

Ct. 12.03
No. 2024
652
151
akb

C.O. 1778 of 2021
Arunangshu Biswas
-Versus-
Sujaya Biswas

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
Ms. Poulami Chakraborty ...For the Petitioner

In spite of service of notice, opposite party is not represented.

Petitioner herein filed a suit, being Mat. Suit No. 73 of 2017 for dissolution of marriage against the opposite party herein, who is his legally married wife. The opposite party herein is contesting the said suit by filing written statement and she has also denied all the allegations made in the plaint of the said suit and inter alia prayed for dismissal of the said suit.

During pendency of the suit, the petitioner filed an application for amendment of the plaint under Order VI, Rule 17 of the Code of Civil Procedure, inter alia, praying that the opposite party has immoral relationship with one singer and as a proof, the petitioner collected some intimate photographs of the opposite party with the said singer, which the petitioner claims are vital evidence and is required to be proved for the proper adjudication of the suit.

Learned Court below after hearing both the parties was pleased to reject the said application for amendment holding, inter alia, that the pleading intended to be amended

by the petitioner comes under *facta probantia* i.e. the facts intended to be inserted by way of amendment by the petitioner in his petition is the evidence by means of which material facts are sought to be proved by the petitioner.

Being aggrieved by that order Mr. Sarbananda Sanyal, learned Counsel appearing on behalf of the petitioner submits that the Court below has acted illegally in rejecting the application for amendment without considering that the proposed amendment is necessary for proper adjudication of the instant suit. He further submits that in order to prove the case of the plaintiff proposed amendment is very much required to be incorporated in the plaint, otherwise he will not be able to prove his case. Accordingly, he has prayed that after setting aside the order impugned proposed amendment of the plaint may be allowed.

I have considered the submissions made on behalf of the petitioner and on perusal of the plaint, it appears that the plaintiff in his plaint has specifically pleaded in paragraph 11 about the relationship of the opposite party herein, with a singer. In such circumstances, the burden lies upon the plaintiff to prove the same during trial and for that purpose facts by which contents of paragraph 11 of the plaint is to be proved, cannot be part of pleading under Order VI, Rule 2(1) of the Code.

By way of amendment what plaintiff wants to incorporate in the pleading is not the material fact but the evidence and accordingly, the Court below was justified in coming to a finding that the case intended to be incorporated by way of amendment by the petitioner is falling under facta probantia which is not required to be incorporated in the plaint by way of amendment.

In such view of the matter, I do not find any reason to interfere with the order impugned invoking jurisdiction under Article 227 of the Constitution of India, since the order impugned is neither illegal nor perverse.

Accordingly, Application, being C.O. 1778 of 2021 is dismissed.

However, this order will not prevent the parties to place and to prove or dis-prove the contents of paragraph 11 of the plaint by material evidence, admissible under the law, during trial before the Trial Court.

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.)