

Item No.29
16.04.2024
Court. No. 19
GB

C.O. 683 of 2024

Anasmita Mukherjee nee Banerjee
Vs.
Ranendra Narayan Mukherjee

*Mr. Tilak Mitra,
Mr. Amiya Kumar Dutta,
Mr. Swadesh Priya Ghosh*

...for the Petitioner.

*Mr. Rajdeep Bhattacharya,
Mr. Debashis Banerjee*

...for the Opposite Party.

1. The revisional application arises out of an order dated February 12, 2024, passed by the learned Additional District Judge, Fast Track Court at Kalyani, Nadia in Matrimonial Suit No.261 of 2019.
2. By the order impugned, the learned court allowed an application for amendment of the plaint. The Court was of the view that the application was filed at the stage when the process of reconciliation was not complete. The evidence had not started, although issues were framed. The court was of the further view that by such amendment, no new ground for divorce had been sought to be incorporated. The amendment, if allowed, would not change the nature and character of the suit. Moreover, merits of the amendment were not to be decided at the stage of allowing such application and the correctness of the allegations of the husband would be decided in the trial.

3. The learned advocate for the petitioner submits that the application for divorce would make it abundantly clear that the husband was confused as to the ground on which the divorce was being sought. The allegation of cruelty has not been explained. No instances of cruelty had been narrated in the application. Further, a contention was made that a proceeding initiated by the wife had resulted in filing of a final report by the investigating agency. By the amendment, such fact was sought to be corrected, upon incorporating the fact that a charge-sheet had been filed.
4. The learned advocate has taken the Court through the entire application for amendment and has submitted that elaborate description of different forms of cruelty and the approach of the wife towards the child who had special needs, was sought to be brought in, as such facts were absent in the original application. It is further contended that insertion of around eight to nine paragraphs in the application for divorce could not be typographical errors as stated in the application for amendment. Moreover, opinion of a newly engaged learned advocate could also not be a ground to seek amendment. It is further contended that the husband was trying to fill up the lacunae in the petition for divorce. A plain reading of the said divorce petition would indicate that the suit would fail.
5. Mr. Bhattacharya, learned advocate appearing on behalf of the opposite party/husband submits that as the trial had

not commenced, the court rightly allowed the amendment. Correctness of the allegations was not to be looked into at a stage when such prayer for amendment had been made. The wife would get adequate opportunity to counter all such contentions by filing an additional written statement. The contentions of the husband would be subject to proof on trial. Thus, the order impugned did not suffer from material irregularity.

6. Having heard the learned advocates for the respective parties, it appears that in paragraphs 14 and 15 of the plaint, foundation had been laid with regard to the ill treatment by the petitioner towards the opposite party and the minor child who had special needs. It has been stated that due to such cruel behaviour of the petitioner, the marital tie between the parties had broken down and there was no chance of reunion.
7. Such cryptic description of cruelty was sought to be elaborated, clarified and explained, by insertion of acts and incidents of cruelty. The suit for divorce on the ground of cruelty, did not undergo any change. The nature and character of the suit remained the same. Before the evidence was recorded and even when the process of reconciliation was not over, such amendment was rightly allowed. The learned trial judge did not commit any irregularity. The fundamental principles governing amendment of pleadings were discussed by the learned court, namely:-
 - a) No change in the nature and character of the suit.

- b) Recording of evidence had not started. The stage of reconciliation was not over.
 - c) The merits of the averments brought in by way of an amendment were not to be decided at the stage of deciding the application for amendment.
8. This Court finds that the amendment was sought to make the pleadings stronger and effective, which the opposite party was entitled to under the law. The ground of attack was being strengthened. The amendment is neither barred by limitation nor does it transform the suit. The nature and character of the suit remains intact. The alleged ground of cruelty also remains intact.
 9. This Court deems it fit to refer to decisions of the Hon'ble Apex Court with regard to the liberal approach to be adopted by courts while considering amendments of pleadings.
 10. The Hon'ble Apex Court in the case of ***Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and others*** reported in **(2007) 6 SCC 737**, held that if the amendment enables the Court to pin-pointedly consider the real dispute between the parties and helps to decide the case more satisfactorily, the amendment ought to be allowed.
 11. In the case of ***Raghu Thilak D. John vs. S. Rayappan*** reported in ***AIR 2011 SC 699***, it was held that amendment should generally be allowed, unless it was shown that permitting the amendment would be unjust and would cause prejudice to the opposite side,

which could not be compensated by costs or would deprive him of a right which had accrued to him with the lapse of time. Amendment may also be refused if the same is barred by time.

12. In the decision of ***Rajesh Kumar Aggarwal and others vs. K.K.Modi and others*** reported in ***AIR 2006 SC 1647***, the Apex Court held on similar lines and directed that the Court was not to go into the merits. The relevant portion is quoted below:-

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

13. In the decision of ***Life Insurance Corporation of India vs Sanjeev Builders Private Limited & Anr.*** decided in ***Civil Appeal No. 5909 of 2022***, the Hon'ble Apex Court laid down the principles governing amendment, in paragraph 70 of the decision. The relevant portions are quoted below:-

(ii) All amendments are to be allowed which are necessary for determining of the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed:-

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.”

14. Under such circumstances, the order impugned is not interfered with. The petitioner shall file the additional written statement within the time frame to be fixed by the trial court, pursuant to disposal of this revisional application.

15. Accordingly, the revisional application is disposed of.

16. However, there will be no order as to costs.

17. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)