



2025:AHC:169263

A.F.R.

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HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 1261 of 2023

Chitranshi

.....Petitioner(s)

Versus

Rajnarayan Tripathi

.....Respondent(s)

Counsel for Petitioner(s) : Ram Bihari Mishra, Vikas Upadhyay
Counsel for Respondent(s) : Abu Sufiyan Azmi

Court No. - 9

HON'BLE MANISH KUMAR NIGAM, J.

1. This petition has been filed challenging the order dated 12.12.2022 passed by Principal Judge, Family court, Hamirpur allowing an application for amendment moved by the plaintiff-respondent under Order VI Rule 17 of C.P.C. in Marriage Petition No. 291 of 2020 (Rajnarayan Tripathi Vs. Chitranshi).

2. Brief facts of the case are that plaintiff-respondent filed a petition under Section 13 of the Hindu Marriage Act, 1955 for relief of divorce on the grounds stated in the petition. The defendant-petitioner filed written statement denying the averments made by the plaintiff-respondent in the petition for divorce. On 27.07.2022, following issues were framed by the Principal Judge (Family Court), Hamirpur:-

"दिनांक 27.07.2020

पुकारा गया। उभयपक्ष अपने-अपने अधिवक्तागण के साथ उपस्थित आये। पत्रावली का अवलोकन किया। पत्रावली वास्ते वाद बिन्दु विरचित किये जाने हेतु नियत है। उभयपक्ष के अधिवक्तागण को वाद बिन्दु विरचित किये जाने के सन्दर्भ में सुना गया। तत्पश्चात निम्नलिखित वाद बिन्दु विरचित किये गये-

1. क्या वादी राजनारायण त्रिपाठी वादपत्र मे वर्णित अभिकथनों के आधार पर विपक्षी श्रीमती चित्रांशी के विरुद्ध विवाह विच्छेद (तलाक) की डिक्री प्राप्त करने योग्य है?

2. वादी यदि है, तो किसी अनुतोष को पाने की अधिकारी है? अन्य कोई वाद बिन्दु विरचित नहीं होता है और न ही अन्य किसी वाद बिन्दु को बनाने हेतु उभयपक्ष के अधिवक्तागण द्वारा बल दिया गया। अतः पत्रावली वास्ते साक्ष्य हेतु दिनांक 1.8.22 को पेश हो।"

3. Thereafter on 13.10.2022, the plaintiff-respondent filed an application under Order VI Rule 17 of C.P.C. seeking amendment in paragraph No. 7, 11 and 14 of the plaint, which was opposed by the defendant-petitioner. The Principal Judge (Family Court) Hamirpur by order dated 12.12.2022 allowed the amendment application on payment of cost of Rs. 800/-. Hence the present petition.

4. Contention of learned counsel for the petitioner is that the amendment application was filed by the plaintiff-respondent under Order VI Rule 17 of C.P.C. after framing of issues. According to learned counsel for the petitioner, in view of proviso to Rule 17 of Order VI of C.P.C., the amendment application cannot be filed after the commencement of the trial, 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. According to the petitioner, since in view of provisions of Section 10 of the Family Court Act, 1984 read with Section 21 of the Hindu Marriage Act, 1955, procedure as prescribed in C.P.C. is applicable to the proceedings under the Hindu Marriage Act, 1955. It has been further contended by learned counsel for the petitioner that initially the divorce petition was filed on the ground of desertion and cruelty. By the proposed amendment, the plaintiff-respondent has tried to change the cause of action for filing divorce petition by adding averments that petitioner is moving around with her colleague Umakant Namdev and her behaviour with her colleague is immoral and shows that relationship between the petitioner and her colleague is very close, which cannot be said to be friendly relationship and the plaintiff-respondent is aggrieved by the actions of the petitioner. Other facts were also tried to be added by the plaintiff-respondent.

5. It is further contended by learned counsel for the petitioner that once a marriage petition is filed on the basis of one of the grounds mentioned under Section 13 of the Hindu Marriage Act, 1955, by amendment cause

of action cannot be changed by adding other grounds given under Section 13 of the Hindu Marriage Act, 1955 for divorce.

6. *Per contra*, learned counsel for the plaintiff-respondent has submitted that the amendment application was filed immediately after the settlement of issues. Neither of the parties has led evidence after settlement of the issues and therefore, it cannot be said that the hearing of the case has commenced and thus, the proviso to Rule 17 of Order VI will not apply in the present case and the court below has rightly allowed the application filed by the plaintiff-respondent. It has also been contended by learned counsel for the respondent that by the proposed amendment no fresh ground i.e. cause of action is being introduced by the plaintiff-respondent and by the proposed amendment, the respondent wanted to bring on record certain facts which came in existence after filing of the divorce petition.

7. Before considering the rival submissions of learned counsel for the parties, it would be appropriate to consider the relevant statutory provisions in this regard. Section 13 of the Hindu Marriage Act, 1955 is quoted as under:-

"Divorce -(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.--In this clause,--

(a) the expression mental disorder means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of

mind and includes schizophrenia;

(b) the expression psychopathic disorder means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

*(iv)(****)*

(v) has (* *) been suffering from venereal disease in a communicable form; or*

(vi) has renounced the world by entering any religious order; or

*(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; (***)*

[Explanation--In this sub-section, the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

[(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground:

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,--

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or [bestiality; or]

[(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal

Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation. This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).]"

8. Rule 17 of Order VI of C.P.C. provides for amendment in the pleadings and the same is quoted as under:

"17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner 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:

Provided 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."

9. Order XIV of the C.P.C. provides for settlement of issues and determination of suit on issues of law or on issue agreed upon. Order XIV Rule 1 of C.P.C. is quoted as under.

"1. Framing of issues.—(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements if any, and [after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence."

10. Order XVIII of C.P.C. provides for hearing of the suits and examination of evidence. Rule 1 of Order XVIII provides that plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin. Rule 2 of Order XVIII of C.P.C. provides for settlement and production of evidence. Rules 1 and 2 of Order XVIII of C.P.C. are quoted as under:-

"1. Right to begin.—The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

2. Statement and production of evidence.—(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

[(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments

unless the

Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.]

*(4) [***]*

11. Learned counsel for the petitioner in this regard relied upon judgment of the Hon'ble Supreme Court in case of **Raj Kumar Gurawara Vs. S.K. Sarwagi and Company Private Limited and another** reported in **(2008) 14 SCC 364** and **Nitaben Dinesh Patel Vs. Dinesh Dayabhai Patel; (2021) 20 SCC 210** .

12. So far as submission of learned counsel for the petitioner that after framing of issues an amendment application cannot be allowed as the same will be hit by proviso to Rule 17 of Order VI of C.P.C. is concerned, is not an absolute proposition of law for the reason that amendment application for amendment in pleading can be allowed after commencement of the trial, if the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before commencement of the trial. There can also be a situation where the facts affecting the parties came in existence after the filing of the suit or even after the settlement of the issues, then the said facts can be brought by way of amendment in order to do complete justice between the parties. Further in case, any relief is added or any cause of action is added for which the plaintiff is entitled to bring a fresh suit, there is no impediment in allowing the amendment adding that cause of action or the relief, in order to avoid the multiplicity of proceedings. Merely framing of issue cannot be said to be commencement of trial. The Hon'ble Supreme Court in case of **Mohinder Kumar Mehra Vs. Roop Rani Mehra and others** reported in **(2018) 2 SCC 132** in paragraph Nos. 13 to 24 has held as under:-

"13. Order VI Rule 17 of C.P.C. as it now exists is as follows:-

"17. Amendment of Pleadings.- The Court may at any stage of the proceedings

allow either party to alter or amend his pleadings in such manner 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:

Provided 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."

14. By Amendment Act 46 of 1999 with a view to shortage litigation and speed of the trial of the civil suits, Rule 17 of Order VI was omitted, which provision was restored by Amendment Act 22 of 2002 with a rider in the shape of the proviso limiting the power of amendment to a considerable extent. The object of newly inserted Rule 17 is to control filing of application for amending the pleading subsequent to commencement of trial. Not permitting amendment subsequent to commencement of the trial is with the object that when evidence is led on pleadings in a case, no new case be allowed to set up by amendments. The proviso, however, contains an exception by reserving right of the Court to grant amendment even after commencement of the trial, when it is shown that in spite of diligence, the said pleas could not be taken earlier. The object for adding proviso is to curtail delay and expedite adjudication of the cases.

15. This Court in Salem Advocate Bar Association, T.N. Vs. Union of India, (2005) 6 SCC 344 has noted the object of Rule 17 in Para 26 which is to the following effect:

"26. Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision."

16. The judgment on which much reliance has been placed by learned counsel for the appellant is Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors: (2006) 4 SCC

385. This Court had occasion to consider and interpret Order VI Rule 17 in Paragraphs 15 and 16, in which following has been held:-

"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.

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."

17. Although Order VI Rule 17 permits amendment in the pleadings "at any stage of the proceedings", but a limitation has been engrafted by means of Proviso to the effect that no application for amendment shall be allowed after the trial is commenced. Reserving the Court's jurisdiction to order for permitting the party to amend pleading on being satisfied that in spite of due diligence the parties could not have raised the matter before the commencement of trial. In a suit when trial commences? Order XVIII of the C.P.C. deal with "Hearing of the Suit and Examination of Witnesses". Issues are framed under Order XIV. At the first hearing of the suit, the Court after reading the plaint and written statement and after examination under Rule 1 of Order XIV is to frame issues. Order XV deals with "Disposal of the Suit at the first hearing", when it appears that the parties are not in issue of any question of law or a fact. After issues are framed and case is fixed for hearing and the party having right to begin is to produce his evidence, the trial of suit commences.

18. This Court in *Vidyabai & Ors. Vs. Padmalatha & Anr.*, (2009) 2 SCC 409 held that filing of an affidavit in lieu of examination-in-chief of the witnesses amounts to commencement of proceedings. In Paragraph 11 of the judgment, following has been held:-

"11. From the order passed by the learned trial Judge, it is evident that the respondents had not been able to fulfill the said precondition. The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination-in-chief of the

witness, in our opinion, would amount to "commencement of proceeding"."

19. Coming to the facts of the present case, it is clear from the record that issues were framed on 17.05.2010 and case was fixed for recording of evidence of plaintiff on 10.08.2010. The plaintiff did not produce the evidence and took adjournment and in the meantime filed an application under Order VI Rule 16 or 17 on 17.01.2011. Thereafter the Court on 26.07.2011 has granted four week's time as the last opportunity to file the examination-in-chief. It is useful to quote Paragraph 4 of the Order, which is to the following effect:-

"4. In view of the above, it is directed as follows:-

(i) Having regard to the delay which has ensued, subject to the plaintiff paying costs of Rs.5,000/- each to the contesting defendant No.1 and 5 within a period of one week, the plaintiff is permitted four weeks time as a last opportunity to file the examination-in-chief of his witnesses on affidavit.

ii) The matter shall be listed before the Joint Registrar for recording of plaintiffs evidence on 29 August, 2011.

(iii) The case shall be listed before court for direction on 18.01.2012.

(iv) Needless to say in case IA No. 1001/2011 is allowed, appropriate orders for evidence of the plaintiff would be made."

20. Thus technically trial commenced when the date was fixed for leading evidence by the plaintiff but actually the amendment application was filed before the evidence was led by the plaintiff. The parties led evidence after the amendment application was filed. In this context, it is necessary to notice the order of the High Court dated 14.02.2014, which records that evidence of both the parties have been concluded. Most important fact to be noticed in the order is that the Court recorded the statement of plaintiff's counsel that parties have led evidence in view of the amendment sought in the plaint. The order dated 14.02.2014 is to the following effect:-

"The evidence of both the parties has been concluded. The matter has been listed for final disposal. The learned counsel for the plaintiff has pointed out the order dated 26th July, 2011 wherein observation was made that in case I.A. No. 1001/2011 under

Order VI Rule 17 CPC for amendment of the plaint is allowed, appropriate order for evidence of the plaintiff would be made. As a matter of fact, plaintiffs counsel stated that the parties have also led evidence in view of amendment sought in the plaint and the same covered in the evidence produced by the parties. The defendants, however, alleged that the said amendment was unnecessary and was opposed by the defendants and issue involved in the said circumstances be considered at the time of final hearing of suit as defendant No.1 is more than 85 years old lady, the suit itself be decided.

List this matter in the category of Short cause on 22 May, 2014....."

21. By same order dated 14.02.2014, the Court directed that the amendment application be taken at the time of final hearing. As noticed above, when plaintiff sought for framing additional issues which application was rejected, the matter was taken before the Division Bench and the Division Bench ultimately has directed the learned Single Judge to consider the amendment application. Subsequently, the amendment application was rejected on 24.10.2016.

22 .The Proviso to Order VI Rule 17 prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced. The present is a case where actually before parties could led evidence, the amendment application has been filed and from the order dated 14.02.2014, it is clear that the plaintiff's case is that parties has led evidence even on the amended pleadings and plaintiff's cases was that in view of the fact that the parties led evidence on amended pleadings, the allowing the amendment was mere formality. The defendant in no manner can be said to be prejudiced by the amendments since the plaintiff led his evidence on amended pleadings also as claimed by him.

23. This Court in Chander Kanta Bansal Vs. Rajinder Singh Anand, (2008) 5 SCC 117 has noted the object and purpose of amendment made in 2002. In Para 13, following has been held:-

"13. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other's case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will

be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases."

24. Looking to the object and purpose by which limitation was put on permitting amendment of the pleadings, in substance, in the present case no prejudice can be said to have caused to the defendant since the evidence was led subsequent to the filing of the amendment application. We thus are of the view that looking to the purpose and object of the Proviso, the present was a case where it cannot be held that amendment application filed by the plaintiff could not be considered due to bar of the Proviso."

13. The law as laid down by Hon'ble Supreme Court in case of Mohinder Kumar Mehra Vs. Roop Rani Mehra (supra) is that technically the trial commences when the date is fixed for leading evidence by the plaintiff. In Mohinder Kumar Mehra Vs. Roop Rani Mehra (supra), the Supreme Court considering the facts of the case allowed the application for amendment as the same was filed before leading evidence by the plaintiff, despite the fact that the issues were framed and date was fixed for leading evidence by the plaintiff. In the present case, it is not the case of any of the parties that the evidence has begin, only objection of the counsel for the petitioner is that the issues were settled before moving an application under Order VI Rule 17 of the C.P.C.

14. In judgment relied upon by counsel for the petitioner Nitaben Dinesh Patel Vs. Dinesh Dayabhai Patel (supra), in paragraph Nos. 8, 9, 10, 11 of the judgment, the Supreme Court has held as under:-

"8. Order VI Rule 17 CPC provides for amendment of the pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings (including written statement) in such manner 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. Proviso to Order VI Rule 17 CPC further provides 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 the trial.

9. Relying upon the proviso to Order VI Rule 17 CPC, the High Court has refused the amendment sought qua paragraphs 35 and 36. However, it is required to be noted that as per the case of the appellant-wife, she actually came to know about the actual marriage between the respondent and Hinaben Manubhai Panchal on 14.12.2006 only during the cross-examination of the respondent and when the marriage certificate was produced on record. It is required to be noted that right from the very beginning, it was the specific case on behalf of the appellant that the respondent-husband is living in adultery with Hinaben Manubhai Panchal and in the rejoinder affidavit filed by the respondent-husband, the respondent -husband denied the allegation of adultery and stated that Hinaben Manubhai Panchal is manager in the hospital run by him and she is looking after the hospital and accounts as a job. Though, the respondent-husband had married with Hinaben Manubhai Panchal on 14.12.2006, he did not disclose the correct and true facts and suppressed the material facts. Only in the cross-examination, he admitted the marriage with Hinaben Manubhai Panchal on 14.12.2006 and produced the marriage certificate. Therefore, in view of the above, the restrictions as per the proviso to Order VI Rule 17 CPC shall not be applicable.

10. The proviso to Order VI Rule 17 CPC provides 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. Therefore, if some facts have come to the knowledge subsequently and subsequent to the commencement of trial, may be during the course of trial and if it is found that it is necessary for the purpose of determining the real questions in controversy between the parties, on a fair reading of Order VI Rule 17 CPC, such an application for amendment can be allowed even after the trial has commenced. In the present case, as observed hereinabove, the factum of actual marriage on 14.12.2006 came to the knowledge of the appellant-wife when the marriage certificate was produced during the cross- examination of the respondent-husband and immediately thereafter the application (Ex.281) for amendment was made.

11. Therefore, as such, and looking to the case on behalf of the appellant, so pleaded in the written statement, the learned Family Court was right and justified in allowing the amendment sought qua paras 35 and 36. The High Court has committed an error in misapplying the proviso to Order VI Rule 17 CPC and has erred in rejecting the amendment sought qua paras 35 and 36 in application (Ex.281)."

15. In the present case also the facts which were sought to be added by means of the proposed amendment came to the knowledge of the plaintiff-respondent subsequently as held by the Principal Judge, Family Court, the proposed amendment is quoted as under:-

"1. यह कि वादपत्र के "पैरा- 7" में इबारत "तैयार है" के आगे "बल्कि मेरे ऊपर सन्देह करती है तथा दूसरी स्त्रियों से सम्बन्ध होने का आरोप लगाती है, का इजाफा फ्रमाया जाये।

2. यह कि याचिका के "पैरा- 11" की चौथी लाइन में दर्ज शब्द "भगा दिया" के बाद इबारत "विपक्षी अपनी नियुक्ति के स्थान मौदहा ब्लॉक में राष्ट्रीय ग्रामीण आजीविका मिशन के कार्यालय में अपने सहकर्मी उमाकान्त नामदेव के साथ स्वच्छन्द रूप से घूमती फिरती है तथा उक्त व्यक्ति का विपक्षी के घर मौदहा में आना आना रहता है, जिसे वहाँ के लोगों ने भी देखा है तथा ऑफिस में भी विपक्षिया एवं उसके सहकर्मी का व्यवहार अमर्यादित है तथा उनका व्यवहार पूर्णरूप से दर्शाता है कि विपक्षी व उसके सहकर्मी के मध्य बहुत घनिष्ठ सम्बन्ध है, जोकि मित्रता की श्रेणी में हरगिज़ नहीं है। याची विपक्षी की इन हरकतों से बहुत दुखी है एवं अब याची व विपक्षी के मध्य पति पत्नी के रिश्ते का आगे भी रह पाना सम्भव नहीं है।

3. यह कि वादपत्र के पैरा 14 में दर्ज शब्द "लगा दिया" के आगे "इसी प्रकार दिनांक 29.07.2022 को विपक्षी एवं उसके सहयोगी उमाकान्त नामदेव ने याची के साथ गाली गलौज किया तथा जान से मारने की धमकी दी गयी, जिसकी रिपोर्ट थाना मौदहा में अन्तर्गत धारा-504, 506 भा०द०सं० के अन्तर्गत याची ने दर्ज करायी, जिसकी पेशबन्दी में विपक्षी द्वारा झूठे तथ्यों के आधार पर पुलिस अधीक्षक हमीरपुर को प्रार्थना पत्र महज याची द्वारा की गयी प्रथम सूचना रिपोर्ट से बचने हेतु प्रस्तुत किया गया है। याची का विपक्षी के साथ रहने में उसकी स्वयं की जान को खतरा है इस कारण भी वैवाहिक सम्बन्ध विच्छेद किया जाना आवश्यक है"

16. Considering the rival submissions of the counsel for the parties as well as the facts of the case, I am of the view that amendment sought by the plaintiff-respondent has been rightly allowed by the Principal Judge (Family Court), Hamirpur and mere framing of issues before filing of application of amendment will not be an impediment in allowing the amendment sought by the plaintiff-respondent. If some facts have come to the knowledge of the party to the suit subsequent to the commencement of

trial, may be during the course of trial and if it is found that it is necessary for the purpose of determining the real questions in controversy between the parties, on a fair reading of Order VI Rule 17 CPC, such an application for amendment can be allowed even after the trial has commenced.

17. So far as the other contention of learned counsel for the petitioner that by the proposed amendment, the plaintiff-respondent has tried to change the cause of action for filing the divorce petition by adding new ground is concerned, is also misconceived for the reason that Section 13 of the Hindu Marriage Act, 1955 provides that a petition for divorce can be filed by either husband or wife on the grounds mentioned in the Section 13 of the Hindu Marriage Act, 1955. There is no prohibition for either of the party to file a petition on one or more grounds specified in Section 13 of the Hindu Marriage Act. Even assuming that by the proposed amendment, a new ground is being sought to be added by the plaintiff-respondent in his divorce petition, will not be an impediment for moving such an application. Decision of a petition under Section 13 of the Hindu Marriage Act, 1955 on one ground will not operate as res judicata for filing divorce petition on other grounds as specified in Section 13 of the Hindu Marriage Act, 1955. Once the party is permitted to file a second petition even after dismissal of the first petition on a separate ground, there is no impediment in taking that ground by moving an application for amendment in the petition. Such an amendment can be allowed in order to avoid the multiplicity of proceedings and for the reason that all the dispute between the parties shall be considered and decided in one proceeding instead of filing successive separate petitions, in case the ground so exists.

18. Further with the help of learned counsel for the petitioner as well as counsel for the respondent, I have perused the application for divorce filed by the plaintiff-respondent No. 1 from which it is apparently clear that the petition was filed on two grounds namely, desertion and cruelty. By the proposed amendment, which are noted above, it cannot be said that the plaintiff has tried to introduce a new ground or cause of action in his divorce petition rather, the proposed amendments are elaboration of facts,

which came to the knowledge of the plaintiff-respondent during pendency of the divorce petition as the same may amount to cruelty, if the plaintiff-respondent succeeds in proving those allegations by leading cogent evidence.

19. In view of the discussion made above, I am of the opinion that no illegality has been committed by the Principal Judge (Family Court), Hamirpur in allowing the application filed by the plaintiff-respondent for amendment in pleadings.

20. Consequently, the writ petition lacks merit and is dismissed. Since the Marriage Petition No. 291 of 2020 is pending, Principal Judge (Family Court) Hamirpur is directed to consider and decide the aforesaid proceeding in accordance with law, expeditiously, after giving opportunity of hearing to the parties concerned as well as opportunity to lead evidence in support of their case and without granting unnecessary adjournments to either of the parties provided that there is no other legal impediment, keeping in view the statutory mandate of Section 21-B of the Hindu Marriage Act.

(Manish Kumar Nigam,J.)

September 22, 2025

Nitika Sri.