

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.R.P. No.6401 OF 2017

AND

C.R.P. No.1750 OF 2019

COMMON ORDER:

These two Revisions arise out of the same case between the same parties, and so they are being disposed of by this common order.

The respondent in both these Revisions has filed FCOP No.1225 of 2010 before the XV Additional District & Sessions Judge, Miyapur, Ranga Reddy District for dissolution of marriage between himself and the petitioner on the ground of cruelty.

Counter-affidavit was filed by the petitioner in the O.P. opposing grant of relief to the respondent.

Thereafter trial commenced on 17.10.2013 and P.W-1 was examined and cross-examination was also done for the witnesses for the respondent and the matter was pending.

In September, 2017, the respondent filed I.A. No.365 of 2017 to amend the pleading in the O.P. and sought to add paragraphs KLMNO in the main O.P.

Since the petitioner did not file counter immediately, though the application was posted finally, the court below allowed I.A. No.365 of 2017 on 23.08.2017 without assigning any reasons only on the ground that counter was not filed by the petitioner.

Assailing the same, the petitioner has filed CRP No.6401 of 2017.

After the I.A. No.365 of 2017 was allowed on 23.08.2017, without giving opportunity to the petitioner to file amended counter to the amended O.P, the court below posted the mater directly for further evidence of P.W-1. Assailing the same, CRP No.1750 of 2019 is filed.

Counsel for the petitioner contended that the court below could not have allowed I.A. No.365 of 2017 merely on the ground that petitioner did not file counter to it, and the court below should have taken note of the commencement of the trial, and the lack of pleading in I.A. No.365 of 2017 of the respondent as to why he could not seek the amendment before the trial commenced. He also contended that after allowing the amendment petition, the court below should have given time to the petitioner to file an amended counter-affidavit to the amended O.P., and failure to do so, caused grave prejudice to the petitioner.

Though counsel for the petitioner sought to contend that the court below was correct in allowing I.A. No.365 of 2017 since the petitioner did not file any counter, I am unable to agree with the said contention.

Proviso to Order VI Rule 17 CPC prohibits amendments to pleadings after the commencement of trial, 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.

Since, admittedly the trial commenced on 17.10.2013 itself and the application for amendment was filed in September, 2017, it was incumbent on the part of the respondent to give an explanation as to why he could not seek the amendment before commencement of the trial, but he did not do so. Therefore, the court below erred in allowing I.A. No.365 of 2017 on 23.08.2017.

Accordingly, CRP No.6401 of 2017 is allowed; order dt.23.08.2017 in I.A. No.365 of 2017 is set aside, and the said I.A. is dismissed. Consequent on the dismissal of I.A. No.365 of 2017,

nothing survives for adjudication in CRP No.1705 of 2017. So CRP is dismissed.

Since the O.P. is of the year 2010, the court below is directed to dispose of the said O.P. preferably within six months from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 26.07.2019

MRKR

