

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1614 OF 2018

Rakhi G. Kharde @
Mrs. Rakhi S. Inamdar

.. Petitioner

vs.

Sanjiv A. Inamdar

.. Respondent

Mr. Mayuresh D. Modgi for the Petitioner.

CORAM : M. S. SONAK, J.

DATE : 6 DECEMBER 2018.

P.C. :-

1] Hear Mr. Modgi, the learned counsel for the petitioner.

2] The challenge in this petition is to the order dated 3rd November 2017 by which the learned Trial Court has permitted the respondent (original plaintiff) to amend the petition and to raise a ground for divorce. Mr. Modgi submits that the plaint as originally filed had sought for a declaration that marriage is a nullity or there is no marriage in the eyes of law. He submits that after the commencement of the trial, the respondent could not have been allowed to amend the plaint and to seek an inconsistent ground that he was entitled to divorce. Mr. Modgi submits that the learned Trial Court has failed to consider the effect of the proviso to Order 6 of Rule 17 of the CPC. Further, the learned Trial Court failed to

appreciate that the proposed amendment changes the complete nature of the suit. He submits that Courts can liberal whilst in the matter of amendment to the written statements, no such liberality is permitted when it comes to the amendment of the plaint. He relies upon *Usha Swami and ors. vs. Kiran Swami and ors. - (2007) 5 SCC 602*. For all these reasons, he submits that the present petition may be allowed and the impugned order be set aside.

3] In this case, the initial plaint had sought for a declaration that marriage is a nullity. By means of amendment, the respondent – plaintiff seeks to urge that assuming his plea for nullity fails, the respondent – plaintiff is entitled to a decree of divorce on grounds which have arisen during pendency of the proceedings. The learned Trial Court has reasoned that such an amendment is required to be permitted in order to avoid multiplicity of proceedings. The learned Trial Court has reasoned that in any case the respondent would be entitled to institute a fresh suit for divorce on the ground urged.

4] In my opinion, there is nothing unreasonable or perverse in the view taken by the learned Trial Court. There is no bar raising alternate plea. Raising of alternate plea does not amount to change

of fundamental structure of the suit. In any case, since a fresh suit for divorce could always have been filed, in order to avoid multiplicity of the proceedings, amendment could also have been allowed as it has been done in the present case.

5] In this case, it does appear that the evidence of the respondent had already commenced at the stage when amendment was applied for. The proviso to Order 6 Rule 17 of the CPC does require the party to plead and establish diligence. In the present case, the amendment was applied for on the basis of circumstances which are alleged to have taken place during pendency of the proceedings. Therefore, it cannot be said that there is non-compliance with the proviso to Order 6 Rule 17 of the CPC.

6] In *Usha Swami (supra)*, the Apex Court has no doubt held that the Courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss caused to the other side or on the ground that the prayer for amendment was not a bona fide one. The Apex Court has held that the real question is whether the amendment is necessary for determining the real question in controversy. The Apex Court has

also made a distinction between approach to be adopted when it comes to amendment of written statement and amendment of a plaint. In the written statement, it is permissible to a defendant to even take inconsistent pleas so long as they do not cause grave injustice and irretrievable loss to plaintiff or displacing him completely. However, the decision is not an authority for proposition that a plaintiff is not even entitled to take up an alternate plea in the plaint. Again, in this case, the petitioner has failed to demonstrate a case of any grave injustice or irretrievable prejudice and therefore, following the principles of *Usha Swamy (supra) itself*, there is no necessity to interfere with the impugned order.

7] Accordingly, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)