

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 744 OF 2018

Sandip Balasaheb Patil	...	Petitioner
V/s.		
Yogita Sandip Patil	...	Respondent

- Mr.Balwant V. Salukhe for the Petitioner.
- Mr.Gajanan Mahadev Savagave for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 23rd MARCH, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and learned counsel for the Respondent.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 22nd December 2017 passed by the 2nd Jt. Civil Judge, Senior Division, Sangli, below the application at Exhibit-105 in Hindu Marriage Petition No.85 of 2013.

3] The application at Exhibit-105 was filed by the Respondent, herein, who is the Petitioner before the trial Court, for amendment of her Petition under Order-6 Rule 17 of the Code of Civil Procedure (*for*

short, "C.P.C.").

4] Earlier, the Respondent/Original Petitioner has filed the Petition under Section 12(1)(c) of the Hindu Marriage Act, 1955, for annulment of marriage by the decree of nullity on the ground that her consent for marriage was obtained fraudulently by concealing the fact that the Petitioner-husband is suffering from H.I.V. positive.

5] According to the Respondent, when she came to know about the disease of the Petitioner-husband, she was mentally shocked and therefore, hurriedly she had applied for annulment of marriage by decree of nullity. After taking the legal and medical advice, she came to know that the H.I.V. positive is a "venereal disease in a communicable form". Therefore, now she intends to claim alternate relief of decree of divorce on the ground that the Petitioner-husband is suffering from a venereal disease in communicable form and to that extent she wanted to amend her Petition to claim divorce under Section 13(1)(v) of the Hindu Marriage Act and for that purpose to incorporate the necessary facts to that effect.

6] This application came to be resisted by the Petitioner-husband contending *inter-alia* that the amendment is sought at the very belated stage, after the evidence of three witnesses is recorded

and therefore, the Proviso to Order-6 Rule-17 C.P.C. comes into play, hence such amendment can not be allowed. Secondly, it was submitted that the proposed amendment will change the nature of the Petition, as earlier Petition was for annulment of marriage, and now she intends to convert the same for decree of divorce.

7] The trial Court has allowed the said amendment application and hence, the instant Writ Petition.

8] It is true that the nature of the Petition is going to be changed in view of the proposed amendment, considering that earlier it was for annulment of marriage and now it will be for decree of divorce. However, the ground which was pleaded for annulment of marriage and now for divorce is one and the same. Thus, only the nature of relief is changed. Therefore, no prejudice, as such, is likely to be caused to the Petitioner. As regards the delay in preferring this application for amendment, considering that the proposed amendment will avoid the multiplicity of the proceedings and curtail the litigation between the spouses, such amendment needs to be allowed in order to resolve the marital dispute between the parties finally, effectually and completely in one proceeding itself.

9] In my considered opinion, the Proviso to Order-6 Rule-17

C.P.C. will not come in to picture in this case, as the entire factual matrix for seeking this relief is not only implicit but set out in detail in the original petition itself. As held by the Hon'ble Apex Court in the case of *Abdul Rehman & Another Vs. Mohd. Ruldu & Others, (2012) 11 SCC 341*, such application for amendment needs to be allowed, so as to decide the dispute between the parties finally and completely. It was held by the Hon'ble Apex Court in this judgment, the object of the Order-6 Rule-17 of C.P.C. and also of the Proviso thereto is that the Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side.

10] In the words of the Hon'ble Apex Court, *"this Court in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case"*.

11] It was further held that, *"if the relief claimed by way of proposed amendment is implicit in the factual matrix set out in the*

un-amended plaint, then such relief needs to be granted, so as to settle the dispute between the parties finally”.

12] In paragraph No.18 of the judgment, it was also observed that, *“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”.*

13] These observations of the Hon'ble Apex Court squarely apply to the facts of the present case. As a result, the impugned order passed by the trial Court being just, legal and correct, it does not call for interference.

14] As regards the trial having been commenced and examination of three witnesses of the Respondent-wife being conducted, the Petitioner is given an opportunity, if he desires to do so, to apply to the trial Court for recall of those witnesses for their further cross-examination, if any is required. With this liberty, the Writ Petition stands disposed off as dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]