

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 963 of 2017**

- Smt. Reeta Shrikant Motdhare W/o Shrikant Motdhare, Aged About 45 Years R/o C/o Banjari Prakash Photo Framing Sati Bazar, Raipur, Tahsil And District Raipur, Chhattisgarh.

---- Petitioner**Versus**

- Shrikant Motdhare S/o Late Laxman Motdhare, Aged About 38 Years R/o Kalkapara, Dongargarh, District Rajnandgaon, Chhattisgarh.

---- Respondent

For Petitioner : Shri Parag Kotecha, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****03/01/2018**

1. Heard.
2. The instant petition is against the order dated 06.12.2017 in respect of the dismissal of an application filed under Order 6 Rule 17 CPC moved by the petitioner/wife, who is a respondent in the case filed by the husband for divorce.
3. Learned counsel for the petitioner would submit that initially an ex-parte decree of divorce was granted in favour of the husband and after that ex-parte decree of divorce, the husband/respondent has remarried and subsequently that ex-parte decree of divorce was set aside. Consequently, again the case for divorce became alive, which was filed by the husband. He would further submit that in such petition the wife wanted to bring a fact

on record by way of amendment that the husband has remarried and it will have a larger implication in the order of suit for divorce, which was filed by the husband and have the effect on its alimony if at all the decree of divorce is granted or is refused or it will have an effect of nullifying the second marriage, therefore, he further submits that he do not want to adduce any further evidence only the pleading has to be incorporated, therefore, he prays that the application for amendment may be allowed.

4. I have perused the order of the learned Court below. It appears that primarily the Court has dismissed the petition on the ground that the amendment petition is delayed as evidence of the husband/respondent has already been closed and the evidence of the wife is still going on.
5. I have also perused the contents of the application filed under Order 6 Rule 17 CPC, wherein it is stated that the respondent/husband on 08.02.2012 has performed marriage with one Medha and further the question of jurisdiction of the Court is also been raised and apart from that demand of alimony of Rs.25 Lakhs has been made.
6. The Supreme Court in the matter of ***Mahila Ramkali Devi And Ors vs Nandram (D) Thr. Lrs. & Ors (2015 AIR SCW 3187)*** has laid down a preposition that 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 rules of procedure. The Court always gives relief to amend the pleading of the 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 cannot be compensated for by an order of cost and the same preposition was further followed in the case of ***Mohinder Kumar Mehra Vs. Roop Rani Mehra &***

others (AIR 2017 SC 5822).

7. In view of the above settled legal prepositions, taking into consideration the proposed amendment in this case, wherein the wife has stated that the husband has remarried and further has stated the financial capability of the husband, naturally it will have an impact on the proceeding which is pending, if it is found to be proved and if it is denied then the wife may lose her valuable rights. In the result, taking into the nature of the amendment proposed and also the fact that the evidence is still going on before the Court below, I am inclined to allow this petition. Accordingly, the petition is allowed and the amendment application which was filed under Order 6 Rule 17 read with Section 151 CPC is also allowed.
8. Let necessary amendment be carried out on the next date of hearing before the Court below and the parties shall adduce their evidence continuously as led before it.

Sd/-

Goutam Bhaduri
Judge

Ashu