IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 1222 of 2025

Angshuman Santra, son of Ranjit Santra, aged about 30 years, resident of Qr. No. E-33, R.I.T. Adityapur, P.O. & P.S.-R.I.T., Dist.-Saraikella Kharsawan, State-Jharkhand

.... Petitioner

Versus

Arpita Sen, wife of Anghuman Santra and daughter of Kamala Kanta Sen, aged about 27 years, resident of Village-Silda, P.O.-Silda, P.S.-Binpur, Dist.-Jhargram, State-West Bengal, presently residing at Plot No. 204, AIIMS Nagar, Lane No.14, P.O.-Patrapada, P.S.-Dhauli, Dist.-Bhubaneswar, State-Odisha

…. Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

…..

For the Petitioner : Mr. Parambir Singh Bajaj, Advocate
For the Opposite Party : Mr. Ayush Kr. Verma, Advocate
: Ms. Alka Kumari, Advocate
: Ms. Sonal Sodhani, Advocate

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By the Court:-

1. Heard the parties.

2. This civil miscellaneous petition has been filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India with the prayer for setting aside/quashing the order dated 12.11.2025 passed by the learned Family Court, Saraikella-Kharsawan in M.C.A. No. 72 of 2025 whereby and where under, the petition under Order VI Rule 17 of the Code of Civil Procedure filed by the petitioner in Original Suit No. 66 of 2025; which was filed with the prayer for restitution of conjugal rights of the petitioner with the opposite party of that proceeding was

rejected on the ground that the petitioner failed to establish due diligence despite the fact that the application was filed prior to framing of issues.

3. The brief fact of the case is that the petitioner filed a proceeding under Section 9 of the Hindu Marriage Act, 1955 contending therein that he married the opposite party on 11.04.2025 as per Hindu Rites and Customs in a temple at Jamshedpur. The opposite party left the house of the petitioner without consent and permission of the petitioner and his family members with all her belongings and ornaments and on 07.07.2025 she made telephonic call and informed the petitioner that she will not restitute conjugal rites with the petitioner as she is in love and affection with some other boy with whom she will marry, hence, prayer for restitution of conjugal rights was made.

4. In her written statement the opposite party took the plea that she never married the petitioner and she has also taken the plea that the petitioner was having previous marriage with someone else and suppressing the same, the petitioner proposed to marry the opposite party. After knowledge about the petitioner's previous marriage, opposite party closed/stopped relationship with the petitioner. Hence, the petitioner is threatening for forceful marriage and money and is blackmailing and creating trouble to the opposite party.

5. When the matter was fixed for reconciliation between the parties and the issues were not framed, the petitioner filed a petition to

amend the petition *inter alia* incorporating therein that the marriage was performed between the petitioner and opposite party on 11.04.2025 according to Hindu Rites & Customs at Sarbojanin Nabo Durga Mandir, Ichhapur-Gowalapara, P.O., P.S. -R.I.T., Dist.-Seraikela Kharsawan, State -Jharkhand and has sought further amendment to incorporate the pleadings about the detail ceremonies of the marriage and incorporate the date of the opposite party leaving her matrimonial house to be on 14.04.2025 and intends to introduce pleadings by way of amendment that on 12.07.2025 and 13.07.2025 the petitioner went to the residence of the opposite party at Plot No. 204 AIIMS Nagar, Lane No. 14 Patrapada, Bhubhaneswar, Odisha, for convincing her to restore her matrimonial ties but in vain and also intends to incorporate therein additional dates i.e. on 14.04.2025 and 13.07.2025 as further causes of action and also intends to modify the prayer by specifically making additional prayers that it be declared that the petitioner and the wife are lawfully wedded wife and husband. The learned counsel for the petitioner submits that the said prayer has not been properly worded and the prayer should have been that it be declared that the petitioner and the opposite party are lawfully wedded wife and husband. Further amendment has been sought to introduce the prayer that it be also declared that the opposite party without any reasonable and justifiable cause left the society of the petitioner and for restitution of conjugal right.

6. The opposite party filed an objection to the said petition for amendment denying the facts sought to be amended in the petition and also pleaded that the same has been filed with *mala fide* intention to prolong the litigation.

7. Learned Principal Judge, Family Court, Seraikella-Kharsawan discussed the principle of law regarding the power of the court to allow the amendment or pleadings and also taking into consideration the proviso to Order VI Rule 17 of the Code of Civil Procedure regarding the requirement that, conclusion to be arrived at by the court for allowing amendment, that in-spite of due diligence the parties could not have raised the matter before the commencement of the trial, in case the amendment is sought after commencement of the trial. A reference to several judicial pronouncement regarding amendment has been made. Judgement relied upon by the learned Family Court, Seraikella-Kharsawan are in the case of **M. Revanna vs. Anjanamma**, reported in **(2019) 4 SCC 332**, judgment in the case of **Balram Yadav vs. Fulmaniya Yadav** passed by the Hon'ble Supreme Court of India in Civil Appeal No. 4500 of 2016 dated 27.04.2016, Judgement in the case of **Vidyabai vs. Padmalatha**, reported in **(2009) 2 SCC 409**, judgment in the case of **Revajeetu Builders and Developers vs. Narayanaswamy & Sons** reported in **(2009) 10 SCC 84** and the judgment in the case of **Basavaraj vs. Indira** reported in **(2024) 3 SCC 705**

8. The learned Family Court, Seraikella-Kharsawan misdirected itself by failing to take into consideration the fact that in this case, trial is yet to commence and the issues are yet to be framed and still found fault with the petitioner for not pleading that despite due diligence the fact proposed to be incorporated could not be brought on record of the case and also considered that since the amendment sought, after the respondent filed Misc. Petition No. 77 of 2025 for rejection of the plaint and went on to dismiss the petition for amendment.

9. It is submitted by the learned counsel for the petitioner by relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Sampath Kumar vs. Ayyakannu & Anr.** reported in **(2002) 7 SCC 559** wherein, in the facts of that case when the amendment was refused by the courts below on the ground that it was open to the plaintiff to file a fresh suit and not to change the nature of relief sought in the plaint, the Hon'ble Supreme Court of India observed that if it is permissible for the plaintiff to file an independent suit, the same can be incorporated in the pending suit also and distinguished the alteration in the basic structure of the suit and the change in the nature of the relief sought in the suit.

10. It is next submitted by the learned counsel for the petitioner by relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi &**

Ors. reported in **(2006) 4 SCC 385**, paragraph nos. 15 and 16 of which reads as under:-

> *"15. The object of the rule 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.*
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> *16. 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."*

and submits that therein the Hon'ble Supreme Court of India further reiterated the settled principle of law in paragraph no.18 to the effect that 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 and in paragraph no.19 while considering whether the application for amendment should or should not be allowed, the Hon'ble Supreme Court of India held that the court should not go into the correctness or falsity of the case sought to be incorporated by way of amendment.

11. Learned counsel for the petitioner then relied upon the judgment of **Vidyabai & Ors. vs. Padmalatha & Anr.** (supra) and submit that though the learned Family Court, Seraikella-Kharsawan relied upon the said judgment but failed to take note of paragraph no.8 of the said judgment as reported in **2009 (1) Supreme 238**,

wherein, the Hon'ble Supreme Court of India has in no uncertain manner held that filing of an affidavit in lieu of examination-in-chief of the witness, would amount to commencement of proceeding.

12. Learned counsel for the petitioner next relied upon the judgment of **Revajeetu Builders and Developers vs. Narayanaswamy & Sons & Ors.** (supra) and submitted that family court failed to take note of paragraph no.33 of the said judgment as reported in **2009 (7) Supreme 333** which reads as under:-

> *"33. The general principle is that courts at any stage of the proceedings may allow either party to alter or amend the pleadings in such manner and on such terms as may be just and all those amendments must be allowed which are imperative for determining the real question in controversy between the parties. The basic principles of grant or refusal of amendment articulated almost 125 years ago are still considered to be correct statement of law and our courts have been following the basic principles laid down in those cases."*

13. It is further submitted by the learned counsel for the petitioner that the proposed amendment no way changes the nature and character of the suit and is necessitated because of the specific plea of the opposite party that she never married to the petitioner and since the petitioner never expected the opposite party to take such a false plea so obviously, the details of marriage were not pleaded initially but in view of the written statement filed by the opposite party, it became essential to make such details of the pleadings which are necessary for the purpose of determining the real question in controversy between the parties as to whether a

Hindu marriage ever took place between the petitioner and the opposite party. It is next submitted by the learned counsel for the petitioner that Jamshedpur and R.I.T. campus are contiguous places and though the R.I.T. campus falls in the revenue District of Seraikella-Kharsawan which is so close to the Jamshedpur town, that it is often being referred to part of Jamshedpur. Under such circumstances giving detailed description of the temple where exactly the marriage took place cannot be termed as an introduction of a new fact. It is further submitted by the learned counsel for the petitioner that merely because an application under Order VII Rule 11 of Code of Civil Procedure has been filed that will not debar the petitioner from introducing amendment which is necessary for the purpose of determining the real question in controversy between the parties. Hence, it is submitted that the prayer as made in this civil miscellaneous petition be allowed.

14. Learned counsel for the opposite party on the other hand vehemently opposes the prayer but fairly submits that trial has not yet commenced. It is then submitted by the learned counsel for the opposite party that the petitioner intends to introduce certain facts by way of amendment only after being wiser on filing the written statement by the opposite party at a belated stage and by such amendment the trial of the case will be delayed. It is next submitted by the learned counsel for the opposite party that no illegality has been committed by the learned Family Court,

Seraikella-Kharsawan. Hence, it is submitted that this civil miscellaneous petition being without any merit be dismissed.

15. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that as already observed in the foregoing paragraphs of the judgment, the learned Family Court, Seraikella-Kharsawan has committed a patent perversity by misdirecting itself by referring to the proviso of Order VI Rule 17 of the Code of Civil Procedure which is applicable only when the trial has commenced and the undisputed fact remains that in this case the trial is yet to commence.

16. As has been held by the Hon'ble Supreme Court of India in the case of **Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.** (supra) that the Court should allow all the amendments that may be necessary for determining the real question in controversy between the parties. The Original Matrimonial Suit No. 66 of 2025 has been filed with the prayer for restitution of conjugal right between the parties. Once, the opposite party has taken the plea that there is no marriage between the parties, so, it is incumbent upon the petitioner that in order to succeed in the case, the petitioner has to establish that a valid Hindu marriage has been solemnized between the petitioner and the opposite party. May be the petitioner at the time of filing of the petition was not expecting the opposite party to take such a stand in her written statement but once, the opposite party has taken such a stand, the details of

the marriage including the exact location of the temple and the details ceremony of the marriage that was solemnized, which are sought to be introduced by way of amendment, in the considered opinion of this Court are necessary for the purpose of determining the real question in controversy between the parties. Similarly, the date when the opposite party withdrawn herself from the company of the petitioner as is claimed by the petitioner is also necessary for determining the real question in controversy between the parties. So is the pleadings sought to be incorporated by way of amendment as to when the petitioner went to Bhubaneswar for pursuing the opposite party, as claimed by him, for restoration of matrimonial ties between them.

17. True it is that, the relief no.1 sought to be incorporated by way of amendment is not properly worded as fairly submitted by the learned counsel for the petitioner himself. Now as the opposite party has taken a categorical plea that she never married the petitioner, certainly, if a specific relief is sought that there be a declaration that there was a valid marriage solemnized between the parties, this will certainly be a pleading which is necessary for the purpose of determining the real question in controversy between the parties and so is the other relief sought.

18. Under such circumstances, this Court has no hesitation in holding that the learned Family Court, Seraikella-Kharsawan has committed a patent perversity in rejecting the prayer for

amendment of the petitioner by the impugned order. Accordingly, the same is quashed and set aside.

19. The prayer of the petitioner made in its petition dated 08.10.2025 for amendment of the pleadings which has been registered as Misc. Civil Application No. 72 of 2025 is allowed except the relief no.1 of the proposed amendment for which liberty is given to the petitioner to approach the learned Family Court, Seraikella-Kharsawan with proper application for a correct relief regarding declaration that a valid Hindu marriage between the parties took place.

20. In the result, this civil miscellaneous petition is allowed to the aforesaid extent only.

21. The interim relief granted earlier vide order dated 18.12.2025 is vacated.

22. Registry is directed to intimate the court concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 6th May, 2026
AFR/Gunjan/-

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