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C.O. 1629 of 2022

Sri Arnab Chakraborty
Vs
Smt. Nabamita Nath Chakraborty

Mr. Arijit Bardhan,
Mr. Sayan Sinha,
Mr. Steven S. Biswas,
... For the petitioner.

Mr. Somnath Roy Chowdhury,
... For the opposite party.

The subject matter of challenge in this case is against the rejection of a prayer for amendment under Order 6 Rule 17 of the Code of Civil Procedure filed by the petitioner/husband in Matrimonial Suit No. 1112 of 2019 pending before the learned Additional District Judge, Fast Track Court-I, Howrah.

Admittedly, this is a suit for divorce, originally instituted under Section 13 of the Hindu Marriage Act. The relationship between the parties is strained one. The estranged wife/opposite party after being separated from her husband already filed a proceeding under Section 12 of the Domestic Violence Act, with a prayer for interim monetary assistance.

In such petition filed by the opposite party/wife, some disclosure was made by the opposite party/wife in paragraph 6, wherefrom the opposite party/wife doubted the potency of the petitioner/husband.

Mr. Arijit Bardhan, learned advocate appearing for the petitioner/husband by the proposed amendment wants to encash the admission/disclosure made by the opposite party/wife in connection with a proceeding registered as Misc Case No. 371 of 2018 under Domestic Violence Act.

It is submitted by Mr. Bardhan that by the proposed amendment, there will be no change in the nature and character of the suit.

It is also contended that the divorce has been proposed fundamentally on the ground of cruelty. The facts disclosed in the proposed amendment, if not proved, as asserted by the opposite party/wife in Domestic Violence Act proceeding, would help the petitioner/husband to support the ground of alleged cruelty.

Per contra, Mr. Somnath Roy Chowdhury, learned advocate appearing for the opposite party/wife submits that the proposed amendment is not necessary to adjudicate the grounds set up in the prayer for divorce.

Learned advocate for the opposite party replies that a new ground of potency on the part of the petitioner/husband has been sought to be incorporated upon misconstruing the disclosure made by the opposite party/wife in her petition filed in Domestic Violence Act proceeding.

Learned advocate for the opposite party

strenuously denies the alleged admission, stated to have been made by the opposite party/wife in her petition filed before the Domestic Violence Act proceeding.

Having considered the submissions of both the sides, it appears that the only point requiring address by this Court is whether there will be any no change in the nature and character of the suit by the proposed amendment, or not.

Upon viewing the proposed schedule of amendment, it appears that a conversion has been proposed to colourize the instant proceeding from Hindu Marriage Act to Special Marriage Act. The other point disclosed in the schedule of proposed amendment is relatable to a disclosure made by opposite party/wife in connection with a proceeding registered as Misc Case No. 371 of 2018 under Section 12 of the Hindu Marriage Act.

Mr. Bardhan has described the disclosure to be an admission on the part of the opposite party/wife, what has been strongly disputed by the opposite party/wife. But in any case, the proposed amendment will not change the nature and character of the suit. When the nature and character of the suit will not be changed by the proposed amendment, this Court believes that if the proposed amendment is allowed giving sufficient opportunity to opposite party/wife to controvert the same upon filing amendment of written

statement, that would not cause any prejudice to the petitioner/wife. Whether it is an admission or not, as disclosed in the Domestic Violence Act proceeding, is a subject matter of decision by the Trial Court to be reached at the final hearing of the suit taking into account the evidence to be adduced by the parties to this case.

The revisional application is thus disposed of permitting amendment of the plaint to be made in terms of the schedule of proposed amendment mentioned against 11A of such schedule of amendment, vide petition for proposed amendment, dated 20.11.2021.

The learned Court below is accordingly directed to incorporate 11A of the proposed schedule of amendment in the plaint, originally filed by the petitioner/husband, doing necessary corrections and after entering the same into the relevant register maintained by the Court below with a further direction permitting the opposite party to file written statement including the amended written statement, if there be any, if not filed in the meantime.

It is, however, clarified that the written statement is always subject to the provisions available under Order 8 Rule 1 of the Code of Civil Procedure.

Parties are directed to make communication of this order to the Court below.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)