

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3678 of 2024

With

**CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/SPECIAL CIVIL APPLICATION NO. 3678 of 2024**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

SHEETAL GAURISHANKAR YADAV W/O VAIBHAV PRAVINCHANDRA SHAH
Versus
VAIBHAV PRAVINCHANDRA SHAH

Appearance:

MANMEETSINGH P CHHABRA(9140) for the Petitioner(s) No. 1
MR AMMAR M MANSURIPINJARA(11757) for the Petitioner(s) No. 1
MR MIHIR THAKORE, LD. SENIOR ADVOCATE WITH MR RUTVIK BRAHMBHATT for the Respondent(s) No. 1

CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 19/03/2024

CAV JUDGMENT

- Present application is filed being aggrieved by the order

dated 14/02/2024, passed below Exh.112 by the Family Court, Ahmedabad in Family Suit No.155 of 2018.

2. The application Exh.112 was moved by the present applicant as original respondent of the family suit on 12/02/2024 with the prayer to give relief of filing of subsequent pleadings under Order-VIII Rule-9 of the Code of Civil Procedure, 1908.

3. The applicant was before the family court with the facts that, she got married with the present respondent as per the rites and rituals of Hindus, and the marriage certificate was issued from Shubham Hall, Lal-Darwaja, Ahmedabad where both the parties along with the witnesses signed the documents. The marriage dated 26/04/2016 was registered before the Registrar of Marriage at Jamalpur Ward at Sr. No.1327 of Volume-01 in the register of marriages on 03/05/2016.

4. The applicant stated that during the pendency of divorce case vide Petition No.A-203 of 2016 before the Family Court, Mumbai at Bandra, she had entered into customary divorce

with her earlier husband and as the customary divorce is prevailing and is permissible in their caste, divorce deed was executed on the stamp paper duly notarized and signed in front of the witnesses on 15/02/2016.

5. As per the applicant, during the time of present marriage, both the parties were divorcees, the respondent had received the divorce decree from the Family Court, Ahmedabad in Family Suit No.1157 of 2009 on 02/11/2012. While applicant's divorce petition before the Bandra Court was initially filed under section 13(1)(ia) of the Hindu Marriage Act, and thereafter was converted into divorce by mutual consent under Section 13B of the Hindu Marriage Act, the divorce was allowed and the judgment and decree was passed on 24/06/2016.

6. In the present matter, in the family suit, the issues were framed on 22/03/2019, and affidavit in examination-in-chief was filed by the plaintiff, while cross examination had taken place on different dates. During the trial, the application to close the right of cross examination was moved by the original plaintiff and the order was passed on 21/08/2019 closing the

right to cross examine. On 12/09/2019, the application was moved by the present applicant for re-opening the right to cross examine the plaintiff, which came to be granted on 01/11/2023. Production application was moved by the present applicant on 16/11/2019 and list of documents along with the documentary evidences were produced by the applicant on the very same day.

7. Mr. Manmeetsingh P. Chhabra, learned advocate for the applicant, submitted that new facts came subsequently to the notice of the applicant, which resulted into filing of the application Exh.112, to the cause of action as pleaded that the husband has illegally married to Shivani Shivlal Rajpurohit and had become father of two children from the said marriage, the said fact came to the notice of the present applicant on 31/12/2022, and on further search, the applicant could find some photos from the Instagram and face-book account of Shivani Shivlal Rajpurohit and her brother Janak Shivlal Rajpurohit, which were in connection to the function showing the relation of the present respondent with Shivani Shivlal Rajpurohit as a husband and wife. The said fact was shocking to the applicant as said Shivani Rajpurohit and her

brother Janak Rajpurohit are advocates, whom she had met in February 2018 after she had received notice from the family court of the Family Suit No.155 of 2018. Mr.Chhabra, learned advocate submitted that the present applicant had discussed about her case and had given the photocopies of the case papers and other related documents with an intention to engage them as her advocates.

7.1. Mr.Chhabra, learned advocate submitted that on 18/01/2023, application for discovery of documents under Order-XI Rule-12 of the Code of Civil Procedure,1908, was moved by the applicant with a prayer to direct the plaintiff to file an affidavit on oath in relation to his present marriage with woman other than the present applicant and to direct the plaintiff to produce the wedding card, marriage certificate of his present marriage with the woman other than the present applicant as well as to produce birth certificate regarding two children who were born out of the marriage. Mr.Chhabra, learned advocate submitted that the application for the discovery of the documents came to be rejected. The cross examination of the plaintiff concluded on 17/01/2024 and during the cross examination certain relevant documents

were admitted vide Exh.82 to 87 and Exh.100 to 103. Closing pursis was moved by plaintiff of the suit on 17/01/2024. Mr.Chhabra, learned advocate submitted that thereafter present applicant had moved an adjournment application since she intended to get amended the issues framed. Learned advocate for the plaintiff had moved an application, praying to close the right of the applicant to lead the evidence on 30/01/2024 and on the said Exh.107 and Exh.108, the court had passed order on 30/01/2024, with some observation directing the present applicant as a respondent in the suit, to submit her affidavit in evidence, in the form of chief examination and witness list, if she desires to examine other witnesses, on or before 12/02/2024. Mr.Chhabra, learned advocate submitted that on 03/02/2024, an application was moved by the applicant to take the case on board to amend the order passed on 30/01/2024 below Exh.107 and Exh.108 under Section 152 read with Section 151 of the Civil Procedure Code, 1908, as there was some error in the order, so thereafter on 12/02/2024, application Exh.112 was moved under Order-VIII Rule-9 of the Civil Procedure Code, 1908, and to grant time in view of direction as was given vide the order dated 30/01/2024 to the applicant to submit

examination-in-chief and list of witnesses. Mr.Chhabra, learned advocate submitted that by the order below Exh.112 and 114 prayer came to be rejected with a direction to the present applicant to produce affidavit for the examination-in-chief, on the next date of hearing and in failure, her right to lead the evidence was ordered to be closed and the matter to be proceeded further in accordance with the law.

7.2. Referring to the contents in Exh.112, Mr.Chhabra, learned advocate submitted that the present applicant wanted to place on record certain facts which had come to the knowledge of the applicant during the course of the cross examination of the plaintiff and by referring applications Exh.82, 83, 83.2, 84, 84.2, 85, 85.2, 85.3, 86, 87, 100 to 103, Mr.Chhabra, learned advocate, submitted that prayer was made by the present applicant as a defendant of the suit to allow her in light of the new facts to place subsequent pleadings in context with the re-marriage of the plaintiff and being father of two children during the pendency of the family suit.

7.3. Referring to the judgment in the case of **Olympic**

Industries vs. Mulla Hussainy Bhai Mulla Akberally and others in Civil Appeal Nos.4148-4149 of 2009 arising out of SLP (C) Nos.23661-23662 of 2007 dated July 7th, 2009 and the order passed by the **High Court of Judicature at Madras in the case of P. Saraswathi vs. C. Subramaniam 31/10/2023**, Mr.Chhabra, learned advocate submitted that the application under Order-VIII Rule-9 of the Civil Procedure Code does not lay down any restriction with regard to receiving any additional written statement, and the court should exercise the discretion liberally and that the provision does not put bar on such additional statement after the trial has commenced and said subsequent pleading does not lay day any restriction, to note whether that defense was available on the date of filing of written statement or not.

7.4. Mr.Chhabra, learned advocate submitted that it was only during the course of cross examination of the plaintiff, the facts could be affirmed, which became known to the present applicant from the Instagram and face-book account of Shivani Rajpurohit and Janak Rajpurohit.

7.5. Mr.Chhabra, learned advocate submitted that if

subsequent pleadings are not allowed, then it would amount to denial of decision of the real controversy between the parties.

8. Per contra, Mr.Mihir Thakore, learned Senior Advocate assisted by Mr.Rutvik Brahmbhatt, learned advocate for the respondent, submitted that the nature of the suit is necessary to be taken into consideration, where the plaintiff had filed the suit under Section 11 of the Hindu Marriage Act, 1955 for the declaration of the marriage being null and void.

8.1. Learned Senior Advocate submitted that on the date of registration of the marriage, present applicant as a defendant of the suit was not a divorcee, as the decree of divorce under Section 13B of the Hindu Marriage Act was drawn only on 24/06/2016, while the marriage was registered on 03/05/2016, which was performed on 26/04/2016, on that date the applicant was not a divorcee.

8.2. Learned Senior Advocate submitted that the Petition No.A-203 of 2016 before the Family Court, Mumbai at Bandra was pending, which was initially filed under Section 13(1)(ia)

of the Hindu Marriage Act and thereafter the petition was converted to be filed under section 13B of the Hindu Marriage Act, for divorce.

8.3. The petition for divorce was filed on 22/01/2015 before the court of Bandra which came to be registered on 02/02/2016, and during the course of the pendency of the petition, the petitioner has stated that she had entered into customary divorce on 15/02/2016, for which learned Senior Advocate submitted that it cannot be said to be valid and legal document as prior to the deed, the petitioner had moved the Family Court by preferring petition No.A-203 of 2016 and the judgment of decree of divorce was passed on 24/06/2016 and hence, learned Senior Advocate submitted that on 26/04/2016, there was no status of the applicant being a divorcee wife and hence on that basis the suit has been filed by the respondent before the Family Court, Ahmedabad to get a declaration for the marriage performed on 26/04/2016 and registered on 03/05/2016 as being null and void.

8.4. Referring to the decision of Privy Council in the case of **Haji Saboo Sidick and others vs. Ayeshabai and another**

reported in volume XXX, Indian Appeals, 127, a decision in the case of **S. Subramanium, vs. G. N. Rajagopal reported in 1998 AIH 3559 of Madras High Court** and a decision in the case of **Gandeti Suryakantham vs. Gandeti Subba Rao and others reported in AIR 2004 Andhra Pradesh 533**, learned Senior Advocate submitted that no leave for subsequent pleadings should be allowed after closure of evidence of the plaintiffs, stating that inconsistent plea put forward would prejudice the case of the plaintiff and hence, discretion to be exercised should be in light of the fact that it should not affect the right of the parties. Learned Senior Advocate submitted that if the plaintiff is allowed to file additional written statement then it would factually change the nature of the suit and it would lead to *de-novo* trial, thus, submitted that the family court has rightly rejected the application of the present applicant.

9. Application Exh.112 was moved under Order-VIII Rule-9 of the Civil Procedure Code, 1908.

10. Order-VIII Rule-9 of the Civil Procedure Code, 1908, reads as under:

"9. Subsequent pleadings.- No pleadings subsequent to the written statement of a defendant other than by way of defence to set-off of counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same."

11. Provision under Order-VIII Rule-9 requires leave of the Court before any party can present further pleadings after written statement has been filed. The trial court thus has to be caution in exercising powers. Though the courts are expected to be liberal in granting the leave, but it should be on the basis of the circumstances of the individual case. The provision does not create a right in the defendant to file an additional written statement, on her own. The requirement which the provision deals with is that of the court and not of the defendant. It is only when the court is of the opinion that the written statement or additional written statement is necessary in order to factually determine the controversy, it may require the defendant to file written statement or additional written statement. The court has to be satisfied about the relevancy, to grant any leave to raise such pleadings, and another consideration in exercising the

discretion would be to see whether the plaintiff is prejudiced by the subsequent pleadings in any way. The discretion conferred should be liberally exercised protecting the plaintiff from any prejudice caused. In the present case, the plaintiff had moved the Family Court, Ahmedabad on the ground that the marriage with the defendant is null and void. One of the conditions under Section 5 of the Hindu Marriage Act, 1955, between marriage of two Hindus is that; neither party has a spouse living at the time of the marriage. That condition is to be fulfilled prior to solemnization of the marriage.

12. As per the facts of the case, the decree of divorce by mutual consent of present applicant with her earlier husband was passed by the Family Court, Mumbai at Bandra on 24/06/2016.

13. Prior to the divorce decree, the marriage was performed on 26/04/2016 which was registered before the registrar of marriage on 03/05/2016.

14. Reliance has been placed by the applicant on the execution of document which was filed during the pendency of

the family suit at Bandra, Mumbai stating it to be customary divorce on 15/02/2016 by the present petitioner with her earlier husband.

15. Prima facie, on record it is clear that the decree of divorce was on 24/06/2016 by the court of Bandra, Mumbai in the Family Petition No.A-203/2016. The plaintiff had filed affidavit before the Family Court, Ahmedabad at Exh.27, in the Family Suit No.155 of 2018 where he has referred about the facts of the case. Exh.112 was moved stating that the plaintiff has re-married and is father of two children and hence, the present applicant as a defendant to the suit prayed for presenting subsequent pleading. The Family Court Judge has rejected the said application Exh.112 observing in para-8 to 10 as under:

8. Even if permission is granted, the alleged actions of the husband do not affect the decision. Moreover, for sake of the arguments, if the petitioner-husband has remarried during the ongoing proceedings, it does not impact either the husband's relief or the wife's defense. Bringing on record any misdemeanour or bad character of either party may not necessarily determine the truth of the case. The court would evaluate the evidence presented by both sides to determine the validity of the marriage. The alleged act of the defendant (wife) does not automatically become true or validated simply

because the husband may have committed a crime or has a questionable character. Each claim and defence would need to be assessed independently based on the evidence and legal arguments presented.

9. *Further, as per the wife's assertion, if these facts are admitted by the husband in cross-examination, then it is not necessary to bring them on record through subsequent pleadings, as it is a cardinal principle of law that the facts stated by the party in their pleadings have to be proved. The facts which are admitted cannot be taken in additional pleadings as these facts are admitted and therefore need not be proved.*

10. *It appears that though order passed below Exh.107 by this Court as well as order passed below Exh.46, the respondent is not interested to produce her evidence. She is only interested to prolong the matter. Since the matter is six years old and as observed in order below Exh.107 and Exh.46, the conduct of the respondent shows that she is not entitled to get more time to produce her evidence. However, this matter is relating to matrimonial dispute. Therefore, in the interest of justice, I am of the opinion that one last chance should be provided to respondent to file her affidavit in lieu of examination-in-chief and witness list. Hence, following order is passed;*

ORDER

1. *Application Exh.112 and 114 is hereby rejected."*
16. The issues were framed by the Family Court, Ahmedabad below Exh.23 as under:

"(1) Whether the petitioner proves that the respondent had spouse living at the time of his marriage with the petitioner, and therefore, the alleged marriage is in contravention of the condition specified in Clause (I) of

Section 5 of the Hindu Marriage Act?

(2) *Whether the petitioner is entitled to get the decree of nullity of his so called marriage with the respondent?*

(3) *What order and decree?"*

17. Section 21-B of the Hindu Marriage Act, 1955, is the special provision relating to trial and disposal of petitions under the Act, which directs that the petition shall be tried expeditiously as possible and endeavour shall have to be made to conclude the trial within six months from the date of service of notice of the petition on the respondent. The issues framed put burden on the plaintiff to prove that the respondent had spouse living at the time of marriage and therefore, the alleged marriage is in contravention of the condition specified in clause (i) of Section 5 of the Hindu Marriage Act. Order VIII Rule 9 of the Civil Procedure Code, 1908, is the specific provision where the court is required to exercise discretion only for the defendant, granting leave to present subsequent pleading, while no such discretion can be exercised for the plaintiff, thus, the discretion has to be cautiously exercised, the Court has to be very much mindful, to consider the facts of the case and the suit pleaded where the plaintiff pleads to declare the marriage

null and void. The subsequent pleadings may lead to *de-novo* trial where the parties may claim to lead further evidence, in that circumstances the main basic case of the plaintiff would get frustrated, where he claims that the marriage is not valid and while on contra, the defendant wants to plead re-marriage of the plaintiff. The observation of the family court in the impugned order, clarifies that the present applicant was permitted to bring all the facts on record during the cross examination, and those are admitted by the plaintiff, and the learned judge found that the facts admitted cannot be taken in additional pleadings. The learned Judge of Family court has rightly rejected the application under Order VIII Rule 9 since allowing the prayer would prejudice the plaintiff. *De-novo* trial may take away admission of the parties and further additional written statement if permitted to be filed may change the nature of suit, where the defendant may, in the form of subsequent pleading would want to frustrate the suit and that would ultimately displace the plaintiff's case, which would be prejudicial to the plaintiff.

18. Thus, to the reasons given above the discretion exercised by the Family Court Judge does not call for

interference. In that result, the present application stands rejected.

19. In view of the aforesaid order in the main application, no order is required to be passed in the civil application and the same also stands disposed of.

(GITA GOPI,J)

Further Order

After the order was declared, learned advocate Mr. Manmeetsingh Chhabra has prayed for staying the operation of the order for period of four weeks since the applicant wants to challenge the order.

Stay is granted for four weeks. In the circumstances, the trial proceedings would be stayed for four weeks.

(GITA GOPI,J)

ILA