

Before Tribhuvan Dahiya, J.

JATINDER PAL KAUR @ JATINDER KAUR @ JYOTI—
Petitioner

versus

UNEESH SEHGAL—Respondents

CR No. 3606 of 2022

September 12, 2022

Code of Civil Procedure, 1908—O.6, Rl. 17 read with Section 151—Matrimonial petition—Rejection of application for amendment of plaint—Challenged—Provisions of Order VI Rule 17 CPC empower Court to allow amendment of pleadings at any stage to determine real questions in controversy—Amendment to written statement is to be granted more liberally—Especially when amendment sought to elaborate defence and is explanatory in nature—Rejection of application for amendment unsustainable and set aside.

Held, that the provisions of Order VI Rule 17 CPC empower the Court to allow amendment of pleadings of the parties at any stage as may be necessary to determine real questions in controversy. It is also well settled that amendment to written statement is to be granted more liberally than amendment to a plaint. Especially when, an amendment has been sought to elaborate the defence and is explanatory in nature, it should be allowed.

(Para 6)

Anil Kumar, Advocate, *for the petitioner.*

Vishal Thakur, Advocate, for the caveator.

TRIBHUVAN DAHIYA, J. (Oral)

(1) This is a revision petition filed under Articles 227 of the Constitution of India against the order dated 3.8.2022 (Annexure P-6) passed by the Additional Principal Judge, Family Court, Ludhiana, in a petition under Section 11 of the Hindu Marriage Act, 1955, whereby the application filed by the petitioner/wife under Order 6 Rule 17 read with Section 151 CPC for amendment of written statement, has been dismissed.

(2) Brief facts of the case are, marriage between the parties was

solemnised on 31.1.2016 at Ludhiana. The respondent/husband filed a petition under Section 11 of the Hindu Marriage Act, 1955, for dissolution of marriage between the parties being a nullity. On completion of pleadings, issues were framed by the Family Court vide order dated 14.9.2018. Evidence of the respondent/husband was led and the witnesses were cross examined by the petitioner/wife. The case was fixed for her evidence when the instant application was filed seeking amendment of written statement. As per the averments in the amendment application, it has been stated that she disclosed to her earlier counsel about the custom prevailing in her caste that the marriage could be dissolved either orally or by executing a writing. Subsequent to change of counsel, and at the time of preparing evidence, it transpired that the ground of custom was not pleaded in the written statement. Accordingly, to incorporate the same, an amendment to the written statement is required. It was also pleaded that no prejudice will be caused to the respondent/husband by way of the amendment. The amendment was opposed by the respondent/husband on the ground that it had been sought at a belated stage only to prolong the matter; existence of any custom was specifically denied.

(3) The trial Court by the impugned order declined the application for amendment of written statement by holding that the petition was filed under Section 11 of the HMA for declaring marriage between the parties a nullity on the ground that earlier to the instant marriage, the petitioner/wife was already married to Surinder Singh. And that the fact of the earlier marriage stands admitted in the written statement filed by the petitioner/wife. It was further held that perusal of cross examination of the respondent/husband reflects that she was cross examined at length by the earlier as well as by the present counsel of the petitioner/wife, and not even a suggestion about existence of a custom was put to him. Besides, the respondent/husband was not diligent in seeking the amendment.

(4) Learned counsel for the appellant has submitted that the Family Court has wrongly declined the application for amendment of written statement. In the written statement filed by the petitioner/wife, it has been denied that at the time of her marriage with the respondent/husband, her previous marriage subsisted or that she had not divorced from her previous husband. The instant amendment application is only to explain that the first marriage did not subsist at the time of second marriage.

(5) Learned counsel for the respondent/husband, on the other

hand, has argued that the application has been filed at a belated stage only to fill up a lacunae in the case after evidence of the respondent/husband has been led.

(6) The provisions of Order VI Rule 17 CPC empower the Court to allow amendment of pleadings of the parties at any stage as may be necessary to determine real questions in controversy. It is also well settled that amendment to written statement is to be granted more liberally than amendment to a plaint. Especially when, an amendment has been sought to elaborate the defence and is explanatory in nature, it should be allowed. This has been so held by this Court in *Pal Singh versus Ranjit Singh*¹. Para 5 of the judgment reads as under,

5. After hearing the learned counsel for the parties and perusing the impugned order, I am of the considered view that this petition deserves to be allowed. It is well settled that amendment in respect of the written statement is granted more liberally than in the plaint. In this regard, reference may be made to the judgment of the Supreme Court in the case of *B.K. Narayana Pillai v. Parameswaran Pillai and another*, (2000) 1 SCC 712. It is also well settled that where the purpose of proposed amendment is to elaborate the defence and take additional plea in support of the case, then ordinarily such an application should not be dismissed. In this regard, reference may be made to the judgment of the Supreme Court in the case of *Estralla Rubber v. Dass Estate (P) Ltd.*, 2001 (4) RCR (Civil) 362 (SC): (2001) 8 SCC 97.

In another judgment passed by this Court in *Aadish Aggarwal and another versus Brijeshwar Swaroop and another*² also it has been held that rule of amendment is essentially rule of justice, equity and good conscience, it has to be exercised in larger interest, in doing complete justice between the parties. The delay in moving the application for amendment cannot be taken as a ground for rejection of the proposed amendment. The relevant paras 14 to 16 of the judgment reads as under,

14. Having considered the submissions made by learned counsel for the parties, I am of the view that delay in moving the application for amendment cannot be taken to be a ground for rejection of the proposed amendment in view of ratio laid

¹ 2006 (2) PLR 68

² 2018 (1) PLR 270

down by the Hon'ble Apex Court in *Surender Kumar Sharma's case (supra)* and *Andhra Bank's case (supra)*. Defendant is entitled to take inconsistent plea in the written statement in view of ratio laid down in *Baldev Singh and others' case (supra)* and *Usha Balashaheb Swami and others' case (supra)*. Even defendant can plead inconsistent stand and can explain the admission made in the earlier written statement. The amendment of written statement is to be liberally construed and the same is placed at a different pedestal than the one meant for amendment of the plaint.

15. It is mandatory on Court to allow all amendments which are necessary for the purpose of determining the real controversy between the parties. At the same time, the Court is not obligated to go into the correctness or falsity of the case of either side in the amendment. The merits of the case are not to be adjudged at the stage of allowing or rejecting the prayer for amendment.

16. The rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest in doing complete justice between the parties. All bona fide amendments are to be allowed.

(7) On the above analysis of facts and law, it is apparent that the order passed by the Family Court dated 3.8.2022 is unsustainable. The petitioner/wife's amendment application to the written statement was declined on wrong basis. By way of amendment, the petitioner/wife sought to explain the stand already taken by her in the written statement denying subsistence of the earlier marriage. Besides, the application is *bona fide* and no prejudice is to be caused to the respondent/husband by allowing the application for amendment of written statement, as the petitioner/wife's evidence is yet to commence and the respondent/husband will have due opportunity to cross examine her also.

(8) In view of the above discussion, the instant petition is allowed and the impugned order dated 3.8.2022 (Annexure P-6) is set aside. The petitioner's application for amendment of written statement (Annexure P-3) is accordingly allowed.

(9) All the pending miscellaneous applications, if any, stand disposed of as having been rendered infructuous.