(2023) 02 PAT CK 0084

Patna High Court

Case No: Civil Miscellaneous Jurisdiction No. 1103 Of 2018

Pankaj Kumar Paswan		APPELLANT
	Vs	
Savita Kumari		RESPONDENT

Date of Decision: Feb. 17, 2023

Acts Referred:

- Code of Civil Procedure, 1908 - Order 7 Rule 1, Order 6 Rule 17
- Family Courts (Patna High Court) Rules, 2000 - Rule 7
- Hindu Marriage Act, 1955 - Section 5(i), 5(iv), 5(v), 11, 12, 12(1)(d), 12(2)(b),12(2)(b)(ii), 13, 20(1)

Hon'ble Judges: Sunil Dutta Mishra, J

Bench: Single Bench

Advocate: Rajeev Ranjan, Yugal Kishore, Rupa Kumari

Final Decision: Dismissed

Judgement

1. Heard learned counsel for the parties.

2. This Application has been filed against the order dated 05.06.2018 passed by the Court of learned Principal Judge, Family Court, Muzaffarpur in Matrimonial Case no. 143/2009 by which the amendment petition dated 16.07.2016 filed on behalf of petitioner has been rejected.

3. The facts, in brief, are that the petitioner filed a Matrimonial Suit No. 143 of 2009 on 21.05.2009 in the Court of learned Principal Judge, Family Court, Muzaffarpur against his wife/respondent herein for divorce under Section 13 of the Hindu Marriage Act, 1955 mainly on the ground of adultery.

4. In the petition, it is stated that the marriage was solemnized with the respondent on 19.05.2008 as per the Hindu rites and rituals and after marriage, the petitioner and respondent started living together at place of applicant but they lived together only four days and bidagari was performed. It is alleged that on 05.11.2008 the applicant heard rumor in the village that respondent was pregnant and has given birth to a male child within 6 months of the marriage. It is alleged that respondent-wife was leading adulterous life before the solemnization of the marriage and became pregnant. Earlier the petitioner had filed Matrimonial Suit No. 307/2008 within one year of marriage with leave application which was rejected and suit was dismissed. Then after completion of one year from the date of marriage, the instant divorce case has been filed. The divorce petition was amended later on as per order dated 27.05.2013 incorporating the fact that the respondent has filed dowry-torture case against the petitioner and his parents who were taken into custody for a long time.

5. In written statement, it is stated that respondent lived with the petitioner at his house for five months and due to consummation of marriage, the respondent became pregnant but she was tortured for dowry and had given birth to an unmatured child due to assault.

6. A petition dated 03.06.2016 filed by the respondent that the divorce petition is not maintainable on the ground that there is no provision under section 13 of the Hindu Marriage Act to get a decree of divorce on the ground that wife was guilty of adultery before the marriage. The Court vide order dated 12.03.2018 rejected the said petition vide order dated 12.03.2018 on the ground that the case is already admitted.

7. An application dated 16.07.2016 filed by the petitioner in the trial Court for amending the petition with prayer to insert Sections 11 and 12 of the Hindu Marriage Act instead of Section 13 of the Hindu Marriage Act and also to amend portion (a) of the relief that "to pass a decree for declaration of marriage of applicant with respondent is void and voidable" instead of the prayer that "the marriage of the appellant with respondent be dissolved". After hearing both the parties, the trial court rejected the said amendment petition on the ground that the proposed amendment petition has been filed after seven years and certainly the same will change the nature of the case.

8. Learned counsel for the petitioner submits that the divorce petition was filed mainly on the ground of adultery before the marriage and it is appropriate that the said petition be decided under Sections 11 and 12 of the Hindu Marriage Act and the Amendment will not change the nature of the suit and will not cause any prejudice to the other party as the facts of leading adulterous life of the respondent before the marriage has already been disclosed in the plaint and accordingly, it is in the interest of justice that the amendment petition may be allowed. He also submits that the wrong provision of law will not make the entire case non-justiciable and on this point he has cited the judgment of Hon'ble Division Bench of this Court reported in 2019 (1) PLJR 219 (Ravindra Kumar Rai vs. Gudiya Rai).

9. On the other hand, learned counsel for the respondent submits that presently the evidence of both the parties have already been closed and the said petition was filed after seven years of the filing of the divorce petition without disclosing any valid reasons. Further, it is submitted that in this case, Section 11 or 12 will not apply as nullity of marriage is different from divorce. He further submits that under Section 12 (2) (b) (ii) of the Act, the petition shall be entertained within one year and admittedly the case has been filed after one year of marriage. He also submits that the amendment sought for if allowed will change the nature of the suit from the divorce to declaration of the marriage as void.

10. Since Section 11 of the Hindu Marriage Act only refers as conditions to Clause no. (i), (iv) and (v) of Section 5 of the Hindu Marriage Act which does not cover the case of the petitioner. Section 12 (1) (d) provides one of the grounds for declaration of marriage void by a Court of competent jurisdiction. The Court may annul the marriage by pronouncement of decree of nullity on the ground that the respondent was pregnant at the time of the marriage pregnant by some person other than the petitioner, however, in view of Section 12 (2) (b) certain riders have been given including filing of petition within on year of the date of marriage. It appears from the record that the time period for filing the petition was in knowledge of the petitioner.

11. The Hon'ble Supreme Court in Revajeetu 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.

12. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17 of C.P.C. These are only illustrative and not exhaustive.

13. It was further observed by Hon'ble Supreme Court in the aforesaid case (Revajeetu Builders and Developers Case) 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.

14. 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.

15. The Division Bench of this Court in the Judgment of Arvind Kumar Rai Vs. Guria Kumari (AIR 2019 (1) PLJR 218 in paragraph 27 it is held:-

"27. Under Rule 7 of the Family Courts (Patna High Court) Rules, 2000, it stands clarified as to what should be the content of the plaint. It is stated that in addition to the particulars required to be furnished under Order VII Rule 1 of the Code of Civil Procedure, 1908 Section 20 (1) of the Hindu Marriage Act, 1955 every plaint/application for judicial separation, nullity of marriage, divorce and restitution of conjugal rights shall contain the particulars prescribed therein. It is nowhere stated that the provision of law under which the relief is being sought, should also be written in the plaint. Otherwise also even if wrong provision of law is written that will not make the entire case non-justiciable. That has to be considered merely as typographical error."

16. In the aforesaid case, the relief sought was for declaration of marriage between the petitioner and opposite party to be null and void and the said relief has not been changed and accordingly held that if wrong provision of law is written then that has to be considered merely as typographical error. But in the present case, the proposed amendment shall change the nature of prayer in the case i.e. 'prayer for decree to divorce' with 'prayer for declaration of marriage as void'. Accordingly, proposed amendment cannot be considered as typographical error.

17. Having heard the learned counsel for the parties and considering the material available on record, including the impugned order, it is evident that admittedly the amendment petition has been filed after inordinate delay of seven years and the amendment proposed shall change the nature of prayer and also fresh petition on the amended claim would be barred by the limitation period prescribed by the Hindu

Marriage Act for filing the petition for decree of nullity on that ground and the amendment sought cannot be said to be bona fide. The impugned order is speaking order which has been passed assigning the sound reasons and in view of the law as discussed above, there is no legal infirmity in it and no interference is required in the impugned order.

18. This Civil Miscellaneous Application is, accordingly, dismissed.