

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4854 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.253 of 2016 in O.P.No.1503 of 2010 dated 21.08.2017 passed by the Judge, Family Court at Hyderabad, dismissing an application filed under Order VI Rule 17 C.P.C declining to grant leave to amend the petition.

The petitioner filed O.P.No.1503 of 2010 under Hindu Marriage Act, for dissolution of marriage for granting decree of divorce on various grounds in the year 2010 and during pendency of O.P.No.1503 of 2010, filed I.A.No.253 of 2016 seeking leave of the Court to amend the original petition, based on the alleged subsequent events that took place during pendency of the petition. The petitioner has filed a criminal complaint for criminal intimidation, trespass, etc and filed report on 11.11.2010. Further, on other subsequent dates, various incidents took place. But, the incidents referred in the petition needs no further elaboration in the present order. But, the basis for the claim is subsequent events that occurred during pendnecy of the original petition for grant of divorce. It is contended that there are certain typographical errors and omissions relating to the property and they are required to be rectified, therefore, sought permission to amend the original petition filed for grounds of divorce.

The respondent did not file counter despite granting several adjournments, even after imposing costs and therefore, the Trial Court heard both the counsel and passed the order under challenge, holding that the proposed amendments being subsequent to filing of I.A.No.253 of 2016, cannot be permitted and those amendments do not, in any way, help the Court to decide the application in O.P.No.1503 of 2010 for divorce and dismissed the petition.

Aggrieved by the order passed by the Court below in I.A.No.253 of 2016, the present revision is filed under Article 227 of the Constitution of India, raising various contentions, mainly on the ground that the Trial Court discussed the merits of the proposed amendment based on subsequent events, while admitting that it is a subsequent event. But, deciding merits of the proposed amendment while dealing with an application under Order VI Rule 17 C.P.C is impermissible and when subsequent events take place, those events have direct bearing on the main petition. But, the Trial Court did not take into consideration various aspects with regard to direct bearing on the issue involved in the main petition based on subsequent events, committed an error and prayed to set-aside the order passed by the Trial Court, granting leave to amend the petition as prayed for in the petition filed under Order VI Rule 17 C.P.C.

Learned counsel for the petitioner placed reliance on the judgments of Supreme Court and this Court in **Rameshkumar**

Agarwal v. Rajmala Exports Private Limited and others¹, Raghu Tilak D. Jhon v. S. Rayappan & others², South Konkan Distilleries v. Prabhakar Gajanan Naik³, Revajeetu Builders and Developers v. Narayanaswamy & Sons and others⁴, State of A.P. V. Special Court under A.P. Land Grabbing Act⁵, State of A.P. v. Gayatri Projects⁶, B.P.P. Venkataswamy v. B. Ramakrishnudu⁷ and Om Prakash Guptha v. Brijesh Kumar⁸.

In all the judgments cited above, the parties are at liberty to raise plea based on subsequent events during pendency of the suit and petitions and principles applicable to petition filed under Order VI Rule 7 C.P.C those judgments will be discussed at appropriate stage in the order.

Learned counsel for the respondent Sri K. Sai Babu contended that amendment cannot be allowed, since it was filed, long after filing O.P..No.1503 of 2010 and several applications were filed during pendency of the petition, where, some of them were not pressed and some of them have become infructuous and there were as many as 81 applications and based on disposal of those applications, either as on merits or otherwise, he contended that this petition is aimed to delay the proceedings further and prayed to confirm the order passed by the Court below, by dismissing the civil revision petition.

¹ 2012 (4) AL 1 (SC)

² 2001 (2) SCC 472

³ 2008 (14) SCC 632

⁴ 2009 (8) SCJ 401

⁵ 2012 (5) ALD 484 (DB)

⁶ 2004 (3) ALD 174

⁷ 2013 (2) ALD 96

⁸ AIR 2002 SC 665

O.P.No.1503 of 2010 was filed by the petitioner for dissolution of marriage by granting decree of divorce on the ground of cruelty, permanent alimony of Rs.10 crores to the petitioner, permanent custody of the minor child Srikriti and Anusreeya, maintenance allowance of Rs.25,000/- per month for each of the minor children to provide adequate security for the educational and marriage expenses of the children and Rs.1 lakh per month towards reimbursement of expenses of maintenance and for upkeep of the petitioner for the last three years, for compensation of Rs.5 crores and costs.

The respondent/husband filed counter on 02.12.2011, which is running into 145 pages, on 28.11.2013, the present petition was filed. Thus, the amendment is sought within two years from the date of filing counter by the respondent in the main original petition.

It is an undisputed fact that the trial is not yet commenced for one reason for the other and now it is coming up for filing of affidavit and trial is not yet commenced. When the amendment is sought, prior to commencement of trial, such petitions have to be allowed liberally. But, if it is post-trial amendment, proviso to Order VI Rule 17 C.P.C will come in the way, if the petitioner satisfies the Court that inspite of exercise of due diligence, the plea could not have raised. Undisputedly, the pre-trail amendments can be allowed liberally.

Learned counsel for the petitioner while contending that an amendment can be allowed at any stage after subject to Order VI Rule 17 C.P.C, except where the amendment will take away the

valuable right that accrued to the respondent or that the proposed amendment will change the nature of the suit or proceedings or amounts to withdrawing admissions made in the pleadings.

In **Rameshkumar Agarwal v. Rajmala Exports Private Limited and others** (referred supra), the Apex Court, relying on **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others** (referred supra) to decide the scope of proviso to Order VI Rule 17 of C.P.C, held in paragraph nos.10 and 11 as follows:

“On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the cases;*
- (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 VI Rule 17. These are illustrative and not exhaustive.”*

If the principles laid down by the Apex Court in the above judgment are applied to the present facts of the case, the proposed amendment is to be allowed, since it is based on subsequent events.

Another controversy raised by the learned counsel for the respondent is that, belated amendment cannot be allowed and he placed reliance on the judgment of the Apex Court in **Mashyak Grihnirman Sahakari Sanstha Maryadit v. Usman Habib Dhuka**

and others⁹, wherein, the Apex court in paragraph 8 of the judgment held that when the amendment petition is filed belatedly, the amendment can be rejected.

But, in the said judgment, the Apex Court did not consider the earlier judgments in **Rameshkumar Agarwal v. Rajmala Exports Private Limited and others** (referred supra) and **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others** (referred supra).

But, even according to the language used in Order VI Rule 17 C.P.C, at any stage of the proceedings, an amendment can be allowed, it is subject to the rider annexed to the provision by way of proviso to Order VI Rule 17 C.P.C by Act 22 of 2002. In the present case, the proviso has no application and that apart, it is only based on a subsequent event took place during pendency of the proceedings before the Judge, Family Court. When such subsequent event took place during pendency of the suit or proceedings having direct bearing on the issue in the main petition, the said amendment can be allowed, in view of the principle laid down by the Division Bench of this Court in **State of A.P. V. Special Court under A.P. Land Grabbing Act** (referred supra).

In **State of A.P. v. Gayatri Projects** (referred supra), the learned single Judge of this Court held that, when no new facts are introduced, amendment allowed and carried out and Court fees paid, only such amendments which are having nexus to the relief

⁹ (2013) 9 Supreme Court Cases 485

sought to be introduced by proposed amendments were allowed, order of Trial Court cannot be faulted.

In **B.P.P. Venkataswamy v. B. Ramakrishnu** (referred supra) the learned single Judge of this Court held in paragraphs 11 & 12 as follows:

“11. Order 6 Rule 17 C.P.C. enjoins - 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. By virtue of the proviso thereunder once the trial of the case was commenced, the question of seeking for any amendment does not arise at all, but definitely this is subject to taking place of subsequent events during the proceedings of the suit.

12. In the decision cited above, it is clearly observed: "Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under order 6 Rule 17 of the CPC. Such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties."

In **Om Prakash Gupta v. Brijesh Kumar** (referred supra) the Supreme Court in paragraph 12 held as follows:

“Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 of the CPC. Such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. In *Messrs. Trojan & Co. Vs. RM. N.N. Nagappa Chettiar* - AIR 1953 SC 235 this Court has held that the decision of a case

cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found; without the amendment of the pleadings the Court would not be entitled to modify or alter the relief. In Sri Mahant Govind Rao Vs. Sita Ram Kesho & Ors. - (1898) 25 Indian Appeals 195 (PC), their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted.”

In the present facts of the case, the petitioner himself brought on record subsequent events by invoking Order VI Rule 17 C.P.C. Therefore, based on subsequent events, the parties can be permitted to amend the pleadings.

In view of the principles laid down in the above judgments, when amendment is pre-trial amendment, the Court shall allow such amendments liberally and it is also clear from catena of decisions referred above that the merits of the amendment cannot be gone into at the time of deciding petition under Order VI Rule 17 C.P.C. Thus, the findings recorded by the Court below based on the merits of the proposed amendment is an error apparent on the face of record and the Trial Court committed an error in dismissing the petition, though it is pre-trial amendment. Therefore, the order in I.A.No.253 of 2016 in O.P.No.1503 of 2010 dated 21.08.2017 passed by the Judge, Family Court at Hyderabad, is hereby set-aside permitting the petitioner to carry out the amendment. The respondent is entitled to file subsequent pleadings under Order VIII Rule 9 C.P.C and on filing such amendment, the Trial Court is directed to dispose of the petition as expeditiously as possible, in any event, not later than six months from the date of receipt of copy of this order, if no further proceedings are pending, since O.P.No.1503 of 2010 is of the year 2010.

In the result, the civil revision petition is allowed.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:16.03.2018

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