



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2018
DELIVERED ON : 02.08.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.471 of 2018
and
CMP (MD) No.2101 of 2018

P.Arunkumar .. Petitioner/Petitioner/Petitioner

vs

I.Indumathi .. Respondent/Respondent/Respondent

Prayer: Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order dated 30.01.2018 made in I.A.No.440 of 2017 in I.D.O.P.No.9 of 2014 on the file of the I Additional District Judge, Madurai.

For Petitioner : Mr.R.Devaraj
For Respondent : Mr.S.M.S.Johnny Basha

O R D E R

This civil revision petition is filed challenging the order dated 30.01.2018 made in I.A.No.440 of 2017 in I.D.O.P.No.9 of 2014 on the file of the learned I Additional District Judge, Madurai.

2.The facts in a nutshell are as under: The petitioner/husband filed I.D.O.P.No.9 of 2014 under Section 18 of the Divorce Act to declare the marriage between the petitioner/husband and the respondent/wife as null and void, inter alia, alleging that the respondent/wife had committed various acts of cruelty. However, the petitioner/husband failed to seek relief under Section 10(1) (x) of the Divorce Act for grant of divorce as an alternative relief and, therefore, he filed I.A.No.440 of 2017 for amendment of the prayer in order to avoid multiplicity of litigation.

3.The said application was resisted by the respondent/wife contending that the trial in the case has completed and when the matter is pending arguments, the petitioner/husband had filed an



application seeking amendment, which in effect is a new relief of dissolution of marriage. The amendment, it is alleged, would cause great prejudice to the case of the respondent/wife.

4. The Court below after considering the entire conspectus of the whole issue and facts and circumstances, more particularly, the factum that evidence of parties is completed and the case is pending for arguments and that the respondent/wife had already filed a petition in I.D.O.P.No.2 of 2016 for restitution of conjugal rights and the same is also pending and a joint trial was conducted, by order dated 30.01.2018 passed in I.A.No.440 of 2017, dismissed the application holding that the petitioner/husband had filed the application only to fill up the lacuna in his case and he was not diligent in prosecuting his case.

5. Assailing the said order dated 30.01.2018 made in I.A.No.440 of 2017 in I.D.O.P.No.9 of 2014, the present revision is filed for the relief stated supra.

6. It is the contention of the learned counsel appearing on behalf of the petitioner/husband that the petitioner/husband had filed the petition under Order VI Rule 17 of the Civil Procedure Code only as an alternative prayer without amending the pleadings and, therefore, the Court below ought to have allowed the same. It is added that an application under Order VI Rule 17 of the Civil Procedure Code can be filed at any stage of the proceedings.

7. It is further contended that the petitioner/husband had filed the petition under Section 18 of the Divorce Act way back in 2014 and, therefore, by efflux of time, he is entitled to seek the alternative relief of divorce on the ground of cruelty.

8. Per contra, the learned counsel appearing on behalf of the respondent/wife reiterated the reasons that weighed with the Court below in dismissing the application of the petitioner/husband seeking amendment and prayed for dismissal of this revision.

9. I heard Mr.R.Devaraj, learned counsel appearing on behalf of the petitioner/husband and Mr.S.M.S.Johnny Basha, learned counsel appearing on behalf of the respondent/wife and perused the documents available on record, including the order under challenge.

10. Before advertng to the merits of the case, it is apposite to refer to Order VI Rule 17 of the Civil Procedure Code, which reads as follows:-

<https://hcservices.ecourts.org.in/> *Rule 17. 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."

11. Proviso to Order VI Rule 17 was added vide the Code of Civil Procedure (Amendment) Act, 2002. The legislature by means of this amendment has put an embargo on the powers of the Court while allowing an amendment. The embargo is that unless the party who seeks an amendment satisfies the Court that he/she had acted with due diligence, the amendment as sought cannot be allowed.

12. In the case on hand, the petitioner/husband had filed the petition under Section 18 of the Divorce Act way back in 2014. The respondent/wife had filed a petition for restitution of conjugal rights in the year 2016. It is not in dispute and is, in fact, a matter of record that trial in both the petitions was jointly conducted and concluded and the petitions are pending arguments. Therefore, by no stretch of imagination, it can be said that the petitioner/husband acted with due diligence in filing the application under Order VI Rule 17 of the Civil Procedure Code seeking amendment of prayer.

13. It is the duty of the petitioner/husband, who is seeking amendment, to satisfy the Court that he had acted with due diligence and despite such due diligence he could not plead the facts now sought to be pleaded by way of amendment. This has not been done in the present case.

14. In *Revajeetu Builders and Developers vs. Narayanswamy and Sons and Others* (2009) 10 SCC 84, the Apex Court has laid down the factors which are to be taken into consideration while dealing with the applications for amendment. The relevant portion of the said judgment reads as under:

"Factors to be taken into consideration while dealing with application for amendments

63. On critically analysing 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:

<https://hcservices.ecourts.gov.in/hcservices> 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.

64. 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."

15. In the case on hand, the petitioner/husband initially filed the petition under Section 18 of the Divorce Act and after lapse of over three years had filed the application seeking amendment to include the relief of divorce as an alternative. He allowed the trial of both the petitions to conclude and after conclusion of the trial, he woke up from the slumber and had filed the petition seeking amendment of the prayer to include divorce as an alternative prayer on the allegation of cruelty.

16. The learned counsel for the petitioner/husband placed reliance on a decision of the Punjab and Haryana Court in *Deepali v. Pankaj Gupta*, reported in 2006 4 Law Herald 2847, wherein it was held as under:

"21. The contention of the learned senior counsel for the petitioner that as the disease was within the knowledge of the respondent-husband and no pleas of



case of *Municipal Corporation of Grater Bombay v. Lata Pancham and others*, AIR 1965 SC 1008, cannot be sustained as in the present case, the respondent was not raising the pleas of disease for the first time, but it was so claimed even in the original petition. By way of present amendment, the respondent- husband has sought to elaborate the said averment and has prayed for a relief available to him under Section 12 of the Act and, therefore, it cannot be said that the said plea in any way has introduced a new case by way of amendment as was contended by the learned senior counsel for the petitioner."

17. The facts of the case in *Deepali v. Pankaj Gupta*, supra, are distinguishable. In the said case, the trial was yet to commence, unlike the case on hand where trial has concluded and the matter was pending for arguments.

18. There is no iota of material of pleading produced by the petitioner/husband to justify that despite due diligence he could not have raised the issue before the commencement of the trial.

19. For the foregoing reasons, this Court finds no reason to interfere with the order of the Court below. The revision petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The I Additional District Judge,
Madurai.

+ 1 CC TO Mr.R.DEVARAJ, ADVOCATE IN SR No. 76823
+ 1 CC TO Mr.S.M.S.JOHNNY BASHA, ADVOCATE IN SR No. 76825

VSV
TE/RP/SAR-1 : 03/09/2018 : 5P/4C

order made in
C.R.P. (MD) (PD) No.471 of 2018 and
CMP (MD) No.2101 of 2018
02.08.2018