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23.08.2021
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In the High Court at Calcutta
Civil Jurisdiction
Appellate Side

C.O. No. 660 of 2020

Smt. Nandita Bhunia Bera
-Vs.-
Suman Bera

Mr. Sobhan Majumder,
Ms. Kalpita Paul
...for the petitioner

Despite service, none appears for the
opposite party-husband.

Affidavit-of-service filed in Court today be
kept on record.

It is argued by learned counsel for the
petitioner that the trial court acted without
jurisdiction in rejecting the petitioner's
application under Order VIII Rule 9 of the Code of
Civil Procedure for bringing on record subsequent
facts relevant for the adjudication of the suit.

It is seen from the impugned order that the
only reason given by the trial court for such
rejection is that the allegations sought to be
incorporated are "post-occurrence" facts and

“started specific case”, whatever such expressions mean.

It is evident that, since the suit has been filed by the opposite party-husband on the ground of desertion, the fact sought to be introduced by the petitioner-wife may be relevant inasmuch as the same has the potential of furnishing a valid reason for the wife living separately from the husband, which may be a valid defence to the ground of desertion. Moreover, the merits of the contents of the amendment sought to be introduced could not be decided on merits at the juncture of introduction of such facts in the pleadings.

Although there is some doubt as to whether Order VIII Rule 9 of the Code or Order VI Rule 17 thereof is the appropriate provision for so permitting the petitioner, the trial court had ample power to permit introduction of the facts sought to be so introduced by the petitioner in the pleadings under either of the two provisions irrespective of the caption of the application, but refused to exercise such jurisdiction in passing the impugned order.

Hence, C.O. No. 660 of 2020 is allowed, thereby setting aside the impugned order, being

Order No. 32 dated January 27, 2020, however, modifying the prayer for filing additional written statement to one for amendment of written statement, allowing the facts sought to be brought on record by way of an additional written statement, now by way of an amendment to the written statement under Order VI Rule 17 of the Code of Civil Procedure.

It is made clear that, in the event the opposite party-husband seeks to amend the plaint to deal with such additional facts, the trial court is at liberty to allow such amendment, subject to permitting the petitioner-wife to file an additional written statement in such limited context.

The concerned department of the trial court shall carry out necessary amendments to the amendment application in terms of the application under Order VIII Rule 9 of the Code of Civil Procedure, as contained in the proposed additional written statement, annexed at Pages 45 to 46 of the present revisional application, incorporating the amended pleadings after paragraph 35 of the existing written statement, allotting appropriate subsequent serial numbers

to the paragraphs contained in the proposed amendment from 36 onwards.

The trial court is further requested to proceed expeditiously with the hearing of the suit itself, in view of long pendency of the same and the nature of dispute involved being matrimonial in nature.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)