

THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

CIVIL REVISION PETITION No.5725 of 2018

ORDER:

The petitioner, Mr.Dharampuri Surender, the husband, is aggrieved by the order, dated 31.08.2018, in I.A.No.1239 of 2018 in O.P.No.1836 of 2015, passed by the learned Principal Judge, Family Court, Hyderabad, whereby the learned Family Court has permitted the respondent – wife, to amend her counter, and to make a counter-claim against the petitioner *viz.*, O.P.No.1836 of 2015, filed by the petitioner – husband, seeking divorce on the ground of cruelty.

2. Brief facts of the case are that the petitioner – husband, had filed a petition *viz.*, O.P.No.1836 of 2015, seeking divorce. The respondent – wife, had filed her counter. The respondent – wife had also filed a petition, *viz.*, O.P.(SR) No.1177 of 2018, seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 (for short ‘the Act’). While dealing with O.P.(SR)No.1177 of 2018, the learned Family Court had expressed his opinion, by order dated 26.04.2018, that the

said O.P. tantamounts to abuse of the process of Court. For, the respondent – wife has sufficient remedy under Section 23-A of the Act to file a counter-claim. Therefore, she need not have filed a separate petition under Section 9 of the Act. Accordingly, the learned Family Court rejected the said O.P. Consequently, the respondent – wife, filed an interim application, *viz.*, in I.A.No.1239 of 2018 in the petition *viz.*, O.P.No.1836 of 2015, filed by the petitioner – husband, seeking divorce, and sought permission for amending her counter, as well as to make her counter-claim seeking restitution of conjugal rights. By the impugned order, the learned Family Court has allowed the said application. Hence, this civil revision petition before this Court.

3. Mr. Bankatlal Mandhani, the learned counsel for the petitioner, has raised the following contentions before this Court:-

Firstly, relying upon Order VI, Rule 17 C.P.C., he has pleaded that once the trial has begun, generally, permission to amend the pleadings should not be given. According to the learned counsel, the petitioner – husband,

has already filed his affidavit to be treated as his examination-in-chief. Therefore, the amendment could not be allowed by the learned Family Court.

In order to buttress this plea, the learned counsel has relied upon the case of **Vidyabai and others v. Padmalatha and Another**¹ and the case of **Ramoji Rao and Another v. M.A.E.Kumar Krishan Varma and another**².

Secondly, the petition *viz.*, O.P.No.1836 of 2015 was filed by the petitioner – husband, as far back as 2015, and the respondent – wife, had already filed her counter. Yet, after a lapse of three years, she has decided to make a counter-claim and to amend her counter.

4. On the other hand, Mr.J.Prabhakar, the learned counsel for the respondent has raised the following counter-contentions before this Court:-

Firstly, in the Family Courts the parties have to defend themselves without resistance of the learned Members of

¹ AIR 2009 SC 1433

² 2012 (1) ALD 259

the Bar. But, the party, who appears before the Family Court, is aware of all the intricacies of the law.

Secondly, the Family Courts Act, 1984, is a special Act, whose object is to ensure that justice is done to both the parties without importing all the technicalities of law. Therefore, the rigours of the Civil Procedure Code (C.P.C.) are generally not applied to a proceeding before the Family Court.

Thirdly, Section 23-A of the Act clearly bestows a substantive right upon the defendant to file a counter-claim in any proceeding for divorce, or judicial separate, or restitution of conjugal rights. Therefore, the said right cannot be denied, and cannot be ignored in the light of Order VI Rule 17 C.P.C. In fact, since the Family Courts Act is a special law, the said law prevails over the general law of land.

Fourthly, the respondent – wife, had already filed a separate petition *viz.*, O.P.(SR)No.1177 of 2018 seeking restitution of conjugal rights. By the aforementioned order dated 26.04.2018, the said petition was returned, as the

learned Family Court was of the opinion that the respondent – wife, should file a counter-claim under Section 23-A of the Act. It is only upon the findings given by the learned Family Court that the respondent – wife had filed the application *viz.*, I.A.No.1239 of 2018 in O.P.No.1836 of 2015. Hence, the learned Family Court was certainly justified in allowing the said application. Thus, the learned counsel has supported the impugned order.

5. Heard the learned counsel for both the parties and perused the impugned order.

6. The very purpose of law is to facilitate smooth running of the lives of the people. The law is not meant to create obstacles, or complications in the lives of the people.

Needless to say, the family disputes, especially, between husband and wife, are riddled with complications. For, it is not a dispute between two individuals, but many a times, it turns into a clash between two families. If the couple is blessed with a child, invariably, it is the child, who suffers during the war between the parents. Therefore, the endeavour of the Family Courts Act and of the Hindu

Marriage Act is certainly to ensure that the proceedings before the Family Courts not only run smoothly, but also to come to an end as expeditiously as possible. Therefore, in a catena of cases, the Hon'ble Supreme Court has observed that rigours of C.P.C. cannot be applied to a proceeding before the Family Court. Hence, the learned counsel for the petitioner – husband, is unjustified in claiming that the technicalities and the rigours of Order VI Rule 17 C.P.C. would be applicable to the present case. Although the learned counsel for the petitioner has relied upon the case of **Vidyabai** (supra) and the case of **Ramoji Rao** (supra), but both these cases are distinguished on the factual matrix from the present case. The case of **Vidyabai** (supra) dealt with a civil suit filed for specific performance of an agreement of sale, whereas the case of **Ramoji Rao** (supra) was a dispute between the landlord and the tenant. However, the present case is a dispute between husband and wife. Therefore, neither of these cases rush to the rescue of the petitioner.

7. Section 23-A of Act bestows substantive right upon the defendant to file a counter-claim in any proceeding for

divorce, or judicial separate, or restitution of conjugal rights. Therefore, the respondent-wife was certainly justified in exercising her right under Section 23-A of the Act. Moreover, the said right was exercised by the respondent – wife only because the Family Court had returned her petition *viz.*, O.P.(SR)No.1177 of 2018, filed for restitution of conjugal rights, and had opined that she should exercise her right under Section 23-A of the Act. Hence, the application *viz.*, I.A.No.1239 of 2018 filed by the respondent – wife, in the petition *viz.*, O.P.No.1836 of 2015, filed by the petitioner – husband, seeking divorce, was almost at the behest of the Family Court.

8. Needless to say, there is no gainsay in multiplying the litigation. Therefore, the learned Family Court was justified in permitting the respondent – wife, to amend the counter and to make her counter-claim against the petition *viz.*, O.P.No.1836 of 2015, so that, both the petition and the counter-claim could be decided, simultaneously, by the same Court. After all, the petition and the counter-claim would involve the same evidence to be produced by the

parties to establish their respective claims. Viewed from this angle, the impugned order is certainly legally justified.

9. For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. This petition is without any merits. Hence, it is dismissed.

10. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

RAGHVENDRA SINGH CHAUHAN, J

20th December, 2018
GHN

