

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.945 of 2023**

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Swarnima Gupta @ Anita Gupta, Daughter of Gopal Jee Prasad Gupta,
Resident of Vrindawan Colony, Parwati Nagar, Kashi Bazar, P.S.-Chapra,
District-Saran.

... .. Petitioner/s

Versus

Varun Kumar Chaudhary, son of Birendra Choudhary, Resident of Anathalay
Road, P.O.-Katihar, P.S. and District-Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Sharma, Advocate
For the Respondent/s : Dr. Bipin Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
Date : 08-04-2025

Heard learned counsel for the petitioner as well as
learned counsel for the respondent and I intend to dispose of the
present petition at the stage of admission itself.

2. The petitioner is aggrieved by the order dated
09.12.2022 passed by learned Principal Judge, Family Court,
Katihar in Matrimonial Case No. 175 of 2019 whereby and
underunder the learned Family Court allowed the amendment
petition of the petitioner/respondent.

3. Learned counsel for the petitioner submits that
respondent Varun Kumar Chaudhary is the petitioner in
Matrimonial Divorce Case No. 175 of 2019 and the petitioner is
the respondent in the said matrimonial case. During pendency of
the matrimonial case, the respondent moved an application for



amendment which was allowed by the learned Family Court vide order dated 09.12.2022 and the said order is under challenge before this Court. Learned counsel further submits that the amendment relates to facts which were already in the knowledge of the respondent when he filed the Matrimonial Case No. 175 of 2019. Initially the respondent filed his matrimonial case seeking dissolution of marriage on the ground of desertion of the petitioner and also on the ground of cruelty and denying the respondent the conjugal relationship. But by way of amendment, the respondent has introduced a new ground for dissolution of marriage saying that the petitioner has been in adulterous relationship with her brother-in-law and while they were having sexual intercourse, the respondent saw them in compromising position. Learned counsel further submits that if this fact was known to the respondent and he did not mention this fact while filing the divorce petition, after three years, the same could not be allowed. Further, there would be change of cause of action as the earlier petition was filed on the ground of desertion and cruelty and now the ground of adultery would be added for which, there is no basis in the earlier petition. Learned counsel relies on the decision of the Hon'ble Supreme Court in the case of *Mashyak Grihnirman Sahakari Sanstha Maryadit*



vs. Usman Habib Dhuka & Ors., reported in **2013 (2) PLJR 356 SC** in support of his contention. On these grounds, he submits that the impugned order is not sustainable and the same be set aside.

4. Learned counsel appearing on behalf of the respondent submits that the respondent has mentioned about the adulterous behavior of the petitioner but not in clear terms in his petition filed for divorce. The amendment is by way of clarification. So no new fact is being brought on record. The adultery of the petitioner provides a ground for dissolution of marriage and hence, the learned trial court rightly allowed the application for amendment.

5. I have given my thoughtful consideration to the rival submission of the parties. Evidently the amendment has been allowed after three years by filing of the plaint by the respondent and from the application filed for amendment, it is also apparent that the respondent was directed to produce his witnesses when he moved the application for amendment on the ground that some facts were left to be mentioned. But there is no reasons given for moving the amendment after commencement of trial. What the respondent wants to introduce by way of amendment is a serious allegation about adulterous



behavior of his wife and further allegation on the brother-in-law of the petitioner that he was involved in this relationship. If this fact was within the knowledge of the respondent even prior to filing of the divorce case, he should have incorporated the same in the original petition and could not have left it to be added later in time. If there is no due diligence shown, after coming into the effect of the proviso to Order 6 Rule 17, amendments should not be allowed at the whims of the parties. The statutory provisions are not merely platitudes and if the courts failed to abide by the statutory provisions, it will result in a chaotic situation. The learned trial court ought to have taken this fact into consideration about the respondent not giving any explanation so show that despite due diligence he could not incorporate the amendment earlier in time or prior to commencement of trial. The Hon'ble Supreme Court in the case of ***Basavaraj vs. Indira & Ors.*** reported in ***(2024) 3 SCC 705***, has held that the Court should not allow the amendments at belated stages if due diligence has not been shown. In the case of ***Basavaraj*** (supra), the Hon'ble Supreme Court quoted the case of ***M. Revanna vs. Anjanamma*** reported in ***(2019) 4 SCC 332*** and held that Order VI Rule 17 of the Code prevents an application for amendment after the trial has commenced unless



the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The Hon’ble Supreme Court further held that the burden is on the party seeking amendment to show that in spite of due diligence, such amendment could not be sought after commencement of trial.

6. In the light of aforesaid discussion, I am of the opinion that the learned trial court erred on this point and passed an erroneous order and the said order could not be sustained. Hence, the impugned order dated 09.12.2022 passed by learned Principal Judge, Family Court, Katihar in Matrimonial Case No. 175 of 2019 is set aside.

7. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.04.2025
Transmission Date	NA

