

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision 619 of 2019
Date of decision: 28.05.2021

Anupam Sinhmar ...Petitioner

Versus

Rajesh Kumar ...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Aayush Arora, Advocate,
Counsel for the petitioner.

Mr. Rakesh Chopra, Advocate,
Counsel for the Respondent.

FATEH DEEP SINGH, J.

The instant Civil Revision by virtue of Article 227 of the Constitution of India seeks to set aside order dated 14.01.2018 (Annexure P-1) of the Court of Learned Addl. District Judge, Chandigarh, allowing application under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the petition filed in matrimonial case HMA Petition No.24 of 2016 titled as 'Rajesh Kumar versus Anupam Sinhmar' whereby, the application of the husband for taking additional ground of desertion stood allowed by the impugned order of the Court

below.

Heard counsel for the parties and perused the records.

The petitioner-wife-Anupam Sinhmar and respondent-husband-Rajesh Kumar entered into a wedlock on 13.03.2012. However, no child was born out of this wedlock. Both the husband and wife are employed with Government undertakings.

During the course of matrimony, the couple developed differences, as a consequence of which, the husband filed a petition under Section 13 of the Hindu Marriage Act seeking dissolution of marriage by decree of divorce on 11.01.2016. The primary grouse of the husband was that the wife did not have cordial relations with the husband since the inception of the marriage and of short temper, often disobeyed him and insulted him in the presence of others. It is further contended that the wife refused to run the household and even went to the extent of taunting the husband that if he was so keen to consummate this marriage, he can adopt a child. The allegations further hover around physical abuse by the wife of the husband and whenever the husband restrained the wife from doling out her salary amongst her own family and which further aggravated the souring relationship between the couple.

The wife in her response by way of written reply besides taking up usual pleas of preliminary objections of misrepresentation of the facts and that the husband and his family were greedy persons who were bent upon asking the wife to hand over her entire salary to him and his family. It is claimed that the husband had earlier filed a divorce petition in the Court of District Judge, Kaithal, and, thereafter, withdrew the same. On merits, the wife, though accepted the factum of marriage and that no child was borne to the couple, denied each and every allegation of the husband raising pleas of demand of dowry by the husband and his family as well as that they were eying her salary. The wife has sought to level insinuations against the husband and in-laws of ill treatment and sought dismissal of the petition. It was during the course of trial, an application under Order 6 Rule 17 CPC was moved by the husband/respondent for amendment of the petition by addition of ground of desertion which was not earlier available to the husband and has subsequently, crystallized with the passage of time.

The wife in her response denied the averments claiming that since evidence has already commenced the application was, thus, not sustainable. The primary plea of the wife is that the husband earlier failed to take up such a ground

which he cannot raise at this belated juncture and sought the dismissal of the application.

Upon hearing counsel for the parties, it is plea of the husband in his petition for divorce that the wife on her own without substantial cause had left the matrimonial home and moved into the flat allotted to her by the employer and lived at her husband's place only till 16.03.2012 and, thereafter, from 27.03.2012, had been staying at Chandigarh. The petition has been filed on 11.01.2016 and it is during the course of pendency, fresh ground for divorce on the basis of desertion have come about and which fact finds mention as to the wife leaving the matrimonial home without any substantial cause and started living at Chandigarh. The Court below in the impugned order has taken note of the fact as to the plea of desertion raised by the petitioner in his original pleadings in the petition. Moreso, the application for amendment was moved prior to the initiation of the trial and, thus, could not be termed to be at a belated stage affecting the disposal of the petition. Keeping in view that it was during the course of pendency of the petition, this ground had come about and, therefore, the petitioner was well within his rights to have sought amendment to incorporate the same. The citation relied upon by the petitioner's counsel in judgment titled

as 'Anil Gopal Bhatia versus Smt. Kashish Anil Bhatia @ Neelam Rattankumar Balchandani' 2017(5) BCR 462 has been well controverted by the counsel for the respondents who has cited judgments titled as 'Sanyogta Verma versus Vinod Verma' 1991(44) DLT 716; 'Rajinder Parshad versus Kulwinder Rani' 2015(2) PLR 746 and 'Abdul Rehman versus Mohd. Ruldu (SC)' 2013(1) DNJ 75. The Apex Court in 'Abdul Rehman and another versus Mohd. Ruldu and others' 2013(1) DNJ 75, in a similar situation had observed that where the proposed amendment would alter the cause of action of the petitioner, the Court ought to take note of the same and since, it is a ground which has come about during the pendency of the petition, the respondent-husband thus, cannot be denied to raise such a plea in his petition by adding another ground through amendment of his petition. More so, it is a pure matrimonial dispute and allowing of the amendment would sub serve that the cause of justice is given an ultimate burial rather than keeping it smoldering for the times to come. More so, being an amendment which subserve the purpose to determine the real issues between the estranged couple needs to be allowed so that the dispute between them is put to an end. Moreover, by allowing such a prayer, the opposite side, the petitioner-wife in this case before this Court does not suffer any

prejudice as the trial is still at initial stage.

The Court needs to be liberal in such a construction involving matrimonial disputes and should not fall prey to constricted approach. This court does not find any perversity in the impugned order under challenge and thus, the present petition being without merits stands dismissed.

(Fateh Deep Singh)
Judge

28.05.2021
Neha

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*