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# IN THE HIGH COURT OF BOMBAY AT GOA

## WRIT PETITION NO. 327 OF 2024

Shahid Shaikh, son of Mainodin Shaikh, about 33 years in age, Indian National, resident of H. No. 32, Kharlem, Shirvodem, Margao, Salcete, Goa, represented through his POA Holder, Mr. Mobin Shaikh, resident of H. No. 32, Kharlem, Shirvodem, Margao, Salcete, Goa. ... PETITIONER

Versus

Mekita Manguesh Naik, daughter of Manguesh Krishna Naik, about 32 years in age, Indian National, resident of H. No. 32, Kharlem, Shirvodem, Margao, Salcete, Goa. ... RESPONDENT

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Mr. Jatin Ramaiya with Mr. Omkar Parab, Advocates for the Petitioner.

**CORAM: BHARAT P. DESHPANDE, J.**

**DATED: 3rd JULY 2024**

**ORAL JUDGMENT:**

**1.** Rule. Rule made returnable forthwith.

**2.** Heard Mr. Ramaiya for the Petitioner.

**3.** Even though the Respondent is duly served, she remained absent. It is submitted that intimation was also given to the learned Counsel appearing for the Respondent before the Trial Court, however, there is no appearance.

**4.** The Petitioner is challenging the order passed by the Civil Court, rejecting the amendment Application filed by the Petitioner on the ground that during pendency of the suit for divorce, another ground became available to the Petitioner and therefore, on such ground also, the divorce could be granted.

**5.** Mr. Ramaiya appearing for the Petitioner would submit that when the Petition was filed, the ground with regard to three years of abandonment of the conjugal domicile was not available, however, during pendency of the said suit, such ground became available to the Petitioner and accordingly, an amendment Application was filed. He submits that the pleadings were not complete and evidence of the parties was yet to start. Thus, the amended provisions of Order VI Rule 17 of CPC with regard to due diligence would not attract. He submits that the learned Trial Court though considered that the amendment is with regard to the additional ground of abandonment of conjugal domicile, however, rejected the amendment Application only on the ground that there

was no cause of action for filing such Application as the period of three years was not over when the suit was filed.

**6.** The record clearly goes to show that the Petitioner filed a suit for divorce under Article 4(4) of the Law of Divorce on the ground of maltreatment and cruelty. During the pendency of the said proceedings, the Petitioner claimed that there was complete abandonment of the conjugal domicile by the Respondent for more than three years and as such, when this ground became available to the Petitioner, he filed an amendment Application. However, the learned Trial Court completely failed to consider the settled proposition of law as to whether the amendment is essential for deciding the dispute and instead, went on to discuss the aspect of cause of action and accordingly, dismissed the amendment Application.

**7.** Mr. Ramaiya while placing reliance on the decision of this Court in **Antonio Ferdino Varela Vs. Thereza Maria Angela Varela, 2014 (5) Bom. C.R. 117** would submit that the scope of the amendment is only to find out as to whether, such plea could be raised for the purpose of just decision of the suit. In the said decision of **Antonio Ferdino Varela** (supra), the learned Single Judge of this Court observed in paragraphs 7 and 9 as under:

*7. I have already referred to the reasons on which the plea of additional ground for divorce has been dis-allowed to be taken by the petitioner. Atleast from one of those reasons, it becomes clear that the learned District Judge has entered into the merits of the plea sought to be taken by the petitioner. While considering an amendment application, it is well settled law, it is not open to the Court to enter into the merits of the plea sought to be raised and the Court has to decide the application purely on the basis of the principles applicable to the amendment of pleadings contained in Order 6 Rule 17 of C.P.C. The relevant considerations could be, whether the amendment is necessary for deciding the real controversy between the parties, what is the stage of the proceeding when amendment application is filed, and if it is filed after commencement of trial, whether the plea could have been raised before commencement of the trial. The learned District Judge, however, by finding that pendency of application for restitution of conjugal rights showed that separation was not freely consented, decided on merits of the plea, which is not permissible. Therefore, on this ground itself, the impugned order cannot be sustained in law.*

*9. As regards the objection that the application for amendment of plea by incorporating the aforesaid plea was prematurely filed as on the date of application, this very ground was not available to the petitioner, I must say, in such a case, the Court has to ensure that cause of justice is advanced and not*

*frustrated for some technical reasons. In this case, the application was indeed prematurely filed as the requisite period of 10 years was short by three months on the date of application. Admittedly, the arguments were advanced before the learned District Judge in December, 2013 and the impugned order was passed on 06.01.2014. When the arguments were completed, period of 10 years was crossed and it was nobody's case that the parties had resumed cohabitation or there had been any break in continuous period of separation of the spouses. Therefore, the learned District Judge ought not to have been so technical and rigid in holding that the plea was premature. In any case, the question of tenability of the additional plea could have been left open to be decided on merits, as there were subsequent events which had a bearing on the ripening of the plea or otherwise. The importance of subsequent events has been considered by the learned Single Judge of this Court in the case of Smt. Sheetal Prakash Pai (supra), by referring to the observations of Hon'ble Apex Court in the case of Ramesh Kumar Vs. Kesho Ram, 1992 Supp (2) SCC 623, in paragraph 6, which are reproduced thus:*

> *"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious*

*cognizance' of the subsequent changes of fact and law to mould the relief."*

**8.** In the case of **Sheetal Prakash Pai Vs. Prakash Ramnath Pai, 2010 DGLS (Bom) 66**, similar issue was discussed and decided by the learned Single Judge of this Court and the relevant observations are found in paragraphs 20 and 21 which read thus:

*"20. It is true that a suit or an original proceeding is to be tried in all its stages on the cause of action as it existed on the date of its commencement. The only exception to this rule is that a court may take notice of events, which have happened since the institution of the suit or the original proceeding and grant relief to the parties on the basis of the altered conditions, (sic which) is applied in cases where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate or that it is necessary to base the decision of the court on the altered circumstances in order to shorten litigation or to do complete justice between the parties, (See Rai Charan Mandal v. Biswanath Mandal, AIR 1915 Cal 103). This was the view expressed by Sir Ashutosh Mookerjee, J. (as His Lordship then was) on this question when subsequent development should be taken into consideration by the court during the pendency of a proceeding or of a suit or even at the appellate stage.*

*21. In Vishwambhar Vs. Laxminarayana, 2001 AIR (SC) 2607, the issue was whether the amendment to the plaint could relate back to the date of filing of the suit and cure the defect of limitation. In the said case, the amendment to the plaint for incorporating the prayer for setting aside the sale deeds made by the natural guardian of the minor plaintiffs during their minority was made after the period prescribed under Article 60 of Limitation Act for setting aside such sale transaction had elapsed. The amendment made to the plaint was, therefore, inconsequential as limitation had started running from the dates when the plaintiffs attained majority. In short, what was lost by operation of law, could not be gained by mere amendment to the plaint. The amendment to the plaint in the present case was not of the kind as seen in the Vishwambhar's case (supra). With the passage of time, an additional ground for divorce became available to the plaintiff by operation of law and the amendment was made to the plaint to incorporate such ground. Even if the cause of action under clause 8 Article 4 of Law of Divorce was not available to the plaintiff on the date of filing of the suit, the same could be availed of by the plaintiff in the suit filed for divorce on any other ground under Article 4 of Law of Divorce in order to shorten the litigation between the parties contesting the claim for divorce and to do complete justice between them. The relevant questions are, therefore, answered accordingly."*

**9.** The main purpose of the amendment that too before commencement of trial is to allow the parties to plead the necessary facts so as to curtail multiplicity of litigations. Once the trial starts, the amendment could be allowed, but on the satisfaction of the Court that inspite of due diligence the party was prevented from bringing it on record. In the present matter, the Petitioner claims that while the matter was pending before the Court, another ground for divorce became available i.e. complete abandonment of conjugal domicile for more than three years. Accordingly, the amendment Application was filed to include such ground, which could be considered as subsequent event from the date of filing the suit, which necessitated the Petitioner/Plaintiff to bring it on record and to agitate as claimed on such ground.

**10.** The question of presence of cause of action for the new ground or whether the same is within limitation, could be decided during the trial itself, if such objection is raised in the written statement, which the Defendant would be filing, in case such amendment is allowed. However, the scope and the powers of the Trial Court under Order VI Rule 17 of CPC is to consider whether the proposed amendment is necessary to decide the suit effectively. In this regard, it is clear that the learned Trial Court travelled beyond the scope and powers thereby rejecting the

amendment. By doing so, the learned Trial Court also failed to consider that it would lead to multiplicity of proceedings. Accordingly, the impugned order requires interference under the supervisory jurisdiction of this Court.

**11.** For the above reasons, the impugned order is quashed and set aside. The Application for amendment filed by the Petitioner stands allowed.

**12.** Rule is made absolute in the above terms.

**BHARAT P. DESHPANDE, J.**