

C.O. 3391 of 2024

29.06.2026

Sl no. 24

Ct no. 2

P.M.

Dr. Asis Das

- Vs -

Smt. Pratyusha Mukherjee

Mr. Mahendra Prasad Gupta,
Ms. Moumita Dhar,
Ms. Tuhina Yasmin Tarafdar
... for the petitioner
Mr. Partha Patim Roy,
Mr. Rajdeep Bhattacharya
.... for the opposite party

1. Present petition has been filed challenging the order dated 31st August, 2024 whereby the amendment application filed by the petitioner was dismissed by the learned Trial Court.
2. The brief facts are that the petitioner filed a matrimonial suit No. 1192 of 2023 for divorce under Section 27 of the Special Marriage Act. In the said suit the petitioner had disclosed that earlier also a matrimonial suit No. 232 of 2023 was filed for divorce on the mutual consent, but there the opposite party/wife left appearing and impliedly withdrew her consent. By way of proposed amendments the petitioner wants to bring on record that subsequently the application under Section 151 C.P.C. was filed

by the opposite party/wife in Matrimonial Suit No. 232 of 2023, whereby it was alleged that she had been made to sign in mutual divorce application without taking her consent and for which she withdrew the consent in matrimonial suit being No. 232 of 2023. That suit was finally dismissed. Petitioner sought an amendment to bring on record this fact so as to demonstrate the conduct of the respondent. The application was opposed by the opposite party/wife by filing written objection. It was stated that the averments made by the petitioner are false and frivolous. It was stated that there is no ground to allow the application.

- 3.** Learned trial Court vide the impugned order dismissed the application inter alia holding that the amendment sought will not be of any help in determining the dispute between the parties.
- 4.** I have heard the learned counsel for the parties and perused the record. Order 6 Rule 17 C.P.C. provides that at any stage of proceeding the Court may allow to amend the pleadings on the terms which may be just, if the

amendment sought are necessary for the purpose of determining the real question in controversy between the parties.

5. It is a settled proposition of law that the Court at this stage cannot go into the correctness or falsity of the proposed amendment. The only test is that whether such amendment is necessary to decide the real dispute between the parties. The facts which are essential for complete adjudication of the matter in dispute may be brought on record for the final adjudication of the matter in dispute.

6. In **Rajesh Kumar Aggarwal & Ors. Vs K. K. Modi & Ors.** (2006) 4 Supreme Court Cases 385, it was inter alia held as under :

‘The object of Order 6 Rule 17 is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. The rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger

interest of doing full and complete justice to the parties before the court. The court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting malafide. The amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. The Court should also take notice of subsequent events in order to shorten the litigation to preserve and safeguard the right of both parties and to subserve the ends of justice.

Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading, the second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. The real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused.

While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case. The High Court without deciding whether the amendment in question was necessary has expressed certain opinions and entered into a discussion on merits of the amendment. Hence the order passed by the High Court is not sustainable in law.”

- 7.** Bare perusal of this judgement makes it clear that discretion conferred by the law for amendment, should be exercised liberally. The exception can be that if the amendment sought is malafide, or it takes away any advantage accrued to the other party. The amendment sought can also be denied if it caused prejudice

to the other party or is contradictory to the case already set up by the parties.

8. The Court considers that the present amendment sought by the petitioner in no way alters the nature and character of the suit litigation. Amendment sought are also not taken or likely to take away or withdraw any advantage to the opposite party/defendant. The Court considers that rather such an amendment would only help the Court for the final adjudication of the matter.

9. In view of the discussion made herein above, the impugned order is set aside. This petition is allowed.

10. Let the amendment sought vide application made by the petitioner dated 18th June, 2024 be allowed.

11. Let the learned Trial Court expeditiously conduct the proceeding accordingly. Opposite party/wife may also file the amended written statement.

12. The petition stands disposed of.

13. Urgent Photostat certified copy of this order, duly applied for, be given to the parties

upon compliance of all usual requisite formalities.

(Dinesh Kumar Sharma, J.)