

Item No. 18
12.06.2023
Court. No. 19
GB

C.O. 411 of 2023

Meeta Mohanty
Vs.
Gaurav Ravi Wankhede

*Mr. Tanmoy Chowdhury,
Ms. Ritoprita Ghosh*

...for the Petitioner.

*Mr. Debjit Mukherjee,
Mr. Arnab Nandi*

...for the Opposite Party.

The petitioner has challenged an order dated November 1, 2022 passed by the learned Additional District Judge, 5th Court at Alipore in Matrimonial Suit No.89 of 2016. By the said order, the application for amendment to the written statement and to the counter-claim had been allowed.

It appears from the records that the written statement to the counter-claim has not yet been filed by the petitioner/wife. Thus, the suit is at its initial stage. Secondly, it appears to the Court that certain facts which occurred after the written statement and counter-claim was filed by the husband, was sought to be brought on record which are factual issues. Moreover, the plea of the husband that he had paid Rs.50 lakhs towards maintenance of the wife and daughters as a one-time settlement was also sought to be brought on record. These amendments do not indicate that any admissions are being taken away or the amendments, if allowed, would change the nature and character of the suit.

The amendments also do not reflect to be time barred. Hence, the learned court did not err in allowing the amendments.

The contention of Mr. Chowdhury is that the statement that the husband had already given Rs.50 lakhs as one-time settlement for maintenance of the wife and two daughters, was incorrect. The husband had paid the amount on his own accord and the wife did not accept the same at any time as full and final settlement.

This Court is of the view that the correctness or the merits of the amendment are not to be looked into at the stage of allowing an application for amendment. Whether the payment of Rs.50 lakhs was a one-time settlement or an interim arrangement or a voluntary gesture by the husband, are all to be decided on merits by leading evidence. The petitioner cannot have any apprehension at this stage with regard to the facts sought to be introduced.

The petitioner is at liberty to controvert all the facts brought in by this amendment by filing a rejoinder and/or written statement to the counter-claim and such issues shall be decided by the learned court below in the trial. It is also on record that the petitioner has not yet filed any application claiming maintenance either for herself or for her daughters. Thus, whether Rs.50 lakhs was at all towards maintenance/one-time settlement or not or whether the same was a gift from the husband, shall be decided by the learned trial judge at the appropriate stage.

If any application for maintenance pendente lite is filed, the same shall also be decided on its own merit without taking the amendment to be sacrosanct but on the basis of records and evidence, if necessary. Contentions in the pleadings, are subject to proof.

Accordingly, the revisional application fails and is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)