

11.12.2023
Sl. No.13(DL)
srm

C.O. No. 667 of 2023

Kanchan Sen

Versus

Sangita Karmakar (Sen)

Mr. Debanik Banerjee,
Ms. Sutapa Dutta,
Mr. Anirban Roychowdhury

...for the Petitioner.

Mr. Dhananjay Banerjee

...for the Opposite Party.

By the order impugned dated January 31, 2023, the learned Additional District Judge, Fast Track, 2nd Court at Malda rejected an application for amendment of the written statement, filed in connection with Matrimonial Suit No.478 of 2017. The learned court below held that trial had commenced and a new cause of action could not be brought on record.

The learned Advocate for the petitioner submits that even if the trial had commenced, the knowledge of the alleged marriage of the opposite party, during the subsistence of the suit was derived sometime in 2020. The courts were not regularly functioning at the relevant point of time due to the intervention of the pandemic. Hence, at the first opportunity, the application for amendment was filed. As the marriage

between the parties and the claims and counterclaims relating to such alleged marriage are subject matters of the suit, the subsequent events should be incorporated. The merits of such amendment need not be looked into. Under such circumstances, it is prayed that this Court should allow the amendment.

The learned Advocate for the opposite party/wife submits that the petitioner wasted two years in between and came up with the amendment application when the evidence was going on. Such belated amendment should not be allowed. It is further submitted that the amendment was irrelevant for disposal of the suit.

Having heard learned Counsel for the respective parties, this Court is of the view that the incident which is sought to be incorporated by way of an amendment, does not amount to withdrawal of any admission made in the written statement nor does it amount to setting up any contradictory pleas. Only, a subsequent event is sought to be brought on record, to demonstrate the conduct of the opposite party.

Under such circumstances, the amendment should be allowed. Moreover, the merits of the averments in the amendment application is not to be decided at this stage. As the petitioner had filed the application belatedly, the opposite

party is entitled to be compensated. Costs of Rs.5,000/- be paid to the plaintiff directly, in cash, within a period of two weeks. The learned court below shall record the payment and acceptance of the amount. The amendment is allowed subject to payment of such costs.

The amended written statement shall be filed within the next date fixed by the learned court below and the re-joinder to the same shall be filed within two weeks from the date of receipt of a copy of the written statement. Failure on the part of the petitioner to pay the costs, within the time frame fixed by this Court, shall entitle the learned court below to proceed with the suit without the amended written statement.

The suit shall be expedited and disposed of within six months.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)