A.F.R.

Neutral Citation No. - 2025:AHC-LKO:30333-DB

Reserved on 5.5.2025

Delivered on - 22.5.2025

Court No. - 10
**Case :-** FIRST APPEAL No. - 49 of 2025
**Appellant :-** Meenu Rajvanshi
**Respondent :-** Brijesh
**Counsel for Appellant :-** Rishi Raj,Vaani Srivastava,Varun Singh

**Hon'ble Vivek Chaudhary,J.**
**Hon'ble Brij Raj Singh,J.**

**(Delivered by Brij Raj Singh, J.)**

**1.** This first appeal under Section 19 (1) of the Family Court Act, 1986 has been filed against the order dated 20.2.2025 passed by the learned Additional Principal Judge 6, Family Court, Lucknow in Original Case No. 2977 of 2014 (Smt. Meenu Rajvanshi Vs. Brijesh) filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act 1955), whereby the learned Family Court has allowed the amendment application filed by the respondent.

**2.** Brief facts of the case as per appellant are that on 1.5.2011 marriage of the appellant was performed with respondent according to the Hindu Rites and Rituals at Lucknow. The appellant went to the house of her husband and performed her marital obligations but they demanded a car and cash as dowry, therefore, under the pressure of demand of dowry and other compelling circumstances, on 31.12.2012 the appellant left the house of the respondent. On 18.4.2023, the appellant lodged F.I.R. against the respondent and his family members on 18.4.2013 bearing Case Crime No. 171 of 2013

under Sections 498-A, 504, 506 I.P.C. & Section 3/4 of the D.P. Act, Police Station- Madiyaon, District- Lucknow. After investigation, charge sheet was filed and the court concerned took cognizance in the matter on 23.12.2013.

**3.** Since both the parties were living separately for more than one year, therefore, the appellant filed a suit for divorce on 5.11.2014 bearing Original Case No. 2977 of 2014 (Smt. Meenu Rajvanshi Vs.Brijesh) under Section 13 of the Hindu Marriage Act. In the said suit by adopting the delaying tactics, the respondent filed various types of applications and in furtherance thereof he filed an application for summoning the witnesses- Deepak Kumar Rajvanshi, Jyoti Rajvanshi and Smt. Pooja Raj, which was rejected by the Family Court on 29.8.2023. Thereafter respondent has also filed an application for summoning the witnesses- Smt. Pooja and Smt. Parul, which too was rejected by the Family Court on 16.5.2024 and 23.8.2024 respectively.

**4.** Being aggrieved by the delaying tactics adopted by respondent, the appellant filed a petition under Article 227 of the Constitution of India before this Court bearing no. 4516 of 2024 for a direction to decide her suit within the stipulated period. The said petition was disposed of by this Court vide order dated 21.9.2024 with a direction to decide the suit of the appellant within a period of four months. Thereafter, the respondent again filed another application for summoning the witness- Himani Chaudhary, which was rejected by the Family Court on 4.12.2024. Against the said order dated 4.12.2024, the respondent filed First Appeal Defective No. 20 of 2025

before this Court and this Court vide order dated 10.2.2025 dismissed the first appeal. However, the respondent did not stop there and moved an application for amendment under Order VI Rule 17 read with Section 151 C.P.C. on 29.12.2024 seeking amendment in the pleadings as well as in the prayer clause for restitution of conjugal rights, to which objection was filed by the appellant on 8.1.2025. The Family Court allowed the said amendment application on 20.2.2025, which is under challenge in this appeal.

**5.** Learned counsel for the appellant has submitted that time and again the respondent is trying to delay the proceedings of divorce petition filed by the appellant by one way or the other so that she could not be able to restart her life. The appellant has filed a writ petition no. 4516 of 2024 under Article 227 of the Constitution of India before this Court in which a direction was issued on 21.9.2024 to decide the divorce petition within four months from the date of production of a certified copy of the order. This Court while disposing of the writ petition observed that respondent is trying to delay the proceedings. For ready reference, the order dated 21.9.2024 passed by this Court in the aforesaid petition is quoted herein below:-

> *1. Heard learned counsel for petitioner. In view of order being passed, notices to opposite parties stand dispensed with.*
>
> *2. Petition has been filed under Article 227 of the Constitution of India seeking a direction to court concerned for expeditious disposal of Suit filed by petitioner under Section 13 of Hindu Marriage Act.It is submitted that aforesaid proceedings are pending consideration for the past ten years without final adjudication. Learned counsel has drawn attention to order passed by court concerned on 23.08.2024 to submit that the court concerned itself has indicated that final disposal of proceedings is delayed due to non-cooperative attitude of defendant.*

*3. Upon consideration of submissions advanced and perusal of order sheet, it does appear the court concerned in its order dated 23.08.2024 has clearly adverted to fact that final disposal of proceedings is delayed due to non-cooperative attitude of defendant who keeps on filing same nature of Application(s) time and again despite its continuous rejection.*

*4. In view of aforesaid facts and circumstances, the court concerned being the Additional Principal Judge (Room No.6), Family Court, Lucknow is directed to decide Case No.2977 of 2014 (Smt. Meenu Rajvanshi v. Brijesh) expeditiously within a period of four months from the date a certified copy of this order is brought on record of the proceedings in case there is no other legal impediment.*

*5. Benefit of this order shall be available to petitioner only in case she cooperates in early disposal of the proceedings.*

*6. With aforesaid observations, the writ petition* ***stands disposed of.***

**6.** Learned counsel for the appellant has further submitted that respondent again filed an application for summoning the witness-Himani Chaudhary, which was rejected by the Family Court on 4.12.2024. The order dated 4.12.2024 was challenged by the respondent by filing First Appeal Defective No. 20 of 2024 before this Court, which too was dismissed as withdrawn on 10.2.2025. It has further been submitted by learned counsel for the appellant that on the face of record, it is to be seen that successive applications filed by the respondent for summoning many witnesses were rejected by the Family Court on 29.8.2023, 16.5.2024, 23.8.2024 and 4.12.2024 respectively. Thus, conduct of the respondent is to be seen by this Court as he is trying to delay the divorce proceedings which are pending for more than ten years. It has been submitted by learned counsel for the appellant that while allowing the amendment application of the respondent, the Family Court has not applied its judicial mind and has also overlooked the provisions of Order VI Rule 17 C.P.C. as the said amendment application was filed after ten years from the date of

institution of the suit as well as after giving direction given by this Court for deciding the case within four months. For the sake of convenience, Order VI Rule 17 C.P.C. is quoted herein-below:-

> *"17. Amendment of pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*
>
> *Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.]"*

**7.** It has further been submitted by learned counsel for the appellant that allowing the amendment application may initiate claim of restitution of conjugal rights and compensation which were never pleaded by the respondent within ten years of the pendency of the case. It has also been submitted that Family Court has ignored its own observation dated 23.8.2024 enclosed as Annexure-3 to the appeal wherein it is observed that respondent is trying to delay the proceedings. Thus, the amendment at the belated stage is not sustainable in the eyes of law. Submission is that in case the amendment is allowed, fresh cause of action will arise whereas the proceedings are very close to attain its finality.

**8.** Learned counsel for the appellant by placing reliance upon the judgment of Hon'ble The Supreme Court in the case of ***M. Revanna Vs. Anjanamma (Dead) Legal Representatives And others;(2019) 4 SCC 332,*** has submitted that case of the appellant is squarely covered by the ratio laid down in the said judgment, wherein it has been held that at the belated stage amendment application may not be allowed as allowing

the amendment application would certainly change the nature of the case. The relevant paragraph nos. 7,8 and 9 of the said judgment are quoted hereinbelow:-

> ***7.*** *Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order VI Rule 7 of the C.P.C. virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.*
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> *8. As mentioned supra, the suit was filed in the year 1993 and at that point of time, Defendant Nos. 4 to 6 were not made parties to the suit. Plaintiff Nos. 1 to 5 and Defendants Nos. 1 to 3 were the only parties. They had filed a joint memorandum for the dismissal of the suit on 22.04.1993, which was within one or two months of the filing of the suit. The compromise petition came to be rightly dismissed by the High Court in RFA No. 297/1994. In the compromise petition, curiously, it was noted that the joint family properties were divided by metes and bounds in the year 1972. If the partition had really taken place in the year 1972 and was acted upon as per the Panchayat Parikath, then Plaintiff Nos. 1 to 5 would not have filed a suit for partition and separate possession in the year 1993. Be that as it may, it is clear from records that the suit was being prolonged on one pretext or the other by the Plaintiff Nos. 1 to 5 and ultimately, the application for amendment of the plaint came to be filed on 01.09.2008. By that time, the evidence of both the parties had been recorded and the matter was listed for final hearing before the Trial Court. If there indeed was a partition of the joint family properties earlier, nothing prevented Plaintiff Nos. 1 to 5 from making the necessary application for the amendment of the plaint earlier. So also, nothing prevented them from making the necessary averment in the plaint itself, inasmuch as the suit was filed in the year 1993. Even according to Plaintiff Nos. 1 to 5, they came to know about the compromise in the year 1993 itself. Thus, there is no explanation by them as to why they did not file the application for amendment till the year 2008, given that the suit had been filed in 1993. Though, even when Plaintiff Nos. 1 to 5 came to know about the partition deed dated 18.05.1972 (Panchayat Parikath) on 22.04.1993, they kept quiet without filing an application for amendment of the plaint within a reasonable time. On the contrary, they proceeded to cross examine PW-1*

*thoroughly and took more than five years' time to get the examination of PW-2 completed, and only thereafter filed an application seeking amendment of the plaint on 01.09.2008, that too when the suit was posted for final arguments. As mentioned supra, the suit itself is for partition and separate possession. Now, by virtue of the application for amendment of pleadings, Plaintiff Nos. 1 to 5 want to plead that the partition had already taken place in the year 1972 and they are not interested to pursue the suit. Per contra, Plaintiff No. 6/Respondent No.1 herein wants to continue the proceedings in the suit for partition on the ground that the partition had not taken place at all.*

*9. Having regard to the totality of the facts and circumstances of the case, we are of the considered opinion that the application for amendment of the plaint is not only belated but also not bona fide, and if allowed, would change the nature and character of the suit. If the application for amendment is allowed, the same would lead to a travesty of justice, inasmuch as the Court would be allowing Plaintiff Nos. 1 to 5 to withdraw their admission made in the plaint that the partition had not taken place earlier. Hence, to grant permission for amendment of the plaint at this stage would cause serious prejudice to Plaintiff No. 6/Respondent No. 1 herein".*

**9.** On the other hand, the respondent in person has made submission that he wanted to live with his wife/appellant but she refused and for the last 10 years he along with his family members are being mentally harassed by the appellant, therefore, his application for amendment regarding the prayer for restitution of conjugal rights as well as other pleadings may be allowed so that he can lead evidence to that extent and set up his counter claim in view of provision of Order VIII Rule 6 A of C.P.C. The provisions of Order VIII Rule 6 A of the C.P.C. is quoted herein-below:-

*6-A. Counter-claim by defendant (1) A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:*

*Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.*

*(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.*

*(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.*

*(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.*

**10.** In support of his submission, the respondent has also placed reliance upon the judgment of Hon'ble The Supreme Court in the case of ***Nitaben Dinesh Patel Vs. Dinesh Dahyabhai Patel (Civil Appeal Nos. 5901-5902 of 2021)*** and the relevant paragraph no. 8 of the said judgment is quoted hereinbelow:-

*"Now so far as the amendment sought qua para 37 in Ex.281 application is concerned, at the outset, it is required to be noted that it was in the form of counter-claim. It is true that as per Order VIII Rule 6A CPC, a defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not. However, in the present case, according to the appellant, the cause for counter claim had accrued after the appellant-defendant has delivered her defence (written statement) and more particularly when during the cross-examination of the plaintiff (respondent herein) the factum of marriage with Hinaben Manubhai Panchal on 14.12.2006 was admitted and the marriage certificate was produced. Therefore, the High Court is not justified and/or right in refusing to allow the counter claim as proposed in para 37 on the ground that the same is not permissible after the appellant as defendant has delivered her defence by filing the written statement. On the aforesaid ground, the High Court ought not to have rejected the amendment sought qua para 37.*

*However, at the same time, the core question which is required to be considered is, whether the appellant-wife could have claimed the relief sought qua para 37 by way of counter claim in a marriage petition filed by the respondent-husband for dissolution of the marriage?*

**11.** We have heard Sri Rishi Raj, learned counsel for the appellant as well as the respondent (in person) and perused the record.

**12.** In various judgments, Hon'ble The Supreme Court has held that exercise of due diligence is requirement for counter claim, which cannot be dispensed with and the term "due diligence" determines the scope of a party's constructive knowledge. Hon'ble The Supreme Court has also held that application at the belated stage may be permitted under Order VI Rule 17 of the C.P.C. but only with plausible explanation. However, in the present case the respondent is unable to give any plausible explanation as to how he kept silence over the matter for the last 10 years and now when date for final hearing has been fixed, he moved an application for amendment and for setting up his counter claim. Hon'ble The Supreme Court has pondered in detail about the words "due diligence" in the case of ***J. Samuel and others Vs. Gattu Mahesh and Others; (2012) 2 SCC 300 and the relevant paragraph nos. 18 to 20 are quoted herein- below:-***

> *"18. The primary aim of the court is to try the case on its merits and ensure that rule of justice prevails . For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their plaints. The court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However, to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states that:*

*no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."(emphasis supplied)*

*19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term "due diligence" is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.*

*20. A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit."*

**13.** After hearing learned counsel for the parties and perusing the record, we find that amendment application under Order VI Rule 17 read with Section 151 C.P.C. was filed by the respondent after 10 years of the institution of the suit by the appellant. Apart from it, this Court while disposed of the petition filed by the appellant bearing no. 4516 of 2024 vide order dated 21.9.2024 directed the Family Court to decide the case within four months taking a note that perusal of the order sheet of the Family Court reveals that respondent is trying to delay the proceedings by filing applications after applications, which were rejected. In spite of the aforesaid order passed by this Court, the Family Court entertained and allowed the amendment application filed by the respondent on

4.12.2024. It is also relevant to note here that the amendment, which is sought by way of amendment application, was already in the knowledge of the respondent since the institution of suit but he has filed amendment application only when the proceedings are at final stage which is certainly a delaying tactics and the same would change the nature of the case. Therefore, the respondent has no case for the reason that his successive applications filed before the Family Court for summoning the witnesses were rejected on 29.8.2023, 16.5.2024, 23.8.2024 and 4.12.2024 respectively and the writ petition filed by the appellant was also disposed of by this Court with a direction to the Family Court to decide the suit within four months. Lastly, the respondent has recently filed an application for amendment just to delay the proceedings and to harass his deserted wife, who is running from pillar to post for the last 10 years. The provisions of Order VI Rule 17 C.P.C. is to be seen in the perspective of the given facts that unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the court. In the present case, for the last 10 years the respondent was silent over the matter and when the proceedings were at final stage, he moved the amendment application, which is against the spirit of the provisions of Order VI Rule 17 of C.P.C.

**14.** On bare reading of the provisions of Rule 6 A it is clear that counter claim can be filed against the plaintiff in respect of a cause of action accruing to the defendant against the plaintiff either before or after filing of the suit but before the defendant has delivered his defence or before the time

limited for delivering his defence has expired. In the present case, after passing the order for closing the evidence on 4.12.2024 the application for amendment moved by the respondent on 19.12.2024 is not sustainable.

**15.** After going through the order dated 21.9.2024 passed by this Court in the petition filed by the appellant bearing nom 4516 of 2024, it is quite surprising that amendment application has been allowed by the Family Court on 20.2.2025 especially when this Court had already given a direction to the Family Court to decide the case within four months and even no modification application was moved in this regard. Therefore, the impugned order cannot be sustainable and the same is liable to be set aside.

**16.** The judgment of Hon'ble the Supreme Court passed in ***Nitaben Dinesh Patel Vs. Dinesh Dahyabhai Patel (Supra)*** relied by the respondent also will not be applicable in the present case for the reason that in the aforesaid case it is to be seen that as per the case of the appellant-wife, she actually came to know about the actual marriage between the respondent and Hinaben Manubhai Panchal on 14.12.2006 only during the cross-examination of the respondent and when the marriage certificate was produced on record. Though, the respondent-husband had married with Hinaben Manubhai Panchal on 14.12.2006, but he did not disclose the correct and true facts and suppressed the material facts. Only in the cross-examination, he admitted the marriage with Hinaben Manubhai Panchal on 14.12.2006 and produced the marriage certificate. Therefore, after going through the facts of the aforesaid case, it is clear that in the said case the amendment

was filed as soon as the document was brought on record, whereas in the present case the suit was filed in the year 2014 and the amendment application has been filed after 10 years by the respondent just to defeat the purpose of the litigation because prayer for restitution of conjugal rights could have been made at the time of institution of the suit but he did not choose to file his claim which was within his knowledge. It is also pertinent to mention here that after passing the order for closing the evidence on 4.12.2024 as well as after fixing the date for final hearing on 23.12.2024 by the Family Court, the respondent filed his amendment application on 19.12.2024 with malafide intention.

**17.** The order dated 4.12.2024 which has been filed as Annexure No.5 to the appeal indicates that Family Court recorded a finding that respondent was afforded ample opportunity to lead evidence and thereafter opportunity for leading evidence was closed and the matter was fixed for hearing on 23.12.2024. However, respondent in order to delay the proceedings moved the amendment application on 19.12.2024 and the Family Court without application of proper judicial mind allowed the said application

**18.** **The appeal is accordingly allowed.** The order dated 20.2.2025 passed by the learned Additional Principal Judge, 6, Family Court, Lucknow is set aside.

**19.** Though the learned Single Judge on application bearing no. I.A. No. 2 of 2025 filed in writ petition bearing no. 4516 of 2024 vide order dated 5.3.2025 directed the Family Court to decide the case within a further period of eight months from

the date of production of certified copy of the order is brought on record, but looking into the peculiar fact and circumstances i.e. it is an old matter, the Family Court concerned is directed to proceed with the case on day-to-day basis and decide the same within two months from today without granting any unnecessary adjournments including ground of strike of lawyers.

**20.** No order as to cost.

**[Brij Raj Singh, J.]** **[Vivek Chaudhary, J.]**

**Order Date :- 22.5.2025**

Anuj Singh