

CR-4529-2023 (O&M)

1

225

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4529-2023 (O&M)
Reserved on : 05.01.2024
Date of decision : 08.01.2024

Kamal Maini ... Petitioner(s)

Versus

Natasha ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arnav Sood, Advocate for the petitioner.

ALKA SARIN, J.

1. The present civil revision petition under Article 227 of the Constitution of India has been filed challenging the impugned order dated 12.07.2023 whereby the application filed by the respondent-wife under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the divorce petition under Section 13 of the Hindu Marriage Act, 1955 has been allowed.
2. The brief facts relevant to the present *lis* are that after the filing of the divorce petition under Section 13 of the Hindu Marriage Act, 1955 by the respondent-wife and the filing of the written statement by the petitioner-husband, an application was filed by the respondent-wife for amendment of

CR-4529-2023 (O&M)

2

the divorce petition stating therein that on engaging a new counsel the respondent-wife found that certain important averments, having a bearing on the decision of the case, had not been mentioned and as such the amendments were sought by adding para nos.(i) to (viii) after para no.8 and also wanting to insert in para no.9 after the word of cruelty "*the petitioner has not condoned the act of cruelty*". It was further averred that the said averments were already on the record and there was medical evidence in support thereof, however, the details had not been mentioned. It was further stated that the said averments were also made in the Police Station where the statement of the respondent-wife was recorded. The amendment application was contested by the petitioner-husband by filing a reply wherein it was stated that the amendment application had been framed with the help of a legal brain to include false averments and that there had been a delay in filing the application for amendment. It was further stated in the reply that there was neither any evidence nor medical evidence in support of the allegations. The Family Court vide the impugned order dated 12.07.2023 allowed the amendment application as it was found that the amendments were material to the controversy. The said amendment application was allowed subject to Rs.2,000/- as costs. Hence, the present revision petition.

3. Notice of motion was issued in the present case. As per the office report the respondent-wife stands duly served, however, none has put in appearance on her behalf despite service.

4. Learned counsel for the petitioner-husband would contend that all the allegations raised in the petition under Section 13 of the Hindu

CR-4529-2023 (O&M)

3

Marriage Act, 1955 are false. It is further the contention of the learned counsel for the petitioner-husband that the amendment application was filed after a delay of 01 year and 06 months and that the purpose was only to improve her case by the respondent-wife.

5. Heard.

6. In the present case the issues are yet to be framed. The case is still at its initial stage. Hon'ble Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr. [Civil Appeal No.5909 of 2002 arising out of SLP (C) No.22443 of 2019 decided on 01.09.2022]** has held as under :

“70. Our final conclusions may be summed up thus: (i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining 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.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed

and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897).”

7. The amendments to the divorce petition sought by the respondent-wife by way of the amendment application are additions of alleged instances of cruelty. The case is still at its initial stage and the said amendments would be necessary for determining the real question in controversy. Learned counsel for the petitioner-husband has not been able to convince this Court that the said amendments would cause any injustice or

prejudice which could not be compensated by way of costs.

8. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

9. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

08.01.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO