

Court No. - 39

Case :- FIRST APPEAL No. - 995 of 2023

Appellant :- Abhishek Singh

Respondent :- Shashi Singh @ Bindu Singh

Counsel for Appellant :- Janardan Singh

Counsel for Respondent :- Anurag Upadhyay

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Janardan Singh, learned counsel for the appellant and Sri Manoj Kumar Tiwari, Advocate, holding brief of Sri Anurag Upadhyay, learned counsel for the respondent.

2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984 arising from the order dated 01.08.2023 passed by the Additional Principal Judge, Family Court No. 1, Mau in Case No. 203 of 2019 (Shashi Vs. Abhishek). By that order, the learned court below has rejected the application being Paper No. 34-Ga(2) filed by the present appellant seeking amendment in the written statement.

3. Learned counsel for the appellant states, the amendment sought to the written statement to introduce paragraph no. 12-A was necessary. According to him, the case set up by the respondent is contrary to the provisions of Section 27 of the Hindu Marriage Act, 1955. That plea has remained from being raised in the written statement. Thus, it is in the interest of justice that such amendment be allowed. Also, it has been urged that irreparable injury would be caused to the appellant if such amendment is not allowed. In that regard, he has relied on a decision of the Supreme Court in **Life Insurance**

Corporation of India Vs. Sanjeev Builders Pvt. Ltd. & Anr., 2022 7 SCC 136.

4. Perusal of the impugned order reveals, the proceedings were instituted in the year 2019. The pleadings were exchanged. Evidence has been led and completed by the parties. At that late stage, the appellant sought amendment in the written statement and introduced the following by way of paragraph no.12 :

"12 अ. "यह कि याचिकाकर्ता ने स्त्री धन के रूप में अपने स्वयं की वस्तुओं की वापसी की याचना किया है, जबकि यदि वह धन दोनों पक्षों की संयुक्त होगी तो उक्त मामले की सुनवाई माननीय न्यायालय में होती है। किन्तु चूंकि कथित धनराशि याची ने नीजी बताया है, इस प्रकार माननीय न्यायालय को सुनवाई का क्षेत्राधिकारी नहीं है, बल्कि यह वह क्षेत्राधिकारी दीवानी न्यायालय को है, तथा दीवानी न्यायालय में बिना न्यायशुल्क के मामला नहीं चलेगा।"

5. Further, perusal of that order reveals, the learned court below has considered the prayer made by the appellant and found the same to be unfounded. It has observed, in paragraph no.2 of the plaint, the respondent had clearly stated, she had received the items in dispute at the time of her marriage and '*vidai*'. Thus, it is not as if the appellant has been surprised or that the respondent has changed her stand.

6. The case of the parties was known to the other from beginning. Pleadings having been exchanged and evidence having been led, no second opportunity may easily arise to change the stand already taken.

7. The principle of law being invoked by learned counsel for the appellant on the strength of decision of the Supreme Court in **Life Insurance Corporation of India (supra)**, is not applicable inasmuch as the said decision does not lay down the principle that each and every amendment sought must be allowed. On the contrary, the

principle laid down clearly suggests, the amendment may be allowed if it is shown to the Court that unless the amendment is allowed, the parties seeking amendment may suffer an irreparable injury or it may defeat the cause of justice or result in further litigation.

8. In view of the facts noted above, that principle is clearly is not invocable in the present case. Present appeal lacks merit and is accordingly **dismissed**.

Order Date :- 20.9.2023

Abhilash

(Arun Kumar Singh Deshwal, J.) (S. D. Singh, J.)