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C.O. 2002 of 2022

**Smt. Soma Chanda/Paul
Vs
Shri Kaushik Chanda**

Mr. Swarup Banerjee,
Mr. Sajal Kumar Ghosh,
... For the petitioner.

Mr. Shibnath Ganguly,
Mr. Arunava Maitra,
Ms. Manasi Das, ... For the opposite party.

The subject matter of challenge in this revisional application is against an order of amendment being rejected by order dated 20th May, 2022 of learned Additional District Judge, 1st Court, Asansol in Mat Suit No. 24 of 2017.

Mr. Swarup Banerjee, learned advocate appearing for the petitioner upon advertng to the schedule of the proposed amendment, submits that some facts relatable to causing abortion of petitioner against wish of petitioner together with facts revealing ill treatment caused upon the petitioner has been sought to be incorporated, for the inadvertent mistake caused at the time of drafting the plaint of Mat suit for divorce.

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

basically for divorce taking the ground of cruelty.

It is also submitted by the petitioner that mere delay caused in filing the amendment application should not be treated to be fatal against the proposed amendment.

Reliance is placed by learned advocate for the petitioner on a decision reported in **(2007) 6 SCC 737 (Ramchandra Sakharam Mahajan -vs- Damodar Trimbak Tanksale (D) and Others)** to submit that the proposed amendment could not have been refused, merely for the delay caused as well as for the commencement of the trial having taken place already.

Per contra, Mr. Shibnath Ganguly, learned advocate appearing for the opposite party/husband disputes with the submission, advanced by the petitioner, replying that the facts sought to be incorporated are not the subsequent event, taken place during the pendency of the suit, but it was very much within the knowledge of the petitioner, while initiating suit for divorce. Supporting the order of the Court below, learned advocate for the opposite party submits that in this case the affidavit-in -chief under Order 18 Rule 4 of the CPC has already been filed on 27th April, 2022 to mark the commencement of trial and the instant petition proposing amendment was filed on 6th May, 2022, i.e.,

subsequent to the affidavit-in-chief being filed before the Court below.

Reliance is placed by learned advocate for the opposite party to support his stand on a decision reported in **2015 (4) ICC 665 (Cal.)** delivered in the case of ***Uma Pada Sen & Ors. –vs- Debasish Sen & Ors.*** that the proposed amendment may not be allowed after the commencement of the trial.

Upon referring such decision, learned advocate for the opposite party submits that affidavit-in-chief having already been filed, prior to the application proposing amendment being made, it would be presumed that trial has already commenced and in such circumstances, the amendment should not be allowed.

Taking recourse to a further decision reported in **2015 (4) ICC 159 (Cal.)** delivered in the case of ***Chandra Kanta Mistri –vs- Saila Bala Mistry & Anr.***, learned advocate appearing for the opposite party submits that in the event of amendment being allowed after the commencement of trial, virtually there would be a *de novo* trial, which is not permissible, and it will prejudice the rights and contentions of the opposite parties.

Having considered the submission of both the parties, it appears that the Court below declined to grant amendment having attracted the mischief

provided under Order 6 Rule 17 of the CPC. Significantly, the suit was filed in the year 2014.

It is also equally true that when the suit is basically for divorce taking the ground of cruelty fundamentally, there will be no change in the nature and character of the suit, in the event of proposed amendment being allowed, though application undoubtedly has been filed subsequent to the affidavit-in-chief being filed.

But there must be an end of litigation. Delay thus caused in filing the proposed amendment should not be viewed critically giving precedence to technicality, though petitioner was not diligent enough to seek for proposed amendment at the appropriate stage.

In the event of the proposed amendment being allowed, there will be no prejudice caused to the opposite parties, because the opposite parties will be favoured with an opportunity to submit amended copy of written statement. But the harassment that has occasioned to the opposite party/husband for the belated amendment being proposed, needs to be saddled with some compensatory cost.

The revisional application is thus disposed of upon setting aside the order impugned subject to payment of cost of Rs. 5,000/- (Rupees Five Thousand), to be paid by the petitioner to the

opposite party within two weeks after the Puja vacation of the Court below.

The proposed amendment to be allowed.

Upon such deposit of cost being made within such stipulated period of time, the Court below would permit the opposite party to furnish additional written statement within a fortnight thereafter. The amended copy of the plaint may be supplied before the Court below within three days after the deposition of cost before the Court below upon supplying a copy well in advance to the opposite party for preparation of additional written statement.

This would not, however, prevent the Court below to frame additional issues, if any, in accordance with law. Both the parties are directed to make communication of the order to the Court below.

Since both the parties are lying separated for a considerable period of time, for the matrimonial differences between the pares, the logical conclusion of the suit may be expeditiously reached without granting unnecessary adjournment, unless it is extremely unavoidable.

Petitioner is directed to make communication of this order to the learned 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)