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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1641 of 2019 (O&M)

Date of decision: 20.09.2022

Satbir Yadav and another

....Petitioners

Versus

Niranjan

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Mukesh Rao, Advocate for the petitioners.

Mr. Karan Singh, Advocate for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for setting-aside the order dated 14.02.2019, vide which the Principal District Judge, Family Court, Gurugram, has dismissed the application filed by the petitioner under Order 6 Rule 17 CPC and has declined to grant permission to amend the written statement.

Counsel for the petitioners has argued that the respondent/father has filed the petition under Section 25 of the Guardians and Wards Act, for seeking the custody of the minor aged about 05 years (name not disclosed). It is further submitted that the daughter of the petitioners Nisha (wife of the respondent) was suffering from Rectum Cancer and thereafter, she had died and since then, the minor child is residing in the custody of the petitioners. It is further argued that after filing of the written statement, when the cross-examination of PW-1/respondent was conducted, certain facts came to their notice and thereafter, they moved an application for amendment of the written statement by taking a specific plea, which reads as under:-

“It is further submitted that the deceased Nisha prior to her death use to exchange whatsapp messages with her cousin brother Praveen Pal and conveyed her miseries, torture and harassment caused by the petitioner to her and her son, which shows the bad conduct of the petitioner towards her son and herself. It is furthermore submitted that the Hon’ble Court of Shri Amandeep Singh, JMIC, Rewari vide FIR No.281/2016, U/s 498-A, 34 IPC, P.S. Dharuhera, titled as State v. Niranjan had allowed the application under Section 311 and 91 Cr.P.C. of the respondents/complainant and had placed the whatsapp conversation exchanged between Nisha (deceased) and her cousin Praveen Pal on record. Copies of the Whatsapp chat and court order under Section 311 Cr.P.C. are attached herewith.”

The trial Court dismissed the application primarily on the ground that the same has been filed after a long lapse of time.

Counsel for the petitioner has further contended that due to inadvertent mistake, the fact which came to their notice subsequently could not be incorporated in the written statement and therefore, the same is required to be incorporated and it will enable the trial Court to come to a just and fair conclusion and therefore, it should be allowed.

Counsel for the respondent has, however, opposed the prayer on the ground that even as per the record, the fact which is sought to be incorporated in Para 2 of the written statement by way of amendment came to the notice of the petitioners in March, 2018 whereas the application has been filed after 10 months and therefore, the trial Court has rightly declined the application.

After hearing the counsel for the parties and going through the paperbook, I find merit in the present petition.

A perusal of the impugned order shows that the only ground taken while declining the application is that the same has been

filed after 10 months and amounts to delay the proceedings. It is also observed that the petitioners could easily lead the evidence being electronic evidence in their possession.

It is worth noticing that this petition is pending since 2019 and while issuing notice of motion, the trial Court was directed to adjourn the proceedings beyond the date fixed before this Court and a period of more than 03 years has lapsed.

In view of the above and after going through the facts and circumstances of the case and also in view of the fact that the trial Court is to form an opinion regarding the grant of custody of the minor child and to find out the veracity of facts/corectness, if the proposed amendment is allowed, the same is not going to prejudice the right of the respondent/father. Accordingly, the present petition is allowed and the impugned order dated 14.02.2019, is set-aside and the application filed by the respondents (petitioners herein) for amendment of the written statement is allowed.

Considering the fact that this petition is pending since 2019 for the last 03 years and there is stay of proceedings, the trial Court is directed to proceed further and decide the case expeditiously preferably within a period of 06 months from today.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

20.09.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No