

D/L- 18
06/08/2025
Ct. No.-6
Aritra

C.O. 2736 of 2025

Mr. Subrata Chatterjee
Vs.
Mrs. Debaleena Chatterjee

Mr. Yashraj Roy

....for the petitioner

Mr. Prithish Chandra
Ms. Akanksha Mukherjee

....for the opposite party

Affidavit of service filed in Court today is taken on record.

This application under Article 227 of the Constitution of India is at the instance of the husband/defendant and is directed against the order dated June 13, 2025 passed by the learned Additional District Judge, 14th Court at Alipore in Matrimonial Suit No.75 of 2015.

By the order impugned, the application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the written statement stood rejected.

The learned advocate appearing for the petitioner submits that commencement of trial cannot be an absolute embargo in allowing an application for amendment of written statement. He further submits that the facts sought to be incorporated by way of amendment are subsequent facts which came to the knowledge of the petitioner during the course of trial. He

further submits that it is well-settled that subsequent events can be allowed to be incorporated by way of amendment.

Heard the learned advocate for the opposite party on such submission. He submits that the application for amendment was filed only for the purpose of delaying the hearing of the matrimonial suit.

Heard the learned advocates for the respective parties and perused the materials placed.

It is not in dispute that the evidence of the wife/opposite party herein has been completed and a date was fixed for evidence of the husband/defendant. On the date fixed for evidence of the husband as D.W.1, the petitioner filed an application under Order 6 Rule 17 of the Code of Civil Procedure praying for amendment of the written statement.

From the schedule of the proposed amendment this Court finds that it has been stated that the petitioner has come to know from his deceased sister's son that the wife/opposite party and Mr. Kaushik Mukherjee married each other in the year 2017 and presently they are leading their unlawful and illegal matrimonial life by staying at Mumbai. The petitioner sought to incorporate the said fact by way of amendment.

It is not in dispute that the trial of the suit has already commenced and the application for amendment

of the written statement was filed on the date fixed for evidence of the defendant witness.

Proviso to Order 6 Rule 17 of the Code of Civil Procedure states that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Though, the proviso to Order 6 Rule 17 of the Code of Civil Procedure to some extent limits the power of the Court to allow an application for amendment after the commencement of trial but it is well-settled that the said proviso cannot be an absolute embargo in allowing an application after the commencement of trial provided the party applying for amendment satisfies the Court that in spite of due diligence the party could not have raised the matter before the commencement of trial.

In the case on hand the petitioner sought to contend that the facts which they wanted to incorporate by way of amendment came to their knowledge during the course of trial and, therefore, the proviso cannot stand attracted to the case on hand.

Order 6 Rule 17 of the Code of Civil Procedure states that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such matter and on such terms as may be just, and all such amendments shall be made as may be necessary for the

purpose of determining the real questions in controversy between the parties. The real and dominant purpose for allowing the amendment is to allow all amendments that may be necessary for the purpose of determining the real question in controversy between the parties.

The opposite party herein filed a suit for divorce on the ground of cruelty and desertion. Such a suit is being contested by the petitioner herein by filing a written statement denying the allegation of cruelty levelled by the opposite party against the petitioner. The petitioner sought to incorporate a new ground by way of amendment that the opposite party is leading an adulterous life during the subsistence of the marital time.

The learned trial judge was right in observing that it was never the defence case of the petitioner that the wife was leading an adulterous life. The learned trial judge was right in observing that the petitioner has not come up with any counter-claim under Section 23A of the Hindu Marriage Act, 1955 praying for any relief in the form of divorce/judicial separation etc. on the ground of adultery of the wife.

After going through the pleadings, this Court finds that the suit for divorce has been filed on the ground of cruelty. The facts sought to be incorporated by way of amendment cannot be said to be necessary for the purpose of deciding the real controversy between the

parties in the suit and the same may be a ground of filing a suit for divorce.

For such reason, this Court is not inclined to interfere with the order impugned.

Accordingly, CO 2736 of 2025 stands dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)