

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.6263 of 2018

ORDER:

Impugning the order, dt.20.09.2018 in I.A.No.270 of 2018 in FCOP No.126 of 2017 on the file of the Judge, Family Court, Anantapur permitting the amendment of the petition in FCOP supra with the petition averments by incorporating the 4 pages as additional pleading as 'a' to 'f', the present revision petition is filed by the FCOP respondent/ wife.

The main petition FCOP is filed by the husband-petitioner against his respondent-wife for annulment of their marriage on the alleged grounds of fraud and deception. Whatever the material pleadings that were supposed to be mentioned for material facts including on the fraud or deception as contemplated by Order VI Rules 2 to 4 of CPC. For more clarity, Order VI Rule 2 speaks that *pleading to state material facts and not evidence*. So whatever the evidence to be adduced in elaborating the pleading cannot even under the guise of amendment be allowed to incorporate as additional pleading and the Order VI Rule 4 speaks *particulars to be given where necessary-In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars(with date and items if necessary) shall be stated in the pleading*. If on that count, once material pleadings relied on the fraud and misrepresentation, that cannot be allowed to be incorporated as additional pleading subsequently.

The contention that the bar under Order VI Rule 17 proviso incorporated by amended CPC,2002 has no application as trial not commenced is different from requirement of due diligence to the letting of a pleading either not necessary or illusory cannot be allowed for what was

not originally pleaded. Thereby the lower Court without considering the above provision in allowing mechanically such a pleading running in 4 pages as additional pleading to add full flesh to the skeleton of the petition that too ignoring if there is a pleading with foundation which can be elaborated only in the evidence and that is the distinction between the pleading and the evidence contemplated by Order VI Rule 2 of CPC.

Having regard to the above, the Civil Revision Petition is allowed by setting aside the order dt.20.09.2018 in I.A.No.270 of 2018 in FCOP No.126 of 2017 on the file of the Judge, Family Court, Anantapur and remanded for reconsideration and fresh disposal. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Date:23.11.2018
b/o.vvr

Dr. B. SIVA SANKARA RAO, J

