

**MAT. SUIT.2535/2016**  
**CNR NO. WBSP01-012619-2016**  
**JO CODE : WB00580**

**Order no. 24 dated 25.03.2022**

The record is placed before me for passing order in respect of two petitions filed u/O.6 R.17 CPC and another filed u/O.1 R.10 CPC filed by the petitioner of this case.

It has been submitted by the Ld. Advocate for the petitioner that the petitioner has instituted the above suit praying for dissolution of marriage under Hindu Marriage Act but subsequently it was detected that there were number of mistakes occurred at the time of filing of the instant suit and for which the petitioner has been advised to rectify the said omission by incorporating some additional fact which was not in original plaint due to miscommunication of the petitioner and her erstwhile engaged Ld. Advocate. The proposed amendment has been described in the schedule of the petition supported with affidavit. According to the submission of the Ld. Advocate for the petitioner, the proposed amendment

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is formal in nature and the same will not change the nature and character of the suit and if the amendment is not allowed, the petitioner will not be in a position to lead evidence in any manner whatsoever as those facts are not covered under the original plaint and on the other hand, the respondent will not be prejudiced as he will get ample opportunity to contest the matter. Accordingly, referred Rule 10 and 24 of Special Marriage Act, of Hon'ble High Court, Calcutta and also referred to the reported decisions of Hon'ble Court reported in AIR 2015 DELHI 124, 2008 CHN (1)407, 2015 AIR CC 2374 (CAL), AIR 2006 SC 1647. Ld. Advocate for the petitioner further submitted that if the proposed amendment is allowed, then the application filed u/O.1 R.10 CPC, is required to be allowed as according to rule every petition for divorce on the ground of adultery, the alleged adulterer shall be impleaded as co-respondent.

On the other hand, Ld. Advocate for the respondent vehemently opposed the prayer and submitted that the proposed amendment is not formal in nature. The application is against the principle of law of estoppel, filed with ill motive with a view to harass the respondent. This petition has been filed under Hindu Marriage Act, so it can never be converted to Special Marriage Act, the grounds / new facts which has been proposed to be amended is false and frivolous one and the petitioner will not be able to adduce sufficient evidence on this regard. The petition filed u/O.1 R.10 CPC, is also not maintainable as the proper address of the proposed added party has not been mentioned. The petitioner with some illegal intention, wrongful gain and deceiving the respondent from his legitimate right filed the petition and hence, prayed for dismissal of both the petitions by stating that if both the petitions be allowed, the respondent will be highly prejudiced and referred decisions reported in 2022 (VOL 1) ICC 622 CAL and further submitted that no damage can be claimed as prayed for in the amendment petition.

Perused both the petitions, written objection, cited decisions and the Rules of Special Marriage Act, issued by Hon'ble Court. It appears from the record that at the time of filing

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divorce petition, photocopy of certificate of marriage annexed with the said petition which clearly speaks that the marriage was registered under Special Marriage Act. It is well settled principles of Law that for determining the real issues in controversy between the parties, amendment can be allowed at any stage of the proceeding and to avoid the multiplicity of the proceeding, I am of the opinion that if the prayer of amendment to convert the application under section 27 of the Special Marriage Act is allowed, no prejudice will serve to the respondent as the nature of the suit will not be changed.

Now, the question is whether the grounds / new fact of adultery can be introduced by way of amendment at this stage. On perusal of the plaint, paragraph-18, I find that the fact of adulterous life has been stated in gist. The petitioner by way of amendment wanted to introduce specific elaborated facts by adding paragraph-18(a). We know that the petitioner / plaintiff is the master of his own case, so, by allowing the amendment petition for incorporation of the fact as stated in the schedule of the petition in no way affect the core of the case.

According to the Rule 10, every petition of divorce under Special Marriage Act, the alleged adulterer shall be added / impleaded as co-respondent. But on perusal of the prayer filed u/O.1 R.10 CPC, for adding her as a party / co-respondent it appears that only official address of the party has been mentioned. So, the petition cannot be considered at this stage. The petitioner is directed to furnish full particulars with proper address of the party whom she wanted to add as co-respondent by the date fixed. After furnishing necessary particulars, her prayer would be considered.

As the adulterer has yet to be added as co-respondent, the amendment in respect of the prayer of the suit i.e., decree of damage to the tune of Rs.2,00,000/- cannot be allowed at this stage. However, petitioner is at liberty to file fresh application after adding her as a party.

In view of the above, the petition filed by the petitioner u/O.6 R.17 CPC is allowed on contest without cost.

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Petitioner is hereby directed to file amended plaint within the date fixed.

The respondent is at liberty to file additional Written Objection, in this regard.

Fix **12.04.2022** for filing amended plaint, for giving full particulars of the party whom she wanted to add as co-respondent and also for consideration of the petition filed u/O.1 R.10 CPC filing additional Written objection, if any and further order.

Sd/-

Dictated and corrected by me.

Additional District Judge,

1<sup>st</sup> Court, Alipore,  
South 24-Parganas.  
Date : 25.03.2022