

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6801 of 2018

Date of Decision: 06.10.2018

Kamlesh

.....Petitioner

Vs.

Jai Bhagwan

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Ravinder Phogat, Advocate, for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order of the learned Family Court dated 29.08.2018, by which the application filed by the respondent-petitioner before that Court under Order VI Rule 17 CPC seeking to amend the prayer clause of the petition has been allowed.

At the outset, it is to be noticed that upon query to learned counsel for the petitioner before this Court (respondent before the Family Court), it is not denied that the application was filed at a time when issues had not been struck as yet.

The amendment sought can be best brought out by reproducing the original prayer clause in the petition filed before the Family Court and the one in the amended petition, that having been now allowed.

The prayer clause in the un-amended petition read as follows:-

“It is, therefore, prayed that the petition for divorce may kindly be allowed and the marriage of the parties may be dissolved by a decree of divorce.”

Whereas the amendment made now is as follows:-

“It is, therefore, prayed that the petition may kindly be allowed and the marriage of the petitioner may kindly be declared as null and void and further the petition may kindly be allowed in favour of the petitioner and against the respondent.”

Upon query to learned counsel for the petitioner, he submits that the parties were 8 to 9 years of age when their marriage was 'solemnized' by their respective parents.

He further submits that the said amendment is barred by limitation in terms of sub-section (3) of Section 3 of the Prohibition of Child Marriage, Act, 2006, which reads as follows:-

“The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.”

Thus, he submits that the amendment now sought, changing the nature of the petition, more than two years after the respondent having attained majority, it is now in fact beyond limitation.

Having considered the argument, this petition is disposed of with a direction that the amendment having been allowed in the aforesaid circumstances, the order allowing the amendment is not being set aside but with the trial Court directed to, naturally, consider all preliminary objections raised in the written statement to be filed (to the amended petition) by the present petitioner (respondent before that Court), including any objections raised on limitation to file such a petition, and to take a decision thereupon as per the merits thereof.

October 06, 2018

nitin/dinesh

Whether speaking/reasoned
Whether Reportable

**(AMOL RATTAN SINGH)
JUDGE**

Yes
No.