

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.1830 of 2016

Date of Decision.22.05.2018

Jyoti

...Petitioner

Vs

Ravi Sher Singh

...Respondent

2. C.R. No.3282 of 2016

Ravi Sher Singh

...Petitioner

Vs

Jyoti

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Bhavesh Aggarwal, Advocate
for the petitioner in C.R. No.1830 of 2016 and
for the respondent in C.R. No.3282 of 2016.

Ms. Kuldeep Kaur, Advocate for
Mr. Amit Arora, Advocate
for the petitioner in C.R. No.3282 of 2016 and
for the respondent in C.R. No.1830 of 2016.

:-

AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two revision petitions. C.R. No.1830 of 2016 (hereinafter called as the “first petition”) is at the instance of the wife against the imposition of costs while passing the impugned order dated 18.02.2016 in allowing the application for amendment of the written statement and C.R. No.3282 of 2016 (hereinafter called as the “second petition”) is at the instance of the husband challenging the order dated 18.02.2016 whereby the application for amendment of written statement preferred by the wife has been allowed.

The petitioner-husband in the second petition instituted

the divorce petition under Section 13 of the Hindu Marriage Act seeking divorce against the wife Jyoti on the premise that marriage between the parties was solemnized on 29.09.2009 as per the Sikh Rites and Customs and two children were born out of the wedlock namely Prerna aged 5 years and Himmat aged 3 years. The divorce had been sought on the ground of cruelty and desertion. The wife had filed the written statement contesting the divorce petition by denying all the averments in the divorce petition and rather stated that it was the conduct of the husband, which resulted into discord between the husband and wife. However, when the case was pending before the trial Court, an application was submitted on behalf of the wife for amendment of the written statement, particularly, when the counsel was changed as it came to know that certain contradictory pleas have been taken in paragraph 6A of the amended written statement and in para No.7 intended to delete the word “conditionally”, in essence, in the first amended written statement, it was stated that she was willing to live with the subject to certain conditions, therefore, the word “conditionally” was sought to be deleted. The trial Court while allowing the application imposed a costs of ₹20,000/- to be paid to the husband and ₹10,000/- to be paid in legal aid account.

On the other hand, the counsel for the husband submitted that amendment cannot be permitted to be allowed in paragraph 6-A of the amended reply. The wife also intended to change the words “when the petitioner pushed her while she was cooking on stove” with the words “petitioner forced her to commit suicide” over and above the word “conditionally”. This would tantamount to taking

away the valuable right of the husband. Wife had been indulging into filing of the perpetual applications, which has resulted into causing intentional delay in adjudication of the *lis*, thus, urges this Court for setting aside the order under challenge.

I have heard learned counsel for the parties and appraised the paper book. This Court while issuing notice of motion in the first petition had passed the following order:-

“Notice of motion for 09.05.2016.

Interim suspension on the proof of payment of costs.”

The law of amendment is not to be construed in the manner and mode as the trial Court did by imposing the onerous condition of payment of costs. The tenor and mode of the order allowing the amendment in the written statement does not reflect any intentional attempt to delay the adjudication of the *lis*. The only reasoning assigned by the Court is that the amendment application had been filed after the commencement of the trial.

The act of the Court is not to prejudice parties to *lis*. By imposing costs, the Court has not taken into consideration that the wife is already suffering at the hands of the husband, in essence, the husband and wife are at loggerheads as it aggravated the agony of the petitioner-wife in the first petition. The amendment sought to be incorporated is innocuous in nature as the husband would have a right to lead evidence to rebut. That is what had been the import of the order while allowing the amendment.

As an upshot of my finding, the order passed by the trial Court in allowing the amendment application filed by the wife is

perfectly legal and justified but imposing of costs is onerous and hereby set aside. Since the petitioner-wife has already paid the costs of ₹30,000/-, she is entitled to seek refund of the same from the husband to the extent of ₹20,000/-, which he had received against the valid receipt and ₹10,000/- from the Legal Aid Service.

The civil revision bearing No.1830 of 2016 is allowed in the above terms and the revision petitioner bearing No.3282 of 2016 is dismissed.

(AMIT RAWAL)
JUDGE

May 22, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No