IN THE COURT OF DISTRICT JUDGE, COOCH BEHAR

Matrimonial Suit No. 50 of 2023

CNR No. WBCB01-000650-2023

Present : Subrata Ch. Polle,
District Judge, (WB01273)

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04.10.2023

Today is the date fixed for filing written statement.

The petitioner filed Hazira. The respondent has filed written statement.

The petitioner has filed an application for amendment.

On consent of the parties, the same is taken up for hearing by treating the same as an item of the today's cause list.

The petitioner / husband has prayed for amendment of the application for dissolution of marriage under section 13 of the Hindu Marriage Act hereinafter referred to as the said application on the ground that by mistake, it is written in the said application under section 13 of the Hindu Marriage Act instead of section 27 of the Special Marriage Act as the marriage was registered under the provisions of Special Marriage Act, 1954.

Smt. Tania Dey learned advocate for the petitioner / husband has submitted that by way of bona fide mistake wrong provision of law has been given in the cause title of the case. She did not want to incorporate any fact. She prays for allowing the said application for amendment to decide the real controversy amongst the parties.

Sri Mrinmoy Sarkar learned advocate for the respondent has opposed the said prayer.

Having heard the counsel of the parties and having going through the materials on record, it appears that said application for dissolution of marriage has been filed *inter alia* with the caption ***" petition for a decree of divorce U/S 13 of the Hindu Marriage Act….."***. Now, the marriage registration certificate has been filed from which it appears that the marriage was registered under the Special Marriage Act, 1954. It also appears from the application for amendment that the petitioner did not want to incorporate any fact. The petitioner has prayed for only rectification of the bona fide mistake in the nomenclature of the application. It is not in dispute that mere nomenclature of the application cannot be considered to be the decisive factor to decide a case and the Court must look into the substance. However in exercising the jurisdiction of

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the present case, the Court has jurisdiction to entertain the application for dissolution of marriage under the Hindu Marriage Act as well as the Special Marriage Act having regard to the schemes of both Acts. It is also not in dispute that mere change of nomenclature of the application nobody will be prejudiced or due to the delay in filing amendment application no one has accrued any right in the present proceeding.

The Special Marriage Act, 1954 aims to provide for a special form of marriage, its registration and for divorce. A marriage between any two persons belonging to any religion or creed may be solemnized under this Act, if at the time of marriage both the parties (i.e. male and female) have been completed 21 years and 18 years respectively provided that the parties are not within the sapinda as well as in prohibited relationship. Therefore, the distinction is apparent but the forum for dissolution of marriage is the same and the grounds are also akin to each other. Accordingly, when the marriage is registered under the Special Marriage Act, parties are governed by the said Act in connection with the matter of dissolution of their marriage or any other reliefs as codified under the said Act. Be that as it may, in this context it is profitable to refer a case of **Prabir Chandra Chatterjee -versus- Kaveri Guha Chatterjee** decided on 5 February, 1987 reported in **91 Calcutta Weekly Notes 870** where the respondent has moved an application under order VII rule 11 of the code of civil procedure for rejection of the application for dissolution of marriage which was purportedly made under both Acts resulting nondisclosure of cause of action, the said application was rejected by the learned trial court and the respondent has preferred the miscellaneous appeal before the Hon'ble Court and in deciding the said case the Hon'ble Court has ruled as follows:-

> *"4.But, we however, have not at all been able to understand the submission made by Mr. Chatterjee that because of such amalgamation of the sections of the Hindu Marriage Act as well as the Special Marriage Act in the heading of the petition, the petition "does not disclose a cause of action" within the meaning of Order 7, Rule 11 of the Civil P.C. to warrant its rejection thereunder. The petition apparently discloses a cause of action for divorce on the grounds of acts of cruelty, adultery etc. and if those allegations are proved on evidence at the trial, it would be for the Court to grant appropriate relief under the provisions of the Hindu*

> *Marriage Act or the Special Marriage Act, by which the marriage in question would appear to the Court to be governed."*

On plain reading of the aforesaid judgement, it is clear that relief of the case would depend upon the provisions of law governed the marriage in the case. If the marriage is registered under the Special Marriage Act, then obviously, relief would come under the said provisions of law. At the same time, this Court is equally conscious that mere wrong quotation of section of any provision of law would not defeat the lis.

In the case **of J.Kumaradasan Nair & Anr-versus-Iric Sohan & Ors** decided on 12 February, 2009, **Civil Appeal Nos. 943 – 944 of 2009,** the Hon'ble Supreme Court has been pleased to observe in connection with the matter of wrong quotation in an application as follows :-

> *"14. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not. "*

In the case of **Jeet Mohinder Singh -versus- Harminder Singh** reported in **(2004) 6 Supreme Court Cases 256** the Hon'ble Supreme Court has dealt with the purpose of mentioning the correct provision for filing the application and it was held as under:

> *"6. Though the nomenclature of an application is really not material and the substance is to be seen, yet it cannot be said that a party shall be permitted to indicate any provision and thereafter contend that the nomenclature should be ignored. Duty is cast on the parties to properly frame their applications and indicate the provisions of law applicable for making the application. Nomenclature may not be normally material. But there is a purpose in indicating the nomenclature in a clear and precise manner. Though it is the substance and not the form which is material but as indicated above, that cannot be a reason to quote an inappropriate*

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> *provision of law and then say "Don't look at the nomenclature". The care and caution which is required to be taken cannot be diluted to absurd limits……..”*

The Court has considered both the afore mentioned judgements. The Hon’ble Supreme Court has specifically, especially in the latter case, dealt with the effect of misquoting provision of law causing unwarranted situation in disposing of a matter. The test lies on the question of whether the misquotation is of the *bona fide* or resulting carelessness. On this particular touchstone, I have considered the application for amendment. In a moffusil Court, the parties are guided by their learned advocate and it is not expected that professionalism touches its optimum limit in handling the clients considering the remoteness of the district and / or other various factors. On that score, the party should not be blamed for the mistake of wrong quotation of provision of law. When a party approaches a counsel for legal advice and entrusts the matter to him, it is presumed that the same shall be dealt with utmost professionalism and due diligence. In **Rafiq-versus-Munshilal** reported in **(1981) 2 Supreme Court 788**, the Hon'ble Supreme Court has been pleased to hold that once a person engages his counsel his botheration goes and it is the duty of the counsel to take care of the case. In the instant case, due to inadvertence, error seems to have crept in on the part of the drafting counsel which mistake should not prejudice the interest of the party.

In the case of **B.K.Narayana Pillai-versus-Parameswaran Pillai** reported in **All India Reporter 2000 Supreme Court 614**, the Hon'ble Apex Court has held as under:

> " *The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and the Supreme Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be*

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> *compensated with the costs. Technicalities of law should not be permitted to hamper the courts in, the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.*

In **Revajeetu Builders & Developers –versus- Narayanaswamy & Sons & Ors.** reported in **(2009) 10 Supreme Court Cases 84,** the Hon'ble Supreme Court once again considered the scope of amendment of pleadings. In paragraph 63, it concluded as follows:

> "*Factors to be taken into consideration while dealing with applications for amendments*
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> *63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:*
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> *(1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
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> *(2) whether the application for amendment is bona fide or mala fide;*
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> *(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
>
> *(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
>
> *(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
>
> *(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.*"

Judging the present case on the touchstone of aforesaid enunciation of law, it appears that the amendment sought for would not change the nature and character of the matrimonial suit for dissolution

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of marriage and further the respondent/wife would not be prejudiced if the amendment is allowed. The amendment is necessary for deciding the case. Apart from these, this Court does not find any *mala fide* intention of the petitioner / husband in preferring the application for amendment at this stage. I have also considered the scope of the proviso added in the amendment of Code of Civil Procedure in the year 2002. The present application for amendment has been filed before framing of issues. By way of amendment, the petitioner did not want to incorporate a new fact or any other fact which was admitted at the time of filing application for dissolution of marriage. Therefore, the bar contained in proviso of order VI rule 17 of the code of civil procedure as introduced in the year 2002 has no application in the case. On the other hand refusal of amendment would cause multiplicity of the proceedings and simply invites situation of another prolonged litigation.

In a similar type of case in hand on the title of **Suman Kundra -versus- Sanjeev Kundra** reported in **AIR 2015 Delhi 124,** the Hon'ble High Court, Delhi has been pleased to hold as follows:-

> *".....No Doubt, the pleadings are of utmost importance and so are the provisions of law under which they are filed. But courts are by and large guided by the substantive justice rather than ousting a party on hyper technicalities. This is more so in matrimonial cases which are not like commercial disputes. In matrimonial cases both the a parties are disturbed because of their matrimonial discord, therefore, they need to be dealt with humane approach with a view to find a solution to their vexed problem through adjudication if it is not possible through mediation and conciliation....."*
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> *28. There is no quarrel with the proposition of law laid down in the said judgment that correct provision of law must be mentioned in the application or the petition, but at the same time in case a correct provision of law has not been mentioned, a party be that in an application or a petition, the said petitioner /applicant should not be made to suffer on account of these inadvertent technical errors which have cropped up. Further, much would depend of the case on the nature of the case, the stage of the case as well as the nature of mistake. In case the case or an application is at the threshold perhaps court may dismiss the application or the petition for want of*

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> *mentioning of correct provision or the party may itself like to withdraw the application or the petition with liberty to file afresh. But situation would be different in case the case is at an advance stage or considerable time has already been spent by the court dismissing the application would be a hyper technical approach rather than doing substantive justice."*

In the aforesaid case, the Hon'ble Delhi High Court has ultimately allowed the conversion of the application for dissolution of marriage under the Hindu Marriage Act to Special Marriage Act.

Reverting back to the present case, there is no doubt that the learned advocate for the petitioner / husband ought to have taken precaution before filing of the case.

In view of the foregoing discussions and considering the facts and circumstances of the case, on thoughtful appreciation of the matter, this Court is of the view that amendment application is required to be allowed for efficacious adjudication of the matter and to avoid further multiplicity of the proceedings in future.

Accordingly, it is ordered that the application (I.A. No. 1 of 2023) for amendment filed by the petitioner / husband is hereby allowed on contest.

The petitioner is directed to file the amended application for dissolution of marriage by the next date fixed below.

The petitioner is directed to serve a copy of the amended application for dissolution of marriage to the respondent / wife.

Fix **13/12/2023** for filing amended application for dissolution of marriage.

Sd/- S.C. Polle

District Judge
Cooch Behar