

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.3588 of 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful respondent assailing the order, dated 02.05.2018, of the learned Senior Civil Judge, Addanki, Prakasam District, passed in I.A.No.1224 of 2017 in H.M.O.P.No.66 of 2016.

2. I have heard the submissions of Sri *M.Sudheer Kumar*, learned counsel appearing for the unsuccessful respondent/revision petitioner; and of Sri *Polavarapu Srinivas*, learned counsel representing Sri *Paladugu Narayana*, learned counsel appearing for the petitioner/respondent herein. I have perused the material record.

3. To begin with, it is to be noted that the respondent herein filed HMOP against the petitioner herein on the file of Family Court at L.B. Nagar, Ranga Reddy District, under Section 13(1)(ia) of the Hindu Marriage Act, 1955, requesting to grant a decree of divorce by dissolving the marriage between the respondent and the petitioner herein, on the ground of cruelty. Subsequently, the said OP was transferred to the Senior Civil Court, Addanki, and was re-numbered as H.M.O.P.No.66 of 2016. Be that as it may.

4. During the pendency of the said OP, the respondent herein filed the subject interlocutory application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, requesting the Court to permit him to amend the original petition to

incorporate the pleadings, which are mentioned in the Memo of Amendment, which are verbatim as under:

“Moreover, the respondent also refused to join with me at Australia even though I made arrangement for VISA for the respondent. On the other hand, the respondent in my absence when I was at Australia, filed false cases against me at Addanki u/s.498(A), 406 r/w 3 and 4 of D.P. Act by showing my parents as accused along with me. On account of the acts of the respondent, my family reputation was lost. So, I filed an application for dissolution of my marriage with the respondent before the Hon’ble Family Court, L.B. Nagar, R.R. District in the year 2013. Subsequently the said matter was transferred to this Hon’ble Court and it was renumbered as O.P.66/2016. The respondent is appearing through her counsel and filed her counter. Apart from the above, she also filed another case u/s.125 of Cr.P.C. for grant of maintenance against me. I am also contesting the M.C.

3) The false cases filed against me and my parents u/s. 498(A), 406 r/w 3 and 4 of D.P. Act (CC 420/2012) has been disposed off on 20th July, 2016 ending in acquittal for me and my parents. This happened subsequently to the filing of the main H.M.O.P filed by me. These facts have to be included in my pleadings by way of amendments.

4) I further submit that respondent also filed H.M.O.P No. 52/206 before this Hon’ble Court which was subsequent to the present H.M.O.P filed by me. For her own reasons she did not pursue her Divorce O.P and allowed the O.P. to be dismissed for default by this Hon’ble Court on 11-11-2016. This fact also happened subsequent to the filing of the present O.P. and this fact has to be mentioned my pleadings by way of amendment.

5) I further submit that subsequent to filing of the present H.M.O.P by me there was mediation by elders and it was decided that I should give Rs. 20,00,000/- (Rupees Twenty Lakhs only) to the respondent and she must give Divorce to me. Accordingly my self and my parents deposited an amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) by taking loans from others for interest with two elders. It was agreed by both parties that Respondent is entitled to receive the said amount of Rs.20,00,000/- (Rupees twenty lakhs only) after the Divorce is obtained. This fact was mentioned by her in her H.M.O.P No.52/2016 filed by the Respondent in this Hon’ble Court. Ultimately on the wrong advice of others the respondent and her parents have refused to abide by their word and for that reason the elders returned the amount to my father’s account. This fact has also happened subsequent to the filing of the present H.M.O.P.

6) I further submit that subsequent to filing of my H.M.O.P the present Respondent, her mother and her sister came to my parent's house at Addanki on 09-03-2015 and tried to physically assault my parents. Thereupon my father gave a complaint in Addanki Police Station on 10-03-2015 which was registered as Crime No. 72/2015 of Addanki P.S. After the investigation Police filed the Charge sheet against the respondent, her mother and her sister in C.C. 410/2015 which is pending on the file of the Court of Additional Judicial Magistrate of 1st Class, Addanki. This has happened subsequent to the filing of the present H.M.O.P and the same has to be pleaded in the main O.P. by way of amendment.

7) I gave instructions to my counsel at Hyderabad for preparation of divorce O.P. with full particulars of the things that were happened between me and the respondent which leads for dissolution of marriage. My Advocate prepared the petition and got the same filed into Court. But in preparing the petition, my Advocate instead of narrating the things elaborately which were happened, only made simple averments in the petition with respect to the cruelty meted out to me by the respondent and other aspects. When I going through the record, it is found that my petition for divorce is lack of full particulars of the incident even though I have narrated the particular incidents separately and so I am advised to get my application amended suitably by making necessary amendments to my petition seeking elaborate things that were happened leading me to file Divorce O.P. against the respondent. I further submit that the facts mentioned above are very essential and necessary to prove how myself and my parents are continuously harassed by the respondent and her parents. The said facts have to be incorporated in my pleadings in the main H.M.O.P by way of amending the main Petition to prove my case. The amendments sought are only formal amendments. Elaborating the points that were already urged in the application is for proper appreciation and the incidents that took place after my filing the present H.M.O.P. The proposed amendment is not against the main pleadings and it will not change the cause of action, the nature of the proceedings and also the nature of contest by both the parties. On the other hand the proposed amendments will help both the parties in deciding the matter by this Hon'ble Court thoroughly."

5. The case of the respondent herein, in support of the request for amendment of his original petition, in brief, is this: 'His wife, the revision petitioner herein, refused to join him at Australia even

though he made arrangement for her VISA. On the other hand, his wife, in his absence and when he was at Australia, filed a false case against him & his parents, under Sections 498-A & 406 of IPC read with Sections 3 & 4 of the Dowry Prohibition Act, 1961. In the year 2013, he filed the instant OP for dissolution of marriage on the file of the Family Court, L.B. Nagar, Ranga Reddy District. Subsequently, the said OP was transferred to the Senior Civil Court, Addanki, and was renumbered as H.M.O.P.No.66 of 2016. The revision petitioner/wife having entered appearance through her counsel filed her counter in the said OP. She also filed another case under Section 125 of Criminal Procedure Code, 1973, for grant of maintenance. The respondent is contesting the said case. On 20.07.2016, the C.C.No.420 of 2012, taken on file for the offences punishable under Sections 498-A & 406 of IPC read with Sections 3 & 4 of the Dowry Prohibition Act, 1961, ended in acquittal of the respondent herein and his parents. Subsequent to the institution of the present OP, the revision petitioner/wife also filed H.M.O.P.No.52 of 2016, on the file of the Senior Civil Court, Addanki. The said HMOP filed by her was dismissed for default, on 11.11.2016. There was a mediation by elders; and, it was decided as follows: "That he should give Rs.20,00,000/- to the revision petitioner/wife by taking loans from others. The revision petitioner/wife is entitled to receive the said amount of Rs.20,00,000/- after the divorce decree is granted." The said facts are admitted by the wife in her OP, which was allowed to be dismissed for default. The revision petitioner/wife, her mother and sister came to his parent's house at Addanki, on 09.03.2015, and tried to physically assault his parents. Thereupon, his father gave a complaint. A case in Crime No.72 of 2015, was registered on the file of Addanki Police Station. A case in C.C.No.410

of 2015, which was taken on file, is pending on the file of the Court of the learned Additional Judicial Magistrate of First Class, Addanki. At the time of drafting of his OP, he gave to his counsel, the full particulars about the happenings that lead to the disputes, for preparation of the original petition. However, his counsel instead of narrating the events, in detail, had instead mentioned in the Original Petition, simple averments with regard to cruelty meted out to him. While so, when he was going through the record, he found that his petition for divorce is lacking in full particulars of various incidents. Though particular incidents are separately narrated in the original petition, however, for non-furnishing of full particulars of the incidents in the circumstances stated, it has become necessary to suitably amend the original petition to elaborate the original pleadings and to bring to the notice of the Court the subsequent events including the details of complaints and cases, which are referred to above and which are stated in the proposed amendments mentioned in the memo of amendment. He was, therefore, advised to seek amendment of his original petition to incorporate the details of the incidents, which are already pleaded, and to bring to the notice of the Court the subsequent events and other subsequent cases. The amendments sought are necessary to substantiate the case of the respondent herein and to elaborate the pleadings related to incidents, which are already pleaded. The proposed amendment is not against the original pleadings and will not change the cause of action and does not affect the defence of the revision petitioner-wife in her counter. The proposed amendments, if permitted, will be useful to both the parties and in finally deciding the case and resolving the disputes effectively. Hence, the subject interlocutory application is filed for permission to amend the original petition to

incorporate in the original petition, the proposed amendments as stated in the Memo of Amendment.'

6. The said application filed in the OP by the respondent herein for amendment of his original petition was resisted by the wife/the revision petitioner herein, who is the respondent in the said OP by filing a counter. However, on merits, and by the orders impugned in this revision petition, the said application for amendment filed by the husband/respondent herein was allowed by the Court below. Aggrieved of the same, the revision petitioner-wife is before this Court.

7. The case of the revision petitioner-wife, which is relevant for consideration, is this: 'The allegations of the respondent herein in his affidavit filed in support of the application for amendment are false. The contentions that he gave to his counsel, full particulars about the happenings that lead to the disputes, but, his counsel, while preparing the original petition, instead of narrating the events elaborately and, in detail, had instead mentioned simple averments with regard to cruelty meted out to him; and, that on going through the record, he found that his petition for divorce lacks in full particulars of the incidents are all false. The further allegations that he was advised to amend his original petition to incorporate necessary amendments in the original petition to elaborate the pleadings with regard to happenings that lead to the filing of the divorce petition and that such elaboration of pleadings by way of amendment of the original petition is essential to prove his case are all false. The further allegations that the amendments sought are only formal amendments for elaborating the points that were already urged in the original petition are also false. The proposed

amendment, if permitted, helps both parties and the Court in deciding the matter effectively is false. The respondent herein is not entitled to seek amendment of the original petition, which is filed seeking divorce. Subsequent events cannot be incorporated in a divorce petition by means of an amendment. The allegations in the proposed amendment are all false. The amendment being sought on the grounds, which are urged by the respondent herein, cannot be granted as the grounds urged are untenable, not valid and insufficient to permit the amendment of the original petition. The petition is liable for dismissal.'

8. At the hearing, learned counsel for the revision petitioner/wife while reiterating her case in the counter, which is stated supra, and which is in the nature of denial, would submit that the amendment sought for is not *bona fide* and is *mala fide* and that the amendment on the premise of elaborating the pleadings and introducing subsequent events is intended to introduce a new case and a new pleading in the original petition of the respondent/husband, and therefore, the Court below ought not to have permitted the amendment of the original petition filed by the husband, more particularly as the amendment was sought after a long delay and as the allegations in the proposed amendment are false and are not necessary to determine the real controversy involved in the marriage OP.

9. *Per contra*, learned counsel for the respondent/husband supported the orders of the Court below *inter alia* stating that the proposed amendment is intended only to elaborate the pleadings already there in the original petition and to bring to the notice of the Court the new cases that are filed subsequent to the institution of

the original petition and to enable the respondent-husband to bring to the notice of the Court the subsequent events and, hence, the amendment is permissible under facts & law and that the Court below is justified in permitting the amendment as sought for by the husband/respondent herein.

10. I have given earnest consideration to the facts and submissions. I have gone through the record and also the order impugned.

11. A perusal of the original petition, a copy of which is filed, would show that the respondent/husband having pleaded in the original petition filed by him certain acts of cruelty meted out to him by the revision petitioner/wife and also about her sexual incapacity, sadistic mentality and attitude and also other aspects, which constitute, according to him, the ground of cruelty, sought a decree of divorce. Now by way of proposed amendment, the petitioner wants to firstly amend the surname of the respondent in view of the stand taken by her in her counter by stating that he has no objection to have the surname of the respondent amended, as per her version in the counter. Secondly, the proposed amendments, on a perusal of the Memo of Amendment, the contents of which are extracted supra, would also indicate that a portion of the amendment being sought is in the nature of elaboration of the pleadings already mentioned in the original petition. The memo of amendment also reflects that the other part of the proposed amendment deals with certain events said to have taken place subsequent to the institution of the original petition. There is no need to re-state the said subsequent events, which are already stated in the Memo of Amendment of the petitioner, as the contents of the said memo are extracted supra.

Suffice to state that they relate to a Calendar Case No.420 of 2012, on the file of the Court of the learned Additional Judicial Magistrate of First Class, Addanki, which was disposed of, on 20.07.2016; and, H.M.O.P.No.52 of 2016, filed by the revision petitioner/wife; and, the dismissal of the same for default, on 11.11.2016; and, the mediation that allegedly took place in the same year; and, the arrangement that was made during the mediation by elders with regard to giving Rs.20,00,000/- by the respondent/husband to the revision petitioner/wife for giving divorce; and, the settlement to the same by the respondent/husband to the revision petitioner/wife after the divorce is granted; and, the mentioning of the said fact by the revision petitioner/wife in her H.M.O.P.No.52 of 2016, which was later allowed by her to be dismissed for default; and, the registration of Crime No.72 of 2015 by Addanki Police Station; and, C.C.No.410 of 2015 taken on file and pending on the file of the Court of the learned Additional Judicial Magistrate of First Class, Addanki; and other allied matters. Therefore, the above said subsequent events are matters of record, according the submissions of the respondent/husband. In that view of the matter, the Court below permitted the amendment *inter alia* observing that the proposed amendment will not change the basic structure of the original petition and that such amendment of the original petition of the husband filed for divorce is permissible, as the enquiry has not yet commenced and that the proposed amendment will neither change the cause of action nor the nature of the proceeding and that the amendment only gives details of the facts related to original pleadings and subsequent events and that it will not substitute a new case in the place of the existing case of the husband and that if

the amendment is permitted, the defence raised by the revision petitioner/wife will not be affected.

12. I have gone through the following citations, on which reliance is placed by the revision petitioner/wife:

- (i) **OM PRAKASH GUPTA v. RANBIR B. GOYAL¹**
- (ii) **JAI PRAKASH GUPTA (DEAD) THROUGH LRs v. RIYAZ AHAMAD AND ANOTHER²**

13. The first of the two citations is relied upon in support of the proposition that an amendment requesting the Court to take note of subsequent events and mould the relief claimed into an appropriate relief is permissible, if only the following three conditions are satisfied:

- “(i) relief, as originally claimed has become inappropriate or impossible to grant;**
- (ii) taking note of such events or changed circumstances would lead to early end of the litigation and would result in complete justice being done; and**
- (iii) subsequent events are brought to notice of court promptly and in accordance with rules of procedure to ensure that opposite party is not taken by surprise.”**

14. The second citation is relied upon in support of the propositions that subsequent additions can be taken into consideration to afford relief to parties, provided when such additions had a material impact on the rights and obligations; and, that the normal rule is to adjudicate the litigation on the rights and obligations of the parties as obtaining at the commencement of the *lis*; and, that the exception is in cases wherever subsequent events of fact or law are having a material bearing on the entitlement of the parties to the relief and are

¹ (2002) 2 Supreme Court Cases 256

² (2009) 10 Supreme Court Cases 197

necessary for moulding the relief; and, that in such limited cases only the Court is not precluded from taking a cautious cognizance of subsequent changes of fact & law and mould the relief.

15. Placing reliance on these two decisions, it is submitted that the necessary legal requirements are not fulfilled in this case and, therefore, the request of the husband-respondent herein for amendment of the original petition ought not to have been considered by the Court below. It is to be first noted that in this case, the respondent/husband, who sought the relief of grant of divorce by dissolution of the marriage in the original petition is not seeking either moulding of a relief or a different relief on the basis of the subsequent events or the proposed amendments. He is only elaborating his pleadings and requesting the Court to take note of elaborated pleadings and the events, which had occurred subsequent to the filing of the original petition and which are borne out by record in order to strengthen his case with regard to the relief claimed in the petition. Therefore, the decisions are not helpful to the wife/revision petitioner.

16. The next contention of the revision petitioner/wife is that the averments in the proposed amendment are false. It is trite to note that while considering an application for amendment of pleadings, it is impermissible to examine the merits of the case being sought to be incorporated by way of proposed amendment. Admittedly, the enquiry in the original petition has not yet commenced.

17. Further, an amendment, which is intended to elaborate the case already pleaded and to introduce pleadings related to subsequent events, is not impermissible and such amendments

intended for the said purposes deserve to be allowed to enable the Court to effectively adjudicate the *lis* and give a quietus to the disputes once and for all. Moreover, the proposed amendments related to subsequent events are matters of record and not merely based on oral assertions. If the amendments related to subsequent events are permitted to be incorporated in the original petition, the revision petitioner/wife can be granted liberty to file an additional pleading, if she so desires, and the parties can also be permitted to adduce evidence comprehensively on the original and amended/additional pleadings in support of their respective cases for comprehensive adjudication of the *lis*. Therefore, allowing the amendment meets the ends of justice.

18. Further, in the decision reported in **VISHWANATH AGRAWAL v. SARLA VISHWANATH AGRAWAL**³, the Supreme Court held as follows:

“48.The courts below have opined that the publication of notice in the daily *Lokmat* and the occurrence that took place on 11-10-1995 could not be considered as the said events occurred after filing of the petition for divorce. Thereafter, the courts below have proceeded to deal with the effect of the said events on the assumption that they can be taken into consideration. As far as the first incident is concerned, a view has been expressed that the notice was published by the wife to safeguard the interests of the children, and the second one was a reaction on the part of the wife relating to the relationship of the husband with Neeta Gujarathi.”

Having referred to the subsequent events, the Supreme Court held as follows:

“49. We have already referred to the second incident and expressed the view that the said incident does not establish that there was an extramarital relationship between Neeta and the appellant. We have referred to the said incident as we are of the

³ (2012) 7 Supreme Court Cases 288

considered opinion that the subsequent events can be taken into consideration. In this context, we may profitably refer to the observations made by a three-Judge Bench in *A. Jayachandra v. Aneel Kaur*⁴.

“16. The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct.”

50. We may also usefully refer to the observations made in *Suman Kapur v. Sudhir Kapur* [(2009) 1 SCC 422] wherein the wife had made a maladroitness effort to take advantage of a typographical error in the written statement and issued a notice to the husband alleging that he had another wife in USA. Thus, this Court has expressed the opinion that the subsequent events can be considered.”

19. For the reasons afore-stated, and having regard to the above ratio in the decision of the Supreme Court, this Court finds that it is necessary in the interests of justice to permit the respondent/husband to incorporate the proposed amendments in the pleadings in the original petition filed by him for divorce, as such a course meets the ends of justice.

20. On the above analysis, this Court finds that in the facts and circumstances and for the reasons aforesaid, the order of the trial Court does not brook interference.

21. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M.SEETHARAMA MURTI, J

12th September, 2018
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⁴ (2005) 2 Supreme Court Cases 22

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