

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30th DAY OF MARCH 2012

BEFORE

THE HON'BLE MR. JUSTICE AJIT J.GUNJAL

WRIT PETITION NO.44250/2011(GM-FC)

BETWEEN :

Smt.Rajeshwari,
D/o.Timmappa Shetty,
Aged about 29 years,
Resident of Vyasa Nagar,
Mangalore.

...PETITIONER

(By Sri.Arun Shyam, Adv. for
M/s.Dharmashree Assts., Advs.)

AND :

Mr.Harish Shetty,
S/o.Late Seetharam Shetty,
Aged about 35 years,
Residing at Shetty Compound,
Vyasa Nagar, Kannur Post,
Mangalore.

...RESPONDENT

(By Sri.Nishit Kumar Shetty, Adv.)

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This writ petition is filed under Articles 226 and 227 of the Constitution of India with a prayer to quash the impugned order dated 16.11.2011 passed by the Family Judge, D.K. Mangalore on I.A.No.V in M.C. No.299/2011(Old M.C.No.169/2006) vide Annexure-A.

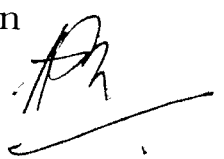
This writ petition coming on for *orders*, this day, the Court made the following:

ORDER

Even though the matter is listed for orders, with consent, it is taken up for final disposal.

2. This petition is by the wife. Respondent – husband initiated proceedings under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. During the pendency of the proceedings, an application is moved by the respondent – husband under Order 6 Rule 17 of the Code of Civil Procedure for conversion of the said proceedings to one under Section 13 of the Act i.e., for dissolution of marriage. The said application was seriously contested. The learned Family Judge has allowed the conversion of the petition from restitution of conjugal rights to one for dissolution. Aggrieved by the same, the wife is before this Court.

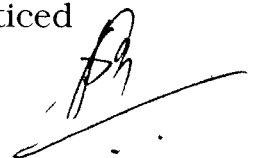
3. The learned counsel appearing for the petitioner – wife submits that the marriage took place on

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22.05.2005 and proceedings were initiated on 01.09.2006. He further submits that any application seeking dissolution of marriage is required to be filed after two years of desertion. Hence, if the application is allowed, it would relate back to the date of filing of the petition.

4. The learned counsel appearing for the respondent submits that the matter is pending adjudication for the last six years and if the present application is not granted then, the petitioner - husband will have to re-start the entire process all over again. He further submits that there were three reconciliation proceedings and all three proceedings having failed, there was no option but to file the application for conversion of the petition into one for dissolution of marriage.

5. I have given my anxious consideration to the submissions made by the learned counsel appearing for the petitioner. In the first instance, it is to be noticed

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that an application for amendment of the pleadings undoubtedly are regulated by the provisions of Order 6 Rule 20 of the Code of Civil Procedure. In the case on hand, it is to be noticed that the original proceedings were initiated under Section 9 of the Act for restitution and in spite of several reconciliation proceedings, they having failed, an application is filed for seeking dissolution of the marriage. Indeed it is to be noticed that this is not a straitjacket suit of an original case but this is a case where human anxieties are also involved. Indeed the proviso to Rule 17 would clearly indicate that if the Court is of the view that for proper adjudication of the controversy in question, an amendment is necessary, it shall grant it. The learned Family Judge has accepted the said application having regard to the fact that it has been pending adjudication since last six years. On that score, I am of the view that the impugned order cannot be faulted.

6. Insofar as the amendment relating back to the date of the proceedings and the maintainability of the

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petition thereof, it is always open for the petitioner to file objections to the said amendment. It is also to be noticed that in the event the application is rejected, the entire proceedings are required to be restarted all over again when both the parties have spent considerable time for almost six years in the portals of the Court. Having said so, I am of the view that the impugned order does not warrant interference.

Petition stands ***disposed of***.

It is open for the petitioners to file an additional statement of objections to the amended pleadings. The learned Family Judge to expedite.

Sd/-
JUDGE

SPS