

12.03.2024
Item No.8
Ct. No. 7
KS

C.O. 3139 of 2023
Swatilekha Roy
Vs.
Souvik Nath

Mr. Saptarshi Dutta
Mr. Kajal Mukherjee

.....for the Petitioner

Mr. R. Pandey

.....for the opposite party

1. This application under Article 227 of the Constitution of India is at the instance of the wife and is directed against an Order No.68 dated 12th May, 2023 passed by the learned Additional District Judge, 10th Court at Alipore, District 24 Parganas (South) in Matrimonial Suit No.43 of 2014.
2. The petitioner filed an application under Section 27A read with Section 27(1)(d) of the Special Marriage Act praying for a decree for judicial separation, which was registered as Matrimonial Suit No.43 of 2014. The petitioner subsequently filed an application under Order 6 Rule 17 of the Code of Civil Procedure on 10th April, 2023 praying for amendment of the plaint for the purpose of adding subsequent events, which took place sometimes in the year 2020.

3. The learned advocate for the petitioner submits that the Courts should adopt a liberal approach while deciding an application for amendment. In support of such contention, he placed reliance upon the decision of the Hon'ble Supreme Court *in Civil Appeal No.5909 of 2022* in the case of *Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. & Anr.*

The learned advocate for the opposite party submits that the learned Trial Judge rightly rejected the amendment application as it was filed at a belated stage.

4. Without entering into the merits of the proposed amendments, the learned Trial Judge rejected such application only on the ground that the suit has reached the stage of peremptory hearing on 22nd June, 2022. It has now judicially settled that the trial of the suit cannot be said to have commenced only upon the suit having reached the stage of peremptory hearing.
5. The learned advocate for the opposite party also does not dispute that the trial in the suit has not yet commenced.
6. In view thereof, this Court is of the considered view that the proviso to Order 6 Rule 17 of the Code of Civil

Procedure cannot be an absolute bar in the case on hand.

7. In *Sanjeev Builders Pvt. Ltd. (supra)*, the Hon'ble Supreme Court held that where the amendment is sought before commencement of trial, Court is required to be liberal in its approach. It was further held that where amendment is necessary for the Court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.
8. The learned Trial Judge did not return any findings as to whether the proposed amendments are necessary for the purpose of deciding the real controversy between the parties to the suit. Since the learned Trial Judge has not returned any finding on the merits of the proposed amendment, this Court is of the considered view that a direction is to be passed upon the learned Court below to decide the application for amendment on merit.
9. For the reasons, as aforesaid, the order impugned being, Order No.68 dated 12th May, 2023 is set aside. The learned Additional District Judge, 10th Court at Alipore is directed to decide the application under

Order 6 Rule 17 of the Code of Civil Procedure filed by the petitioner herein after giving an opportunity to hearing to the respective parties and by passing a reasoned order in the light of the observations made hereinbefore.

10. With the above observations and directions, C.O. 3139 of 2023 stands allowed.
11. There shall be, however, no order as to costs.
12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)