

Mat suit 186/21

Order No.24 dt.16.03.26

The instant case is fixed today for passing necessary order as the respondent/wife has filed an application U/O 6 Rule 17 of the Code of Civil Procedure(in short CPC) along with a prayer to amend her written statement by inserting certain facts as specifically mentioned in the schedule of the said amendment application.

The amendment application was filed on 15th July, 2025 and it is supported by an affidavit sworn by the respondent/wife herself. The application is hereinafter referred as the 'amendment' application.

- a. During hearing of the said amendment application Ld. Advocate for the respondent/wife has contended that by way of amendment he wants to insert her counter claim that this Court may be pleased to pass a decree of divorce in alternative and the cause of action of the counter claim arose on 10.08.17 and thereafter. There is mere chance of restitution as the marriage has already irretrievably broken down, for which, the counter claim may be accepted and the respondent/wife be permitted to add it by way of amendment in her written statement. He has further submitted that the limitation as enshrined U/O 8 Rule 6A of the CPC does not apply here, as it has a recurring effect and in support of his contention Ld. Advocate has cited decision reported in Smt. Shanti Rani Das Dewanjee vs. Dinesh Chandra (Dead) by Lrs on 18 September, 1997 AIR 1997 Supreme Court 3985.

- b. In reply, Ld. Counsel for the petitioner has prayed for further time to submit written objection in the said amendment application. It appears from the said amendment application that copy of the application was served upon the petitioner/husband on 15.07.25. Therefore, ample opportunities were given to raise objection, but he has not yet submitted any such objection, hence the prayer for adjournment is rejected.
- c. On bare perusal of the case record it appears that this is a case under Sec.22 of the Special Marriage Act filed by the husband/petitioner against the wife/respondent praying for restitution of their conjugal life. In the said case respondent/wife had submitted her written statement on 22.11.22. After that she made a prayer for amendment of her written statement and the same was allowed. She had submitted her amended written statement on 05.05.25. Subsequently on 15th July, 2025 she has again filed an application for amendment. By way of amendment she wants to insert counter claim to dissolve the marriage. During hearing of the said application Ld. Advocate for the respondent has drawn my attention to Sec.35 of the Special Marriage Act and as per Sec.35 of the Special Marriage Act amendment may be allowed by way of defence of such facts as specifically mentioned in the said provision but insertion of a fact by way of counter claim the prayer of divorce in a suit of restitution of conjugal rights is not permissible. In this connection I want to cite an unreported decision: *C.O No.1432/2024 in the High Court, Calcutta before Hon'ble Justice Biswajit Basu*, wherein the Hon'ble Court was pleased to held - *The prayer for decree of restitution of conjugal rights by way of a counter-claim under Sec.23A of the said Act 1955 is a completely misconceived action as much as the said provision gives a right to the respondent of*

any proceeding for divorce or judicial separation or restitution of conjugal rights not only to oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion but also to make a counter-claim for any relief under the said Act of 1955 on that ground, obviously, on proof of those grounds, a decree for restitution of conjugal rights cannot follow.

- d. Basing on the said principle the prayer for amendment as made by the respondent/wife is deserved to be rejected.
- e. During hearing of the said application the responded has cited a decision Shanti Rani Das Dewanjee (supra.), but on the factual matrix it has no application.

Hence it is

ORDERED

that the said application U/O 6 Rule 17 of the Code of Civil Procedure filed on 15th July, 2025 is hereby rejected on contest without any costs.

To 06.05.26 for reconciliation.

Dictated and Corrected by me,

Additional Sessions Judge,

Fast Track Court, Chandernagore

Additional Sessions Judge,

Fast Track Court, Chandernagore