



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-01-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CRP No.4320 of 2022

And

CMP No.22709 of 2022

N.Aafra Farzana

... Petitioner

VS.

Khwaajaa Moinuddin

... Respondent

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 08.11.2022 passed in IA No.3 of 2022 in OS No.33 of 2021 on the file of the Sub Court at Tambaram.

For Petitioner : Mr.S.Vinoth Kumar

For Respondent : Mr.S.Viswanathan for
M/s.Dass and Viswa Associates



ORDER

The present Civil Revision is filed against the order dated 08.11.2022 passed in IA No.3 of 2022 in OS No.33 of 2021 on the file of the Sub Court at Tambaram.

2. The revision petitioner is the defendant in the suit and the respondent-husband instituted the suit in OS No.33 of 2021 to cancel the marriage solemnised between the petitioner and the respondent as per Muslim Rites and Customs.

3. It is not in dispute between the parties that the examination and cross-examination were concluded and the suit is posed for the argument of the parties.

4. At that point of time, the respondent-husband filed IA No.3 of 2022 in OS No.33 of 2021 under Order VI, Rule 17 of the Code of Civil Procedure to amend the prayer in the plaint. Due to oversight, they have sought for cancellation of marriage. However, it is just and necessary to



amend the prayer in the plaint for the purpose of declaring the marriage as null and void.

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5. The Trial Court adjudicated the Interlocutory Application filed seeking amendment of prayer in the suit and allowed the same with costs.

6. Perusal of the order reveals that the requirements contemplated under the Proviso Clause to Order VI, Rule 17 of the Code of Civil Procedure was not considered by the Trial Court. The Proviso to Order VI, Rule 17 of the Code of Civil Procedure stipulates that “no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial”.

7. In the present case, the learned counsel for the respondent states that the ground has been raised in the plaint, but inadvertently the prayer has been sought for to cancel the marriage instead of declaring the marriage as null and void.



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8. When the plaintiff was very much aware of the grounds raised in the plaint and no amendment was filed at the advanced stage of the suit, it is to be construed that the respondent has complied with the mandatory requirements contemplated under the Proviso Clause to Order VI, Rule 17 of the Code of Civil Procedure for amendment of plaint.

9. In the present case, the trial was completed and the suit is posted for arguments. In the event of allowing the Interlocutory Application for amending the prayer in the plaint, the same would cause prejudice to the interest of the revision petitioner. Since the written statement was filed in respect of the grounds raised in the plaint and examination and cross-examination of witnesses were also concluded.

10. Thus this Court is not inclined to consider the Interlocutory Application filed by the respondent for amending the prayer in the plaint and further, the Trial Court has failed to consider the requirements as contemplated under the Proviso Clause to Order VI, Rule 17 of the Code of Civil Procedure.



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11. Accordingly, the order dated 08.11.2022 passed in IA No.3 of 2022 in OS No.33 of 2021 on the file of the Sub Court at Tambaram is set aside and consequently, the present Civil Revision Petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

25-01-2023

Svn
Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order

To

The Sub Judge,
Sub Court,
Tambaram.



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S.M.SUBRAMANIAM, J.

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