

Act VIII case no.27/2021
CNR No.WBHG01-001131-2021

Order no.27 dt. 27.03.2024

Both sides file haziras through learned Advocates.

Today is fixed for hearing of the petition for amendment U/o 6 Rule 17 CPC dated 16.12.2023 filed by the petitioner/father. Today one written objection supported by affidavit is filed by the O.P/mother after copy service upon the petitioner. Certain documents are filed in photocopy by firisti by the O.P/mother.

Learned Advocate for the petitioner/father Biswajit Dey moving the amendment petition submits that certain significant facts could not be mentioned in the plaint as to the monthly earning of the petitioner/father and other related facts. In the event, the proposed amendment is allowed to be incorporated in the plaint, it will not change the nature and character of the proceeding. Moreover, it will not cause any prejudice to the O.P.

Learned Advocate standing for the O.P in his turn submits that this is for the third time after 14.08.2023 and 27.09.2023, trial of the case suffered shifting from the P.H board. The intention of the petitioner is very clear to drag the litigation. Apart from this case, the petitioner had filed one M.P case u/s 97 Cr.P.C, one PLC before S.D.L.S.C, Arambagh. Respondent also filed Misc case under PWDV Act and criminal case being G.R case no.868/2020 before the learned A.C.J.M, Ghatal. They admit that petitioner/father is a successful businessman having very good earning from stationary supply goods business. However, they denied that his mother is physically and mentally fit to look after the minor child. Proposed amendment is an afterthought to snatch the custody of the minor child from her mother and it is not at all formal in nature. Instead a new case has been attempted to be made out. Therefore, the amendment petition should be summarily rejected with cost.

Now, let us decide and dispose of the petition on hand.

From the written objection filed by the O.P side, the huge earning of the petitioner/father from stationary goods supply is not denied but acknowledged . Therefore, the monthly earning as stated in the former part of proposed schedule 5A is accepted by the O.P/mother.

The cardinal principle of amendment is that such proposed amendment should not change the basic structure of the suit or case. Such amendment should not cause prejudice or injustice to the other side. Moreover, such amendment is required for determining the real question in controversy and it is not malafide. Insofar as the proposed amendment is concerned, the petitioner has conceded the sufficient earning of the petitioner from his business. On the earlier two occasions, the shifting from the P.H board was on the point of visitation. Therefore, it cannot be said that the proposed amendment is to drag the case and harass the O.P.

The latter part of the proposed amendment is regarding the age of the petitioner's mother and her physical and mental fitness to look after the minor child,

has not been well reasoned why such facts were not incorporated before the commencement of trial. This is also not explained how the cousins of the age of this ward will maintain a good and cordial relationship with her.

In view of the discussion and observations as before, as regards the monthly earning of the petitioner starting from the words “that the petitioner has sufficient means..... per month in average” should be allowed to be incorporated in the plaint. The rest portion of the proposed amendment is **rejected**.

Accordingly, the amendment petition is allowed in part on contest and thus, disposed of.

To 26.04.2024 for filing amended plaint by the petitioner.

Dictated & corrected by me

Sd/-
Additional District Judge,
1st ADJ. Chinsurah
J.O Code WB00753

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1st Court, Chinsurah.
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