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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 26th September, 2023***

+ **MAT.APP.(F.C.) 291/2023 & CM APPLs. 50106/2023, 50107/2023**

MRS JYOTI YADAV

..... Appellant

Through: Mr. Abhay Pandey, Mr. Amit Kumar,
Ms. Nikita Gupta, Mr. Chand & Ms.
Priyanka Singh, Advocates.

versus

CHITRESH YADAV

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeal under Section 19 (1) of the Family Courts Act, 1984 has been filed on behalf of the appellant against the Order dated 31.08.2023 passed by the learned Principal Judge, Family Courts, West Tis Hazari, Delhi, whereby the Application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) seeking amendment of the Written Statement has been dismissed.
2. The respondent/husband had filed a Petition under Section 12 (c) of the Hindu Marriage Act, 1956 (*hereinafter referred to as "HMA, 1956"*) seeking annulment of the marriage. The petition was listed on 31.08.2023 for the evidence of the appellant/wife (respondent in the main Petition), at which stage, the Application under Order VI Rule 17 of CPC, 1908 was



filed on behalf of the appellant/wife which was dismissed *vide* Impugned Order dated 31.08.2023.

3. The Application was dismissed on the ground that neither the said application was signed by the appellant/wife nor by her counsel and no justifiable ground had been given as to why the new counsel was not able to exercise due diligence in filing the said Application at an earlier stage before the commencement of trial. Indisputably, the present counsel had cross-examined PW1/respondent-husband on 25.03.2023 and 18.04.2023.

4. Being aggrieved, the present appeal has been preferred by the appellant/wife.

5. **Submissions heard** from learned counsels for the parties and the documents perused.

6. The record shows that the issues were framed and the evidence of the respondent/husband (Petitioner's evidence in the main Petition) was concluded and the matter was listed for the evidence of the appellant/wife (Respondent's evidence in the main Petition) on 31.08.2023. On the said date, instead of filing the affidavit of evidence, the appellant/wife moved the Application under Order VI Rule 17 of CPC, 1908.

7. Admittedly, the said Application did not bear the signatures of the applicant/appellant-wife or of her counsel, though it was supported with the duly attested affidavit of the applicant/appellant-wife.

8. The learned counsel on behalf of the appellant/wife has submitted that the said Application was not signed either by the counsel or by the appellant/wife, since certain other proposed amendments were to be incorporated in the said Application and it was not intended to be filed in the Court on that date. Significantly, the supporting affidavit had been duly



prepared and signed and thus to contend that it was not intended to be filed in the Court on that day is an explanation which is not tenable.

9. The other aspect is that the said Application had been filed at the stage of appellant's evidence (respondent in the main Petition) when the evidence on behalf of the respondent/husband (petitioner in the main petition) had already been concluded.

10. Order VI Rule 17 of CPC, 1908 is an enabling provision providing for amendment of the pleadings, but circumscribed by its Proviso which shows that no application for amendment of the pleading shall be entertained if the trial has commenced, unless it is shown that such an application could not be moved earlier despite exercising due diligence.

11. In the present case, the evidence of the respondent/husband has already been concluded. A specious ground was taken on behalf of the appellant/wife that a new counsel had been engaged on 14.10.2022 and he while going through the pleadings, realised that imminent amendments were required in the Written Statement. However, it has been observed in the impugned Order dated 31.08.2023 by the learned Principal Judge, Family Court that counsel, namely, Mr. Amit Gupta had conducted the cross-examination of the respondent/husband/PW1 on 25.03.2023 as well as on 18.04.2023. Clearly, he could not have cross-examined PW1/respondent without having gone through the entire pleadings. The claim that he was engaged only on 14.10.2022 and also that it was only later that he realised that the Written Statement required certain amendments, is nothing but an afterthought. It cannot be held that the present amendment Application could not have been filed earlier. The appellant/wife has failed to justify the filing of the amendment Application under Order VI Rule 17 of CPC, 1908



at this belated stage of appellant's evidence.

12. The learned Principal Judge, Family Court has observed in the impugned Order dated 31.08.2023 that the said application also does not specify when the counsel of the appellant came to know about the defects in the Written Statement.

13. We otherwise also well find that by way of proposed amendments, essentially the appellant/wife intends to withdraw Paragraphs 5 to 10 from the Preliminary Objections and Paragraphs 3 to 16 in her Reply on merits. Essentially, the appellant/wife intends to withdraw her entire defence and wishes to substitute it with a fresh Written Statement. Not only this, the proposed amendments are withdrawal of all the admissions that have already been made in the Written Statement. The withdrawal of admissions on the frivolous ground of the counsel having cheated the appellant/wife is absolutely without any merit. Also, as noted earlier, the evidence of the respondent (Petitioner's evidence in the main Petition) already stands concluded.

14. It is a settled proposition of law that admissions once made in the Written Statement cannot be permitted to be withdrawn. The Apex Court in Modi Spg & Wvg. Mills Co. Ltd. v. Ladha Ram & Co., (1976) 4 SCC 320 observed that when the amendment to the written statement has the effect of displacing the plaintiff by retracting all the admissions made in his favour, it would irretrievably prejudice such plaintiff and deny him of the opportunity of extracting the admissions of the defendant. It was affirmed that *the repudiation of the clear admission is motivated to deprive the plaintiff of a valuable right accrued to him and is against law.*

15. It has also been mentioned in the said Application that the Written



Statement was never shown to the applicant/appellant-wife, but this again is not tenable as the Written Statement bears the signatures of applicant/appellant-wife and is supported by her duly attested affidavit.

16. However, before concluding, we may also mention that aside from all the above averments, the appellant/wife has also sought to append verification to the original Written Statement. The appending of verification is a procedural aspect which does not change the content of the Written Statement. Moreover, the affidavit in support of the Written Statement has already been filed. Therefore, the amendment to the Written Statement already on record, is permitted to the extent of appending the verification to the same.

17. We direct the appellant/wife to file the Written Statement as originally with the verification appended to it within 15 days from today.

18. Accordingly, we hereby dispose of the present appeal along with pending applications.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 26, 2023
S.Sharma