

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

Writ Petition No. 9512 OF 2017

Mr. Mayank Prahlad Sinhal

...Petitioner

Versus

Mrs. Ruchi Mayank Sinhal

...Respondent

WITH

Writ Petition No. 9513 OF 2017

Mayank Prahlad Sinhal

...Petitioner

Versus

Ruchi Mayank Sinhal

...Respondent

Mr.Ashutosh Kaushik i/b. Kaushik & Co., for the Petitioner.

Mrs.Jalaja Nambiar with Mr.Narayana Babu Suvarna, for the Respondent.

Coram : G.S.KULKARNI, J***Date : 25 JANUARY 2018***

P.C.

1. Heard the learned Counsel for the parties. Both these petitions are filed by the petitioner-husband.

2. In Writ Petition No.9513 of 2017, the challenge of the petitioner is to the order dated 16 June 2017 passed by the learned Judge, Family Court at Bombay whereby the application of the petitioner for amendment of the petition filed under the provisions of Order 6 Rule 17 of the Code of Civil Procedure stands rejected. By the proposed amendment, the petitioner intended to incorporate in the petition, the

case about physiological, biological and mental health of the respondent and to incorporate additional prayer as b(i) to the petition which reads thus:-

“b(i) This Hon'ble Court may be pleased to Order for a complete physiological, biological and mental medical check-up of the Respondent by Doctors on the panel of this Hon'ble Court or by any other doctor or doctors or medical team as this Hon'ble Court may deem fit and proper at the cost of Petitioner abovenamed.”

3. In the proposed amendments in paragraphs 4(c), 4(l), 4(y) and paragraph 5, the petitioner for the first time has made averments that the respondent is suffering from acute mental sickness. The application for amendment was opposed by the respondent-wife on the ground that the proposed amendment was introduction of a new case, totally inconsistent with the cause as set out in the petition, namely that the petitioner by such amendment was introducing a case under Section 13(1) (iii) of the Hindu Marriage Act namely of a ground for divorce that *the respondent has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.* My attention is drawn to the relevant averments as made in the marriage petition being Petition No.A-179 of 2015 filed by the petitioner. Learned Counsel for the respondent submits that none of the averments would even remotely indicate the cause of action as now been sought to be introduced. In submitting that the petitioner had been very

casual on the proceedings he instituted against the respondent/wife, learned Counsel for the respondent has also drawn my attention to the earlier petition (petition no.A-2769 of 2013) which was filed by the petitioner for divorce on the ground under Section 12(1)(a) of the Hindu Marriage Act, namely that the marriage has not been consummated owing to the impotence, which according to respondent no.1 was completely an untenable ground as against the respondent-wife. Accordingly the said petition was withdrawn as permitted by the family Court by an order dated 9 December 2014 with liberty to file a fresh petition.

4. Learned Counsel for the petitioner in assailing the impugned order would however submit that there is sufficient foundation for the petitioner to introduce such grounds as set out in the amendments and the prayer proposed to be made. My attention has been drawn to paragraph no.4(f), (g), (I), (j), (l) and (y). The averments in that regard are merely are in regard to certain medicines being taken by the respondent and the so called behaviour of the respondent, being the petitioner's version. When learned Counsel for the petitioner was asked as to whether apart from his averments in the pleadings any supporting material/document is available to substantiate such contentions, my attention has been drawn to a medical certificate which is dated 15 February 2016 of Dr.Vijay Y.Patil, M.S.(Ortho), Consulting Orthopaedic and Joint Replacement Surgeon, who simplicitor has advised some sonography of the respondent. The

contents of the medical certificate reads thus:-

“This is to certify that Mr.Prahlad Chandra Sinhal and Mrs.Kailash Devi Sinhal brought Mrs.Ruchi Sinhal to Consult me on 9th October,2013 at Omkar Healthcare, Gorai, Borivali (W), Mumbai.

I advised a Sonography of Mrs.Ruchi Sinhal.

I certify that the attached is a true copy issued by me.”

5. There is another medical prescription dated 9 October 2013 which clearly records the observations of abnormal swelling over middle back and advised sonography (USG of swelling). Apart from this, there is no other material on record. In my opinion, such a medical certificate issued by a Consulting Orthopaedic and Joint Replacement Surgeon will be of no avail in regard to the specific averments sought to be made which are averments relevant to the provisions under Section 13(1)(iii) of the Hindu Marriage Act. It would be useful to note the said provision which under the Explanation incorporates the meaning of 'mental disorder' as also 'psychopathic disorder'. Section 13(1)(iii) reads thus:-

“Section 13:

(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party,

.... ..

[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation . In this clause,

(a) the expression **mental disorder** means mental illness, arrested

or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression **psychopathic disorder** means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

6. Considering the above clear position in law and the case which is sought to be introduced by the petitioner by the proposed amendment, in my opinion, there is much substance in the contention as urged on behalf of the respondent that the attempt on the part of the petitioner is to incorporate completely a new case and introduction of a new cause of action. There is also much substance in the contention as urged on behalf of the respondent that if this was to be the nature of physiological and biological behaviour of the respondent then surely this could have been the basic averment for the ground on which the petitioner could have approached the Court at the threshold, not only in the present petition but also in the earlier petition.

7. The learned Judge of the family Court by the impugned order, in my opinion, has appropriately considered the entire perspective of the matter in rejecting the amendment application. The petitioner cannot take inconsistent positions, as it cannot be believed that the petitioner himself was not aware as to what would be the ground on which he would file

and pursue the marriage petition. The impugned order would not require any interference. The petition is accordingly rejected.

8. The second petition being Writ Petition No.9512 of 2017 challenges the consequent order passed on the same date i.e. on 16 June 2017 by which the application of the petitioner seeking complete physiological, biological and mental medical check-up of the respondent, has been rejected. The learned Judge in paragraph 3 of the order has correctly observed that the petitioner merely stating about physiological, biological and mental medical check-up, was not sufficient. Nowhere it was described what he meant by physiological, biological and mental medical check-up. So also the petitioner is vague and has not detailed as to the nature of the medical check up he intends, the respondent to undergo. It is observed by the learned trial judge that in the absence of all these details, seeking a biological check up without, any reason was nothing but causing mental harassment to the respondent-wife. It is also correctly observed that the petitioner was well aware about the entire facts before filing of this petition and therefore, if the same was to be a reality he was certainly in a position to describe in detail regarding the physiological, mental disorder and sub-normality of intelligence. In my opinion, the learned Judge of the family Court has correctly come to a conclusion on the facts as placed on record that such an application ought not to be entertained. Apart from the lack of any merit in the said

application, the application could also not have been entertained once the amendment application to incorporate such a plea and making prayer on the basis of such a plea, was rejected. It may be observed that the plea which was sought to be raised on behalf of the petitioner, was raised after more than two years from filing of the petition as an afterthought. It clearly appears that it is an attempt on the part of the petitioner to cause harassment to the respondent-wife.

9. Learned Counsel for the petitioner in support of the submission has placed reliance on the decision of the Supreme Court in the case “*Chakreshwari Construction Pvt.Ltd. Vs. Manohar Lal*”¹ in regard to the principles to be followed by the court in allowing or rejecting application for amendment under the provisions of Order 6 Rule 17 of the CPC. The principle as laid down in the said decision cannot be disputed. However, in the facts of the present case, as the proposed amendment fundamentally changes the nature and character of the petitioner's case, the amendment has been correctly disallowed.

10. Resultantly no ground is made out for interference in the impugned order. The petition is devoid of merit. It is accordingly rejected. No costs.

11. At this stage, learned Counsel for the respondent submits that

¹ (2017)5 SCC 212

not only the application as filed by the petitioner before the trial Court as also the filing of this petition, is an abuse of process of law. She submits that by virtue of such an application and making such serious allegations has caused respondent-wife lot of humiliation and harassment as also observed in the impugned order, she accordingly prays that the petition be dismissed with exemplary cost. Learned Counsel for the petitioner however has opposed this prayer. It is submitted that no prejudice whatsoever is caused to the respondent-wife.

12. Considering the facts and circumstances of the case as noted above and the orders passed by the family Court, in my opinion, it would be appropriate to dismiss the petitions with costs quantified at Rs.20,000/- to be paid by the petitioner to the respondent within four weeks.

(G.S.KULKARNI, J)