

Rinki @ Rinki Singh Vs Harsh Bardhan Singh

Court: Patna High Court

Date of Decision: Feb. 8, 2023

Acts Referred: Code of Civil Procedure, 1908 " Section 151, Order 6 Rule 17

Hon'ble Judges: Sunil Dutta Mishra, J

Bench: Single Bench

Advocate: Neeraj Kumar, Birju Prasad

Final Decision: Allowed

Judgement

1. Heard learned counsel for the parties.

2. The present application is filed against the order dated 08.08.2018 passed by learned Principal Judge, Family Court, Nalanda at Biharsharif in

Matrimonial (Divorce) Case No. 303 of 2015 whereby and wherein the learned trial court has allowed the petition dated 05.05.2018 filed by the

petitioner husband for amendment of plaint.

3. The brief facts of this case are that the plaintiff-respondent who is husband of the petitioner filed Matrimonial (Divorce) Case No. 303 of 2015 in

the Court of learned Principal Judge, Family Court, Nalanda at Biharsharif against the wife on the ground of cruelty and desertion. The marriage

between the parties was solemnized in year 2006 and both lived as a husband and wife till 2011 and a child was born out of wedlock on 24.11.2007.

The allegation against the wife is that she refused to lead conjugal life with her husband and he was asked to take divorce and the wife also treated

the respondent husband with cruelty.

4. During the pendency of the said matrimonial suit, on application on behalf of the husband respondent DNA test of the child was ordered to be held

to ascertain the paternity of the child by the trial court which was set aside by this Court vide order dated 30.04.2018 passed in Civil Miscellaneous

Jurisdiction No. 269 of 2018. This Court in the said order observed that the husband did not seek relief of divorce on the ground of illicit relation of his

wife but in the petition for D.N.A. test, the husband stated that his wife was having illicit relation. It was also observed that the child was born out of

the wedlock and the paternity of the child was never in doubt by any side. It appears that in view of the observation made by this Court, the husband

filed an amendment petition before the trial court under Order VI Rule 17 read with Section 151 of C.P.C. for adding adultery as additional ground

alongwith cruelty and desertion in the Matrimonial Case.

5. Learned counsel for the petitioner submits that the trial court failed to consider that petition for amendment is not maintainable and the proposed

amendment will change the nature of the suit, the proposed amendment is after thought and has been sought with a view to fill the lacuna in the plaint.

It is also stated that the proposed amendment filed by the husband is not maintainable because the name of adulterer has not been mentioned in the

petition and the proposed amendment is also barred by limitation.

6. The learned counsel for the respondent has supported the impugned order and has submitted that during the pendency of divorce case the

respondent-husband came to know that petitioner wife is having extramarital affair with her own relative and it is the outcome of such relation that she

has given birth to her child and the child born to petitioner is not from the respondent accordingly, he made a prayer for D.N.A. test of son. He has

lastly submitted that the amendment will not change the nature of suit and the instant Civil Miscellaneous Case is not maintainable and liable to be

dismissed.

7. The Hon'ble Supreme Court in Revajeevu Builders and Developers Vs. Narayan Swamy and Sons and Others (2009) 10 SCC 84 on critically

analysing both the English and Indian Cases, held that some basic principles emerge which ought to be taken into consideration while allowing or

rejecting the application for amendment.

(i) whether the amendment sought is imperative for proper and effective adjudication of the case.

(ii) whether the application for amendment is bona fide or mala fide.

(iii) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money.

(iv) refusing amendment would in fact lead to injustice or lead to multiple litigation.

(v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case, and

(vi) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of

application.

8. There are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only

illustrative and not exhaustive.

9. It was further observed by Hon'ble Supreme Court in the aforesaid Judgment in (Revajeetu Builders and Developers (supra) that the decision

on application made under Order VI Rule 17 is a very judicial exercise and the said exercise should never be undertaken in a casual manner.

10. The law is now well settled that the Courts have very wide discretion in the matter of amendment of pleadings but Court's powers must be

exercised judiciously and with great care. While deciding applications for amendments the Courts must not refuse bona fide, legitimate, honest and

necessary amendments and should not permit mala fide, worthless and/or dishonest amendment.

11. Applying these parameters to the present case, the application for amendment is mala fide and the amendment shall cause prejudice to the

petitioner-wife which cannot be compensated adequately in terms of money, deserves to be dismissed. Accordingly, this Civil Miscellaneous

Application is allowed. The impugned order dated 08.08.2018 passed by learned Principal Judge, Family Court, Nalanda at Bihar Sharif in Matrimonial

(Divorce) Case No. 303 of 2015 is set aside.