

Umang Tewari vs Pooja Tewari & Anr on 26 October, 2021

Author: Vipin Sanghi

Bench: Vipin Sanghi, Jasmeet Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
MAT.APP.(F.C.) 135/2020
UMANG TEWARI

Through: Mr. Ajay Sondhi & Mr. La
Khanna, Advocates.

versus

POOJA TEWARI & ANR.

Through: Ms. Kamakshi Gupta, Advo

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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26.10.2021

C.M. No. 28001/2020

1. This application has been filed to seek condonation of delay in filing the present appeal.
2. Since the period of limitation was suspended on account of the Pandemic, the application is allowed and the delay in filing the appeal is condoned.
3. The application stands disposed of.

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4. The present appeal is directed against the order dated 06.03.2020, whereby the appellant/petitioner's application under Order VI Rule 17 CPC to amend the divorce petition preferred by him under Section 13(1)(i) and 13(1)(ia) of the Hindu Marriage Act, 1955, has been dismissed. The plea that the appellant sought to incorporate was that the respondent did not disclose - at the time of marriage, that she was a Christian. He desired to plead that the respondent and her family withheld the fact that they were Christian for all the years that they lived together and it was only in the year 2018 that he discovered that the respondent belonged to a Christian family upon the death of her father when he was buried in a Christian graveyard. The Family Court has rejected the application by observing that it is unbelievable that the petitioner/ appellant remained under the belief that the respondent was a Hindu.

5. We have heard learned counsels.

6. The submission of learned counsel for the appellant is that the appellant was not aware of the fact that the respondent was a Christian inasmuch, as, the wedding invitation card prepared & circulated by the respondent's parents also clearly conveyed that the respondent and her family were Hindus inasmuch, as, it had impressions of Lord Ganesha as well as the Om Symbol, which are typical of Hindu religion. He further submits that the explanation furnished by the respondent in her reply to the application under Order VI Rule 17 CPC moved by the appellant was flimsy inasmuch, as, it was claimed that the respondent's father was following both the Hindu and Christian religions under the influence of his friend. Learned counsel for the appellant has further pointed out that even the name of the grandfather of the respondent shows that he was a Christian and all these facts were held back from the appellant.

7. We have no doubt that the appellant has an uphill task in establishing the aforesaid plea. However, that cannot be a reason for disallowing the amendment application. Allowing an amendment application only means that the party concerned is allowed to make a pleading as desired by him/ her. Correctness of the pleading would be tested only after a trial has been conducted. Therefore, in our view, the amendment could not have been refused as sought to be incorporated rather early in the proceedings. Even the issues had not been framed when the amendment application was moved. Only after passing of the impugned order, the Family Court proceeded to frame the issues.

8. We, therefore, allow this appeal and set aside the impugned order. The amendment application moved by the appellant is allowed. At the same time, we make it clear that the fact that the amendment application has been allowed does not tantamount to acceptance of the pleas sought to be incorporated by the appellant in his divorce petition. The amended petition be brought on record within two days with copy to the respondent. The respondent shall file written-statement to the amended divorce petition within two weeks. We are informed that the matter is coming up before the Family Court on 15.11.2021 for orders on the application preferred by the respondent under Section 24 of the Hindu Marriage Act. The Family Court may consider whether to grant time for filing the replication; and in view of the amendment application being allowed, the Family Court may recast the issues after hearing the parties.

9. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J JASMEET SINGH, J OCTOBER 26, 2021 B.S. Rohella