

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.3409 OF 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 30.04.2018 passed in I.A.No.187 of 2018 in O.P.No.675 of 2015 on the file of the Judge, Additional Family Court at Hyderabad.

2. Heard the learned counsel for both parties.

3. The facts leading to filing of the present revision petition are briefly as follows: The marriage of the respondent was performed with the petitioner on 13.04.2014 as per Hindu Rites and Caste Custom. For obvious reasons, bad weather prevailed in the family life of petitioner and respondent. The petitioner herein filed O.P.No.675 of 2015, under Sections 13(1)(ia) and 13(1)(iii) read with 12(1)(c) of the Hindu Marriage Act, on the file of the Additional Family Court at Hyderabad, against the respondent for dissolution of marriage. The petitioner examined himself as PW.1 and got marked the documents. After cross-examination of PW.1, the petitioner filed I.A.No.187 of 2018, under Order VI Rule 17 read with Section 151 C.P.C. for amendment of the divorce petition. The trial Court, after affording a reasonable opportunity to both parties, arrived at a conclusion that the petition lacks merits and *bona fides* and consequently, dismissed the said petition. Hence, the revision petition.

4. To substantiate the arguments, learned counsel for the respondent has drawn the attention of this Court to the decision in **Revajeetu Builders and Developers Vs. Narayanaswamy and**

sons and others¹, wherein the Hon'ble Apex Court held at paragraph No.63 as follows:

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian case, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) 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.”

5. This Court is placing reliance on the decision in **Vidyabai v. Padmalatha**², wherein it is held as follows:

19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of

¹ (2009) 10 SCC 84

² (2009) 2 SCC 409

its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

6. Let me consider the facts of the case on hand in the light of the above legal principles.

7. It is not in dispute that the petitioner filed O.P.No.675 of 2015, under Sections 13(1)(ia) and 13(1)(iii) read with 12(1)(c) of the Hindu Marriage Act, for dissolution of marriage between him and the respondent on the ground of cruelty. The present interlocutory application is filed, under Order VI Rule 17 C.P.C., for amendment of the petition thereby to permit the petitioner to take the plea of desertion. It is needless to say that the desertion itself is one of the grounds available to the spouse to file a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage. In order to appreciate the contention of the petitioner, it is not out of place to extract hereunder Clause (ib) of Sub-section (1) of Section 13 of the Hindu Marriage Act, which reads as follows:

13. Divorce:-

(1) Any marriage solemnized, 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 –

(ia)

(ib) has deserved the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; ...

A perusal of the above Clause makes it clear that the petitioner has to establish that the respondent deserted him two years prior to filing of the divorce petition. The marriage of the petitioner and respondent was performed on 13.04.2014, whereas the petitioner filed the divorce petition on 20.05.2015. The record reveals that

the divorce petition was filed within 14 months from the date of marriage. The record clearly reveals that the plea to be taken by the petitioner by way of amendment is not sustainable either on facts or in law, as the divorce petition was filed within 14 months from the date of marriage. By any stretch of imagination, it can be presumed that the stand taken by the petitioner will fall within the ambit of Section 13(1)(ib) of the Hindu Marriage Act. To put it in a different way, the petitioner has not established the basic ingredients of Section 13(1)(ib) of the Hindu Marriage Act. The plea of desertion is purely a question of fact. Whether the respondent has deserted the petitioner, with or without justifiable cause, is very much known to the petitioner as on the date of filing of the divorce petition. For the reasons best known, the petitioner has not taken such a plea in the divorce petition. It is a settled principle of law that establishment of the ingredients of proviso to Order VI Rule 17 C.P.C. is a *sine qua non* to allow the petition. The affidavit filed by the petitioner is bereft of the basic ingredients of proviso to Order VI Rule 17 C.P.C. The trial Court considered the scope of proviso to Order VI Rule 17 C.P.C. and dismissed the petition. There is no illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court.

8. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, the amendment petition is not maintainable.

9. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, Miscellaneous

Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 27.06.2018
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