

S/L 17
30.03.2023
Court No.652
SD

CO 4161 of 2019

Smt. Koyel Roy
Vs.
Sri Somnath Roy

Mr. Partha Sarathi Bhattacharyya
Ms. Sukla Das

...for the Petitioner.

Mr. Arindam Dey
Mr. Smarajit Basu
Mr. P. Chakraborty

...for the Opposite Party.

This application under Article 227 of the Constitution of India has been directed against the order no.36 dated 26.9.2019 passed by the learned Additional District Judge, 2nd Court, Arambag, Hooghly in Matrimonial Suit No.85 of 2017.

By the impugned order, learned court below was pleased to reject the defendant's prayer for amendment of written statement. The petitioner contended that the petitioner/wife was married with the opposite party/husband according to Hindu rites and customs on June 17, 2009 and they are blessed with a male child who was born on 15.9.2011.

The plaintiff / opposite party alleged in the plaint that from the early days of marriage, the petitioner herein could not adjust himself in the house of the opposite party and the opposite party was in service of a private concern and had to stay outside most of the time for the sake of his occupation and the job of the opposite party was very much volatile for which he did not have any permanent place of stay and for

which the opposite party could not take the petitioner along with him. Op/husband further alleged in the plaint that wife /petitioner was unhappy in matrimonial life and she never participated in the family matters. Finally by way of an agreement petitioner herein decided to stay along with child at her father's place from 31.10.2017.

Petitioner contended that the defendant is contesting the said suit by filing written statement but after filing the written statement, it transpires that inadvertently some mistake occurred while preparing such written statement and vital points have been omitted relating to the matrimonial suit which are very much necessary to incorporate by way of amendment and as such, she filed application under Order VI Rule 17 of the code. Now, by way of amendment, the petitioner sought to incorporate certain facts and also sought to delete certain statements from the written statement which, if allowed, will not change the nature and character of the suit.

Earlier the petitioner instead of filing an application under Order VI Rule 17 filed an amended written statement and the said application was rejected by the court below and challenging the same, the petitioner preferred revisional application before this court being CO 1989 of 2019 and this court was pleased to observe that since the trial court did not go into the merits of the application in question, but only rejected the same as not being maintainable, so said application was rejected.

Subsequently, present application under Order VI Rule 17 was filed but the court below rejected the same with the observation that points sought to be incorporated by way of amendment are the same facts which the petitioner contended in the old paragraphs but in a different way and as such, the court below did not find it necessary to allow the application for amendment.

Learned counsel appearing on behalf of the opposite party mainly raised objection in respect of item no.1 of the schedule of amendment and contended that the petitioner is trying to take away certain admissions and certain statements which are contradictory to their original statement and if they are allowed to withdraw such statement by way of deletion from the written statement then it will be prejudicial to the opposite party/husband and as such, he has strong objection in respect of item no.1 of the schedule of amendment. However, he did not press much argument relating to item no.3 of the schedule of amendment but he submits that the said item no.3 matter has been sought to be incorporated in the written statement by filing amendment application only to drag the said matrimonial proceeding for an indefinite period which was filed in the year 2017.

Having considered the facts and circumstances of the case, it appears to me that by incorporating the subject matter mentioned in item no.3 of the schedule of the amendment petition, the defendant/wife/opposite party only wants to elaborate the statement that has already been made

by the wife/petitioner in her written statement. Accordingly, if the said portion of amendment is allowed to be incorporated with the written statement, the plaintiff will have no cause to prejudice. Moreover, it appears that no new fact is sought to be incorporated by way of amendment but it is merely an attempt to make the earlier statements specific. Since I do not find any mala fide in the prayer for amendment nor there is any chance that if the proposed amendment is allowed, it will change the nature and character of the suit because even after proposed amendment it will remain a suit for dissolution of marriage under section 13 (1) of the Hindu Marriage Act. Moreover if the proposed amendment is allowed, it will not cause such prejudice to the plaintiff/husband which cannot be compensated by payment of costs. Accordingly the proposed amendment is allowed, in respect of item no 3 of the schedule of amendment only.

However, I am not inclined to allow item no.1 and 2 of the schedule of amendment as it relates to withdrawal of statement which the petitioner has earlier made in her written statement.

In view of the above, C.O. 4161 of 2019 is disposed of with a direction to the court below to incorporate item no.3 of the schedule of amendment application in the written statement and to give a direction upon the defendant to file amended written statement under the provisions of Order VI Rule 18 of the Code of Civil Procedure. The prayer for

amendment as item no.1 and 2 of schedule of amendment is refused.

Since the suit is pending for a considerable period of time, the court below is directed to make all endeavour for expeditious disposal of the suit and to conclude the entire proceeding preferably within a period of one year from the date of communication of the order.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)