in disposal of cases, as the courts are already over burdened. The amendment sought does not seem

to be bonafide and it was rightly declined by the learned trial Court.

It is equally important to note here that once the petitioner has come to know about the complete defence of the respondent from her written statement already filed, the proposed amendment, at the hands of the petitioner-husband in his divorce petition, would cause a serious prejudice to the respondent-wife, whereas refusal of amendment is not likely to cause any kind of prejudice or injustice to the petitioner. Unless a prayer seeking amendment in the pleadings is found to be bonafide and necessary for rendering an effective judgment, it must be discouraged by the courts so as to avoid unnecessary delay in the proceedings.

The above-said view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in **State Bank of Hyderabad Vs. Town Municipal Council, 2007 (1) SCC 765; Revajeetu Builders & Developers Vs. Narayanaswamy & Sons and others, 2009 (10) SCC 84; J.Samuel and others Vs. Gattu Mahesh and others, 2012 (2) SCC 300; Khushi Ram Vs. Murli Manohar Thatheran Panchayati Mandir and Dharamsala Society, 2010 (2) CCC 286 (P&H), Parkashveer Vs. Smt. Champa and others, 2011 (34) RCR (Civil) 179 (P&H) and CR No.488 of 2017 (Sher Singh and others Vs. Nagar Council, Sunam and others), decided on 15.2.2017.**

The Hon'ble Supreme Court in the case of **Revajeetu Builders & Developers** (supra) traced the legislative history, objects and reasons for incorporating the orders under Order 6 Rule 17 CPC. Relevant observations made by the Hon'ble Supreme Court in this regard in paras 27 to 33 of its

judgment, read as under:-

"We are tracing the legislative history, objects and reasons for incorporating Order 6 Rule 17 not because it is necessary to dispose of this case, but a large number of applications under Order 6 Rule 17 are filed and our courts are flooded with such cases. Indiscriminate filing of applications of amendments is one of the main causes of delay in disposal of civil cases. In our view, clear guideline may help disposing off these applications satisfactorily.

We deem it appropriate to give historical background of Rule 17 Order 6 corresponds to section 53 of the Old Code of 1882. It is similar to Order 21 Rule 8 of the English Law. Order 6 Rule 17 Civil Procedure Code reads as under :

"Amendment of Pleadings. - 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:

Provided 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 trial."

In our considered view, Order 6 Rule 17 is one of the important provisions of the Civil Procedure Code, but we have no hesitation in also observing that this is one of the most misused provision of the Code for dragging the proceedings indefinitely, particularly in the Indian courts which are otherwise heavily overburdened with the pending cases. All Civil Courts ordinarily have a long list of cases, therefore, the Courts are compelled to grant long dates which causes delay

in disposal of the cases. The applications for amendment lead to further delay in disposal of the cases.

It may be pertinent to mention that with a view to avoid delay and to ensure expeditious disposal of suits, Rule 17 was deleted on the recommendation of Justice Malimath Committee by the Civil Procedure Code (Amendment) Act, 1999 but because of public uproar, it was revived. Justice C.K. Thakker, an eminent former Judge of this Court in his book on Civil Procedure Code (2005 Edition) incorporated this information while dealing with the object of amendment.

In a recently published unique, unusual and extremely informative book "Justice, Courts and Delays", the author Arun Mohan, a Senior Advocate of the High Court of Delhi and of this Court, from his vast experience as a Civil Lawyer observed that 80% applications under Rule VI Order 17 are filed with the sole objective of delaying the proceedings, whereas 15% application are filed because of lackadaisical approach in the first instance, and 5% applications are those where there is actual need of amendment. His experience further revealed that out of these 100 applications, 95 applications are allowed and only 5 (even may be less) are rejected. According to him, a need for amendment of pleading should arise in a few cases, and if proper rules with regard to pleadings are put into place, it would be only in rare cases. Therefore, for allowing amendment, it is not just costs, but the delays caused thereby, benefit of such delays, the additional costs which had to be incurred by the victim of the amendment. The Court must scientifically evaluate the reasons, purpose and effect of the amendment and all these factors must be taken into consideration while awarding the costs.

To curtail delay in disposal of cases, in 1999 the Legislation altogether deleted Rule 17 which meant that

amendment of pleading would no longer have been permissible. But immediately after the deletion there was widespread uproar and in 2002 Rule 17 was restored, but added a proviso. That proviso applies only after the trial has commenced. Prior to that stage, the situation remains as it was. According to the view of the learned author Arun Mohan as observed in his book, although the proviso has improved the position, the fact remains that amendments should be permissible, but only if a sufficient ground therefore is made out, and further, only on stringent terms. To that end, the rule needs to be further tightened.

The general principle is that courts at any stage of the proceedings may allow either party to alter or amend the pleadings in such manner and on such terms as may be just and all those amendments must be allowed which are imperative for determining the real question in controversy between the parties. The basic principles of grant or refusal of amendment articulated almost 125 years ago are still considered to be correct statement of law and our courts have been following the basic principles laid down in those cases.”

Further, after a detailed deliberations on the subject, dealing with different aspects and relevant factors for permitting or declining amendment in the pleadings, the Hon'ble Supreme Court laid down the law and guiding factors for the courts, for deciding the application for amendment under Order 6 Rule 17 CPC, in paras 61 to 70 of its judgment in the case of **Revajeetu Builders & Developers** (supra), which aptly apply to the facts of the case in hand, read as under:-

The first condition which must be satisfied before the amendment can be allowed by the court is whether such

amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment.

NO PREJUDICE OR INJUSTICE TO OTHER PARTY :

The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side.

The Courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care.

In Ganga Bai's case (supra), this Court has rightly observed :

"The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court."

COSTS :

The Courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters

must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive.

- (i) At what stage the amendment was sought ?*
- (ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial or post-trial stage;*
- (iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.*
- (iv) The imposition of costs should not be symbolic but realistic;*
- (v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.*
- (vi) In case of appeal to higher courts, the victim of amendment is compelled to bear considerable additional costs.*

All these aspects must be carefully taken into consideration while awarding the costs.

The purpose of imposing costs is to:

- a) Discourage mala fide amendments designed to delay the legal proceedings;*
- b) Compensate the other party for the delay and the inconvenience caused;*
- c) Compensate the other party for avoidable expenses on the litigation which had to be incurred by opposite party for opposing the amendment; and*
- d) To send a clear message that the parties have to be careful while drafting the original pleadings.*

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS :

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 for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case ?

(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 6 Rule 17. These are only illustrative and not exhaustive.

The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

Respectfully following the law laid down by the Hon'ble

Supreme Court as well as this Court and applying the same to the facts of the present case, this Court is of the considered opinion that the impugned order passed by the learned Matrimonial Court has not been found suffering from patent illegality or perversity, which may warrant interference, at this hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order has been found supported by sound reasons. Divorce petition filed by the petitioner more than three years ago ought to have been decided by now. However, it seems that petitioner is not allowing the learned Matrimonial Court to proceed further moving one after other applications and then approaching this Court.

Keeping in view the long pendency of matrimonial dispute between the parties, this Court made an effort to get the matter amicably settled between the parties, by referring this matter to the Mediation and Conciliation Centre of this Court. However, parties could not arrive at an amicable settlement. In the recent past, it has also been experienced that sometimes the parties to the litigation, seem to be under a totally wrong impression as if they were going to oblige the court, in arriving at an amicable settlement. They must keep in mind the that the only object of the court is to get their dispute resolved amicably so that bad blood is not maintained for all times to come and the parties may also save their valuable time and money.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that since the impugned order passed by the learned Matrimonial Court has been found based on true facts of the case and also in consonance with the principles of law laid down by the Hon'ble Supreme Court as well as this Court in the cases referred to hereinabove, the same deserves to be upheld. Instant civil revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present civil revision petition stands dismissed, however, with no order as to costs.

18.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No