



C.R.P.(MD)No.2971 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.11.2023

PRONOUNCED ON:22.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**C.R.P.(MD)No.2971 of 2023
and
C.M.P.(MD)No.15268 of 2023**

A.Suganya : Petitioner/Respondent/Respondent

Vs.

V.A.Anand : Respondent/Petitioner/Petitioner

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal order, dated 17.08.2023, made in I.A.No.1 of 2023 in H.M.O.P.No.63 of 2020, on the file of the Family Court, Madurai.

For Petitioner : Mr.R.Kannan

For Respondent :Mr.V.N.Arjun



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ORDER

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The Civil Revision Petition is directed against the order passed in I.A.No.1 of 2023 in H.M.O.P.No.63 of 2020, on the file of the Family Court, Madurai, allowing the petition filed under Order VI Rule 17 of the Civil Procedure Code.

2. The respondent has filed a petition in H.M.O.P.No.425 of 2019, against the revision petitioner claiming restitution of conjugal rights on the file of the Family Court, Trichy and that subsequently the case was transferred to the file of the Family Court, Madurai and the case is pending in H.M.O.P.No.63 of 2020. It is not in dispute that the marriage between the parties was solemnised on 23.05.2012 as per the Hindu rites and customs and due to their wedlock, they were blessed with a male child Sharvan, that the respondent – husband has filed a petition in G.W.O.P.No.1217 of 2022 seeking custody of their minor child Sharvan, that the revision petitioner/wife has filed a complaint under the provisions of the Domestic Violence Act in D.V.No.1 of 2020 and that the same are pending. Pending original petition, the respondent/husband has filed a petition in I.A.No.1 of 2023 under Order VI Rule 17 C.P.C., to



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amend the main petition for converting the petition for restitution of conjugal rights as the petition for divorce.

3. The main contention of the respondent/husband is that the petitioner has committed several matrimonial cruelties against him, but he has not sought for the relief of divorce, with an intention to safeguard the reputation of either families and for the welfare of their minor child Sharvan, that the petitioner, subsequent to the filing of H.M.O.P., lodged several false complaints of dowry harassment before the police against the respondent, his parents and brother, which resulted in the criminal proceedings, that the petitioner has also initiated proceedings under the Domestic Violence Act, that the respondent has arranged a separate residence for the petitioner at Madurai, in pursuance of the compromise move initiated by the Family Court, Madurai, but even thereafter the petitioner has adamantly refused to come and live with him, that the respondent has all along been patiently waiting under the bonafide belief that the petitioner would change her attitude and resume back to the matrimonial home, but the respondent has lost his hope due to the conduct of the petitioner and that because of the subsequent events and altered circumstances, the original relief sought for by him has become



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inappropriate or even if granted, the same will not be useful and that therefore, he was constrained to file the above application to amend the petition to claim divorce.

4. The revision petitioner/wife has filed a counter statement raising objections stating that the relief of conjugal rights and the relief of divorce are diametrically opposite to each other, that the proposed amendments are all against the provisions of the Hindu Marriage Act, that the entire character of the main petition, entire cause of action and the relief claimed in the petition shall change if the proposed amendment is allowed, that no amendment of pleadings can be allowed which has the effect of introduction of mutually destructive pleas and that therefore, the petition is liable to be dismissed.

5. The learned Judge of the Family Court, after enquiry, has passed the impugned order dated 17.08.2023 permitting the proposed amendment. Aggrieved by the impugned order, the wife has preferred the present Civil Revision Petition.



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6. Before entering into further discussion, it is necessary to refer the decisions relied on by the learned Counsel for the revision petitioner.

1. ***(2012)2 SCC 300 (J.Samuel and others Vs. Gattu Mahesh and Others):***

“In suit for specific performance of contract of sale of property, specific averment that plaintiff was and is always ready and willing to perform his part of contract, which is essential under S.16(c) of Specific Relief Act and Appendix A Form 47 for maintaining suit, not contained in plaint – Application for amendment of plaint to introduce the specific plea on ground that it was missed by “type mistake” filed before trial court after arguments were completed and matter was posted for judgment – Held, omission of such vital plea amounts to lack of due diligence and cannot be regarded as mere typographical mistake – Trial court rightly rejected the amendment application and High Court erred in allowing the same – However, in deserving cases court can allow delayed amendment by compensating the opposite party by awarding costs, though the present case was not such a case.”



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2. 2012(5) CTC 37 (Minor Balakumaran, through his Natural Guardian, next friend and father Gnanasoundiran Vs. Gunasekaran):

“Suit for Declaration filed – Plaintiff sought to add a relief of Recovery of Possession – Petition dismissed – Revision filed – Amendment Application was filed after trial – Petitioner has not made out a case that in spite of his diligence he could not file Application before trial – Ingredients of Proviso to Order 6, Rule 17, not satisfied – Held Application rightly dismissed.”

3. 2013(3) MWN (Civil)13 (D.Lalitha and others Vs. Rangasan and others):

“Amendment of Pleadings – Introduction of new Plea – Suit for partition between brothers and sisters – Officials arrayed as formal Defendants in Suit – Clear averment of Plaintiffs in Suit that they were not claiming any share in father's properties and only claimed 1/4th share in mother's property – Suit dismissed by Trial Court – Application for Amendment filed by 3rd Plaintiff at Appellate stage – Proposed Amendment introducing Plea that Third Plaintiff due to inadvertence did not claim any share in father's property – Amendment seeking to introduce relief of partition of father's property as well – Held, Plea sought to be raised by Amendment totally inconsistent with original



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Plea – In such circumstances, Order of Court below dismissing Application for Amendment, upheld – Revision dismissed.”

7. In the first decision above referred, in a suit for specific performance of contract of sale of property, amendment was sought to include the averment that the plaintiff therein was and is always ready and willing to perform his part of contract, so as to satisfy the mandatory requirement under Section 16(c) of the Specific Relief Act, by alleging that it was a type mistake, that the trial Court has rejected the proposed amendment and the High Court, by setting aside the order of the trial Court, has allowed the proposed amendment and that when the same was taken before the Hon'ble Supreme Court, by observing that the omission of a specific plea mandatorily required by statute to be stated in the plaint amounts to negligence and lack of due diligence and as such, the amendment sought to incorporate such a plea on the ground that it was missed due to typographical mistake cannot be accepted, allowed the appeal and restored the dismissal order of the trial Court.



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8. In the second decision above referred, in a suit for declaration, amendment was sought to add a relief of recovery of possession and a learned Judge of this Court by observing that the plaintiff has not made out a case that in spite of his due diligence, he could not file amendment petition before the trial and thereby not satisfied the ingredients of proviso to Order 6, Rule 17 C.P.C., dismissed the Civil Revision Petition and thereby confirming the dismissal of the amendment petition.

9. In the third decision above referred, in an appeal which was filed challenging the dismissal of a partition suit between the brothers and sisters, amendment was sought for introducing the relief of a partiton of father's property as well. The learned Judge of this Court by observing that plea sought to be raised for amendment is totally inconsistent with the original plea, dismissed the revision petition and thereby confirming the dismissal of the amendment petition by the trial Court. In the said decision, the judgment of the Hon'ble Supreme Court in *Alkapuri Co-operative Housing Society Limited Vs. Jayantibhai Naginbhai* reported in *2009(3) SCC 467* was referred, wherein it was observed that an application for amendment of the plaint seeking to introduce a cause of action which had arisen during the pendency of the suit stands on a



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different footing than the one which had arisen prior to the date of institution and that the respondent/ plaintiffs in effect and substance sought to alter the basic structure of the suit is impermissible.

10. The above decisions are not applicable to the facts of the case on hand. But as rightly pointed out in the third decision above referred, it has to be seen in the present case, whether the respondent/husband has sought to introduce a new case with a new relief which is inconsistent with the original plea and the relief. Admittedly, the respondent/husband has filed a petition under Section 9 of the Hindu Marriage Act claiming restitution of conjugal rights, and now he sought to claim divorce on the ground of cruelty.

11. No doubt, a cursory look at the case of the respondent/husband would disclose that the original relief claimed and the relief sought to be added are diametrically opposite to each other. As already pointed out, the respondent/husband has claimed the amendment on the basis of the subsequent developments after the filing of the petition for restitution of conjugal rights. It is the specific case of the respondent/husband that after the filing of H.M.O.P., for restitution of conjugal rights, the



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petitioner/wife has lodged a complaint of dowry harassment before All Women Police Station, Thirumangalam, that the respondent was forced to apply for anticipatory bail and obtained orders from this Court, that the respondent has been paying Rs.7,500/- per month towards maintenance to the petitioner and their child as per the orders of this Court, that the petitioner has also filed a complaint under the provisions of the Domestic Violence Act in D.V.O.P.NO.7 of 2019, on the file of the Judicial Magistrate, Thirumangalam against the respondent, his parents and brother, that this Court has subsequently quashed the proceedings under Domestic Violence Act as against the parents and the brother of the respondent, that the petitioner has again lodged a complaint of dowry harassment against the respondent, his parents and brother and on that basis, F.I.R., came to be registered in Cr.No.4 of 2020 for the offences under Sections 498(A), 406, 420 I.P.C., and Section 4 of Dowry Prohibition Act, that the respondent, his parents and brother were constrained to file a petition in CrI.O.P.Nos.13644 of 2020 and 13645 of 2020 for quashing the F.I.R., and the same are pending, that subsequent acts of the petitioner would only amount to mental cruelty, that though the respondent has been patiently tolerating the acts of cruelty for the welfare of the family, but the act of cruelty has reached its optimum stage



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and has become unbearable, that the petitioner without any just or reasonable cause, left the matrimonial home, along with the child on 17.08.2013, that the respondent's efforts to bring back the petitioner to the matrimonial home have ended in vain and that therefore, the respondent with no other option, has filed the above petition seeking to amend the petition for incorporating the plea of divorce instead of the prayer for restitution of conjugal rights.

12. At this juncture it is necessary to refer the decision of the Allahabad High Court in ***Smt.Preeti Vs. Sandeep Asthana*** made in First Appeal No.605 of 2017, dated 06.09.2017, wherein the judgment of the Hon'ble Supreme Court in ***Srinivas Ram Kumar vs Mahabir Prasad And Others*** reported in ***1951 AIR 177*** was referred to the position that plaintiff could rely upon different rights alternatively and there was nothing in CPC to prevent the party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative and the relevant passages are extracted hereunder:

*“ It would also be pertinent to refer to the view taken by the Allahabad High Court in ***Smt. Krishna Devi vs Additional Civil Judge Bijnor*** and another. In this case, the respondent*



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husband had filed a matrimonial suit before the Trial Court on 28 September 1982 stating therein that his wife had deserted her matrimonial home on 29 July 1977 without any reasonable cause and was residing with her parents and also claimed alternative relief of divorce. It was contended on behalf of the wife that the relief for restitution of conjugal rights as well as for divorce could not be made simultaneously in one petition as they were contradictory to each other. The High Court expressed that alternative relief of restitution of conjugal rights and divorce could be prayed for because the provisions of CPC would govern the procedure to be followed, in which there was no such bar. Relying upon the law laid down by Supreme court in [Ram Kumar vs Mahavir Prasad](#), it was held that Plaintiff could rely upon different rights alternatively and there was nothing in CPC to prevent the party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. Ordinarily, the Court cannot grant relief to the plaintiff in a case in which there was no foundation in the pleadings and which the other side was not called upon to meet but there was nothing improper in giving the plaintiff a decree upon a case which the defendant himself had stated.

In the backdrop of the above position of law, the order allowing the amendment application by the Court below



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does not suffer from any infirmity because it has been allowed on 2 August 2017 on an application moved on 3 March 2017, while the marriage was admittedly performed on 25 April 2012. It is apparent that for final adjudication of the disputes between the parties, the same can be allowed by the Court. The wife had left the matrimonial house without any reasonable cause as per version of the husband. Hence the petition for restitution of conjugal rights was initially filed by the husband against the wife on 8 July 2013 with all good intention to bring his wife back home, but during the proceedings, further developments took place which were unpalatable to the respondent. The wife had instituted criminal case, being crime number 102 of 2013, at police station Mahila, District Gautambudh Nagar under sections 498 A, 323, 504, 506 [IPC](#) and $\frac{3}{4}$ [Dowry Prohibition Act](#) on 4 October 2013 against the husband and his family members, which made him change his mind to bring an amendment seeking relief of divorce on the ground of cruelty.

The other issue is as to whether the amendment was necessary for proper adjudication of the dispute between the parties. In this regard it seems that the husband had instituted a case for restitution of conjugal rights believing that his wife would come back as she had left the matrimonial home without any valid reasons, but when the



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wife became more aggressive since she filed a criminal case against the husband and his family members, it dawned upon the respondent that his wife probably never wanted to return to her matrimonial home and wanted to torture not only him but his whole family. It is then that the husband thought it proper to get the case of restitution of conjugal

rights converted into that of divorce on the ground of cruelty. The divorce on the ground of cruelty does not require separation between spouses for more than 2 years. However, two years separation would be valid only if desertion was the only ground for divorce. In case the divorce on the ground of cruelty is prayed for, only one year period since the date of marriage would make the petition for divorce competent.

From the proposition of law referred to above, there is no ambiguity as regards contradictory pleas being taken because without having the plaint amended for seeking a particular relief, no evidence would be permitted by the Court to be adduced to prove that plea. It is also worth mentioning here that the said amendment does not seem to cause any prejudice to the wife, because firstly she has not filed any written statement till date and she would still have an opportunity to meet the allegations made by the husband in the amended plaint. It may also be mentioned that to



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avoid multiplicity of suits, the amendment was required. It may further be mentioned that when alternative reliefs can be prayed for, conversion of one relief into another would not be barred.

13. In the case on hand also, according to the respondent, he has filed the petition for restitution of conjugal rights believing that his wife would come back as she had left the matrimonial home without any valid reason, but after filing of the petition for conjugal rights, she has lodged criminal complaints for dowry harassment not only against the respondent, but also against the parents and brother and also a domestic violence complaint and that thereby the petitioner/wife has come out with a clear cut case that she is not willing for re-union anymore and that is why with no other option, he has come up with the proposed amendment.

14. As rightly contended by the respondent side, rejection of the proposed amendment will only force the respondent to withdraw or not press the present petition for restitution of conjugal rights and to file a new petition for divorce and as such, they have to begin everything afresh. To put it in other way, if proposed amendment is allowed, it will



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avoid multiplicity of proceedings. Admittedly, both the parties are living separately for more than 3 years and are litigating the proceedings for more than 4 years, and in that scenario, directing them to start a new litigation afresh would not be in the interest of both parties. Moreover, as rightly contended by the respondent side, if the proposed amendment is refused and allowed to proceed with the case, he will not be permitted to adduce evidence for claiming divorce, for want of necessary pleadings in view of the settled legal position that any amount of evidence without pleadings and any amount of pleadings without evidence are of no use.

15. Considering the above and the legal position settled by the Hon'ble Supreme Court, this Court is in entire agreement with the views expressed and decided by the learned Judge of the Allahabad High Court. In the case on hand, the learned Judge of the Family Court by observing that when the parties were already litigating for nearly 4 years, there was no need to ask them to start the litigation afresh, as they could not reunion for the past 3 years, even though the petition was filed for restitution of conjugal rights, has rightly allowed the proposed amendments. The revision petition has not canvassed any other valid reason or ground to impugn the order. Hence this Court concludes that



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the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

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16. In the result, the Civil Revision Petition is dismissed.
Consequently, the connected Miscellaneous Petition is also dismissed.
There shall be no order as to costs.

22.12.2023

Index : Yes : No
Internet : Yes : No
SSL

To

1. The Family Court, Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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