

Misc Case 273/24.

Order No.18 dt.27.10.25.

Both sides file their respective hazira.

Today is fixed for hearing of the Misc Case.

In case of hearing of Misc Case, it is detected that both parties have not filed statements of their bank account as per direction of Hon'ble Supreme Court in Rajnesh vs Neha.

Accordingly, both parties are directed to file their bank statements positively by the next date.

Case is adjourned.

Fix 19.12.25 for hearing of the Misc Case and filing of bank statements by both sides.

Addl. District Judge,
2nd Court, Howrah.

Matrimonial Suit 816 of 2024.

Order No.19 dt.27.10.25.

Today is fixed for hearing of the petition u/o 1 rule 10 (2) of CPC filed by pro-forma respondent no.2 to 4 and also for hearing of petition u/o 6 rule 17 of CPC filed by the petitioner/ husband.

Both the petitions are taken up for hearing.

At the time of hearing of petition u/o 6 rule 17 of CPC filed by petitioner, it is submitted by Ld Advocate that at the time of filing of the suit, defendant no.1 was admitted at healing centre at Batanagar Agnita Healing Foundation and accordingly address of defendant no.1 was mentioned of healing centre. On 29th August 2024, defendant no.2 got defendant no.1 discharged from said healing centre for better treatment and it is evident from the discharge certificate that defendant no.2 has mentioned himself as guardian of defendant no.1 and has given his own address. Accordingly necessary amendment of the cause title is required to be done relating to change of address. It is submitted that another para is also required to be included in plaint as subsequent development as per schedule of amendment. The proposed amendments are formal in nature and it will not change the nature and character of the suit. Accordingly prayed for allowing the same.

On the other hand, Ld Advocate for the respondent no.1 by filing written objection submitted that the proposed amendment cannot be allowed as the same is filed with mala fide intention by concealing the actual fact at the time of filing of petition. Proposed amendment is fit to be rejected since the respondent no.1 was forcefully admitted in the said healing centre. He also denied about the discharge of the respondent no.1 or several visits of proforma respondent no.2 to the said healing centre. Petitioner did not inform the father and brother of respondent no.1 and accordingly complaint is filed before Maheshtala PS and Human Rights Commission on 28.8.24 and recovered respondent no.1 from rehab centre with the help of police on 29.8.24. Accordingly prays for rejection of the petition.

Contd...P/2.

Mat Suit 816 of 2024.

Pro-forma respondent also contested the application in the same tune.

Considering submissions of both sides and having regard to the fact that proposed amendment appears to be formal in nature relating to the address of the respondent no.1 and also relating subsequent development, I am inclined to allow the amendment application.

Thus the amendment application is considered and allowed.

Amend the plaint and note in the register accordingly.

Petitioner is directed to file the amended copy of plaint by the next date.

Now the petition under order 1 rule 10(2) of CPC filed by proforma respondent no.2 to 4 is taken up for hearing along with its objection filed by the petitioner.

Heard both sides.

Perused the petition and its objection.

Considered.

At the time of hearing of petition, Ld Advocate for the proforma respondent no.2 to 4 submitted that they are unnecessary party to the instant proceeding of matrimonial dispute between the husband and wife accordingly prayed for striking out their names from the cause title of this case.

On the other hand, Ld Advocate for the petitioner submitted that the petition u/o 1 rule 10 (2) of CPC is not maintainable. It is submitted that matrimonial suit u/s 13 (1)(iii) of Hindu Marriage Act is filed on the ground that respondent / wife is of unsound mind and since under the Indian Legal System, any person who is of unsound mind cannot represent herself/himself on their own and therefore it was necessity that respondent no.2,3,4 to be impleaded. It is further submitted that proforma respondent no.2,3,4 have been involved from the very beginning and their presence in the suit is crucial for proper adjudication of the suit. The marriage of the petitioner and respondent no.1 was arranged one and proforma respondent no.2,3,4 were instrumental in arranging the marriage on behalf of respondent no.1 who is of unsound mind by deliberately suppressing the fact at the time of negotiation of marriage. Proforma respondent no.2, 3 & 4 were always aware about the mental condition of respondent no.1 and even deliberately concealed the fact from the petitioner. Accordingly it is submitted that proforma respondent no.2,3,4 should not be strike out from this case as their presence will be required for proper adjudication of the case since the law provides provision for representation of mentally unsound person by his or her guardian.

Ld Advocate for the proforma respondent no.2 to 4 raise the point that the case has been filed under section 13(1)(iii) of Hindu Marriage Act on the ground of unsound mind and mental disorder which is yet to be established and until and unless the same is established, it cannot be said that the respondent no.1 is mentally unsound or she is not capable to defend her case. My attention is also drawn to the copy of GDE no.2171 dt. 30.7.23 lodged by respondent no.1 which has been filed by the petitioner and it is submitted that since she was mentally fit, she lodged her GDE which is relied upon by petitioner.

My attention is also drawn to the xerox copy of medical treatment papers filed in this case by the petitioner and submitted that mentally challenged and mentally unsound are quite different and the same cannot be a ground for representation through guardian. On the other hand, Ld Advocate for the petitioner drawn my attention towards the writ petition filed before Hon'ble Court and the order passed by Hon'ble Court. On going through the said order dt. 08.9.23 in WPA No.19586 of 2023, it is palpably clear that Hon'ble Court has categorically mentioned in order that "since affidavits were not called for, the allegations contained in the writ petition are deemed not to have been admitted."

In course of hearing, it is revealed that the petitioner has impleaded proforma respondent no.2 to 4 as guardian of respondent no.1 to defend her case alleging that respondent no.1 is mentally unsound and she is not capable to defend her case. On the other hand, respondent no.1 as well as proforma respondent no.2 to 4 have denied that respondent no.1 is a lady of unsound mind. In such situation, it is yet to be ascertained as to whether respondent no.1 is mentally unsound or not and even if she is mentally unsound, she did not require three persons to represent her to defend her case. Moreover, if the case is filed in such manner so that the respondent no.1 is required to be represented by her guardian then the cause title of the suit should have been drafted in that fashion but it appears that the respondent no.1 has been made party in her independent capacity and at the same time proforma respondent no.2 to 4 are also made party in their independent capacity and they are not made party in a manner to represent the respondent no.1. As such the argument put forward by the petitioner appears to be baseless in the light of the contents of the plaint. At the same time, it further appears that no relief is claimed proforma respondent no.2 to 4 and the instant suit is a matrimonial suit where husband and wife are the necessary party. Father and brothers of wife cannot be turned as necessary party to a matrimonial suit. Therefore, I do not agree with the submissions made by Ld Advocate for the petitioner.

In view of the above, petition u/o 1 rule 10(2) of CPC is fit to be allowed.

Hence, petition u/o 1 rule 10(2) of CPC is allowed on contest.

Let the names of proforma respondent no.2 to 4 be deleted from the cause title of this suit.

Fix 19.12.25 for filing amended copy of plaint and W.S. by respondent.

Addl. District Judge,
2nd Court, Howrah.