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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/288/2024

ASHAMONI BORAH
D/O SRI SURENDRA NATH GOGOI
RESIDENT OF HOUSE NO. 3, KANCHAN NAGAR, JAIL ROAD NEAR POST
OFFICE, PO BORBHETA, DIST JORHAT, ASSAM 785004

VERSUS

SANJEEB KUMAR BORAH
S/O LATE GOLAP CHANDRA BORAH,
RESIDENT OF PARBOTIA BALUGADA TINIALI, PO HUKANPUKHURI, PS
AND DIST TINSUKIA, ASSAM

Advocate for the Petitioner : MR N PATIRI, MR. K KAKOTI, A J KASHYAP

Advocate for the Respondent : MR. A K GUPTA, MR. H BURAGOHAIN, MR. G PHUKAN, MR. I CHOUDHURY, MR. R S MISHRA

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

30.07.2026

Heard Mr. N. Patiri, learned counsel for the petitioner and Mr. G. Phukan, learned counsel for the respondents.

2. In this petition, under Article 227 of the Constitution of India, petitioner has challenged the order dated 25.06.2024, passed by learned Additional District Judge, FTC, No. 2, Tinsukia, in Petition Nos. 1635/2023, and 259/2024,

in Title Suit (M) No. 136/2015. It is to be noted here that vide impugned order, dated 25.06.2024, the learned Trial Court was pleased to dismiss the two petitions, being petition Nos. 1635/2023, and 259/2024, filed by the petitioner herein for recalling the witnesses and also for amendment of written statement.

3. Mr. Patiri, learned counsel for the petitioner, submits that the petitioner herein is the defendant in the Title Suit (M) No. 136/2015, filed by the respondent herein as plaintiff, for dissolution of their marriage and while the case was pending at the stage of argument, the petitioner herein had filed two petitions in the said title suit, being petition Nos. 1635/2023 and 259/2024, one for recalling of the witnesses and the another for amendment of the written statement, respectively. Thereafter, hearing both the parties, the learned trial court, vide impugned order dated 25.06.2024, was pleased to dismiss both the petitions.

3.1. Mr. Patiri further submits that the petitioner, on earlier occasion also had filed petition for amendment of written statement and also recalling of witnesses, but the learned trial court had dismissed the same. And against the said dismissal order the petitioner herein had filed one civil revision petition, being Civil Revision Petition No. 29/2024 and vide order dated 01.03.2024, this Court was pleased to direct the learned trial court to dispose of the applications/petitions separately, by passing separate orders, after applying judicial mind. But, the learned trial court without applying the judicial mind had dismissed the said applications/petitions, vide order dated 25.06.2024.

3.2. Mr. Patiri also submits that while the title suit was pending at the stage of argument and one of the daughter of the petitioner, who was in the custody of the respondent herein, died under suspicious circumstance and thereafter, the petitioner had filed one FIR, before the Doomdoo Police Station, upon which

Doomdoo PS Case No. 208/2023, under Section 302 of the IPC, was registered. Being the same a subsequent event, it could not be pleaded in the written statement and this necessitates bringing on record the said factum, by amendment of written statement and to that effect, the petitioner has filed the petition No. 259/2024. But, without applying the judicial mind, the learned trial court had dismissed the same and thereby, the petitioner suffered serious prejudice and therefore, it is contended to allow this petition. Mr. Patiri also submits that the learned trial court also dismissed the petition for recalling the witnesses without just ground and thereby, caused prejudice to the petitioner.

3.3. In support of his submission, Mr. Patiri has referred to one decision of Hon'ble Supreme Court in the case of **Usha Balashaheb Swami and Others vs. Kiran Appaso Swami and Others**, reported in **2007 5 SCC 602**, wherein it has been held that in respect of amendment of written statement a liberal approach is a general view, when admittedly in the event of allowing the amendment the other party can be compensated in money.

4. Per-contra, Mr. Phukan, learned counsel for the respondent, has supported impugned order. Mr. Phukan submits that the suit was filed on 03.10.2015, under Section 13(1)(ia) and Section 13(1)(ib) of the Hindu Marriage Act and the daughter of the petitioner died on 15.08.2023 and that when the case is pending at the stage of argument, the application/petition under Order VI Rule 17 read with Section 151 of the CPC and for recalling the witnesses was filed. He also submits that since the case was pending at the stage of argument on the date of passing of the impugned order, dated 25.06.2024, amendment of written statement cannot be allowed, unless the requirement of the proviso to Order VI Rule 17 of the CPC is satisfied with. He also submits that the petitioner herein has failed to show due diligence on her part and also assign any

justifiable ground for failing to file the application/petition in time and to recall the witnesses, who have already been examined and therefore, it is contended to dismiss the petition.

4.1. In support of his submission, Mr. Phukan has referred to one decision of Hon'ble Supreme Court in the case of **Usha Devi vs. Rijwan Ahamd and Others**, reported in (2008) 3 SCC 717.

5. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition as well as the documents placed on record and also gone through the impugned order, dated 25.06.2024 and also the decisions referred by learned counsel for both the parties.

6. The law with respect to amendment of pleading is well settled in a catena of decision. Reference in this context can be made to the decision of Hon'ble Supreme Court in the case of **Pandit Malhari Mahale vs. Monika Pandit Mahale and Others**, reported in (2020) 11 SCC 549.

6.1. It is to be noted here that in the case of **Pandit Malhari Mahale (supra)**, Hon'ble Supreme Court, by referring to its earlier decision, in the case of **Vidyabai and Others vs. Padmalatha and Another**, reported in 2009 2 SCC 409, held that to allow amendment, under Order VI Rule 16 of the CPC, after the evidence being led, the Court must return a finding that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

6.2. In the case of **Vidyabai (supra)**, Hon'ble Supreme Court, while dealing with the issue, in paragraph 19, has held as under:-

"19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real

dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

7. In the instant case, admittedly, the suit was filed on 10.03.2015, for dissolution of marriage on the ground of cruelty and desertion; being meted by the petitioner herein and while the case was pending at the stage of argument. Indisputably, the daughter of the petitioner died on 15.08.2023, which is indeed a subsequent event. There is no doubt that on account of the same being a subsequent event the same could not be pleaded in the written statement. But, it appears that while the daughter of the petitioner died on 15.08.2023, the application/petition for amendment of the written statement was filed on 20.02.2024. But, no statement or averment was made in the application/petition explaining the delay and also to demonstrate the due diligence on the part of the petitioner, as required by the proviso appended to Order VI Rule 17 of the Code, which restricts the power of the court and also to recall the witnesses.

8. Further in the case of **Vidyabai (supra)**, Hon'ble Supreme Court has held that it is the duty of the Court to decide whether such amendment is necessary to decide the real dispute between the parties.

9. In the case in hand, the suit was filed by the respondent herein for dissolution of the marriage with the present petitioner under Section 13(1)(ia) and Section 13(1)(ib) of the Hindu Marriage Act. and the alleged death of the

daughter of the petitioner in the custody of the respondent, to the considered opinion of this Court, the amendment of the written statement is not required to decide the real dispute between the parties. The real dispute between the parties herein is whether the respondent herein was subjected to cruelty and deserted by the petitioner herein or not.

10. It is also to be noted here that in the case of **Usha Balashaheb Swami (supra)**, that in respect of amendment of written statement a liberal approach has to be taken. But, proviso to Rule 17 of Order VI of the CPC put an embargo upon the courts in exercising the jurisdiction under Order VI Rule 17, unless due diligence is demonstrated, as held in the case of **Pandit Malhari Mahale (supra)** and also in **Vidyabai (supra)**. In that view of the matter, this Court afraid the decision in **Usha Balashaheb Swami (supra)**, would not advance the case of the petitioner herein.

11. Thus, to recapitulate on following counts this petition cannot be allowed:-

- (i) The petitioner has failed to demonstrate due diligence in filing the petition for amendment of written statement.
- (ii) The amendment appears to be not necessary to decide the real dispute between the parties.

12. In the result, this Court finds that the impugned order, dated 25.06.2024, suffers from no illegalities or irregularities, requiring any interference of this Court. Accordingly, this petition stands dismissed, leaving the parties to bear their own costs.

JUDGE

Comparing Assistant