

Ct.  
No.  
652  
  
70  
akb

**06.05**  
**2024**

**C.O. 666 of 2021**  
**Suman Roy**  
**-Versus-**  
**Sudeshna Roy**

**Mr. Sovan Das Gupta      ...For the Petitioner**

Affidavit-of-service filed on behalf of the petitioner is taken on record. In spite of service opposite party is not represented.

Petitioner herein as plaintiff filed a suit for dissolution of marriage by a decree of divorce against opposite party herein, being Mat. Suit No. 359 of 2017. The wife/ opposite party herein after receiving summons appeared before the Court below and contesting the suit by filing written statement. During pendency of the suit petitioner/plaintiff filed an application under Order VI, Rule 17 of the Code of Civil Procedure, seeking amendment of the plaint. The opposite party herein / wife filed written objection against the said amendment application. Learned Court below by the impugned order No. 52 dated 22<sup>nd</sup> January, 2021 was pleased to reject the said amendment application filed by the petitioner.

Being aggrieved by the said order Mr. Sovan Das Gupta, learned Counsel appearing on behalf of the petitioner submits that the Court below acted illegally and with material irregularity in failing to consider the original plaint

and in holding that the petitioner is trying to introduce new ground of adultery which the petitioner did not state in his original plaint. Learned Court below failed to consider that the party could bring the subsequent facts in the suit by way of amendment. Learned Court below also failed to consider that in the original plaint, plaintiff has already mentioned about the extra-marital relationship of the opposite party.

I have considered the submissions made on behalf of the petitioner and also perused the schedule of amendment as well as the order impugned.

The plaintiff in his plaint has sought for dissolution of marriage under Section 13 of the Hindu Marriage Act. Now by way of amendment, plaintiff mainly wants to incorporate some subsequent events. Learned Court below rejected the said prayer for amendment observing that the plaintiff initially filed suit only against the wife/respondent but now he intends to add two more persons as defendants. The other grounds for rejection of the prayer for amendment of plaint by the Trial Court is that in the original plaint, plaintiff has not disclosed any ground of adultery against the respondent. But now he is intending to insert said ground alleging that the respondent has extra-marital relationship with the persons he proposed to add, which is not permissible. The learned Court below has further observed

that if the proposed amendment is allowed, it will change nature and character of the suit.

In this context it is to be noted that plaintiff by way of proposed amendment has not sought for any additional relief in the plaint. The original suit is for dissolution of marriage and if the ground mentioned in the prayer for amendment is allowed the suit will remain the suit for dissolution of marriage and will not constitutionally or fundamentally change the nature or character of the suit. Subsequent fact must be included to adjudicate the matter completely. In the instant case plaintiff sought to incorporate the case of alleged extra-marital affairs of the other party, which could have certain impact over the main relief sought for in the suit. The proposed amendment if allowed, the defendant, will not be prejudiced in any way, if she would get the chance of filing additional written statement. The proposed amendment, should therefore be allowed for the purpose of shortening the litigation, to sub serve the ends of justice and also for the purpose of adjudicating the matter in dispute once for all.

In such view of the matter the order impugned No. 52 dated 22<sup>nd</sup> January, 2021 is hereby set aside. The prayer for amendment is allowed subject to payment of cost of Rs. 1,000/- (one thousand only) which the petitioner shall pay to

the respondents within a period of four weeks from the date of communication of this order. On such payment, the plaint would be amended as per schedule of the petition for amendment and the plaintiff will file amended plaint within a period of two weeks thereafter. The defendant will be at liberty to file additional written statement, if any, within a period of four weeks thereafter. In the event of nonpayment of cost as above, the order impugned shall revive.

The application, being C.O. 666 of 2021 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

**( Ajoy Kumar Mukherjee, J.)**