

CIVIL RULE.

Before B. B. Ghose and Mallik JJ.

MATI LAL LYALL

v.

PREMI LYALL.*

1927

March 21.

*Revision—Practice—Interlocutory order—Interference by High Court—
Co-Respondent, addition of—Divorce Act (IV of 1869), s. 11.*

The High Court will not usually interfere in revision with an interlocutory order, even in a divorce suit, where the District Judge has refused to add a party as a co-respondent, as the petitioner has a right of appeal against the final order.

CIVIL RULE obtained by Moti Lal Lyall, the petitioner.

In June 1926 the petitioner instituted a divorce suit in the Court of the District Judge of 24-Parganas against his wife, Mrs. Premi Lyall, of Thompson Hospital, Agra, alleging she had committed adultery with one Mr. Billy, Mr. Victor and the Rev. Samuel Dutt, and was leading the life of a prostitute, and so no one was made a co-respondent under the provisions of section 11 of the Indian Divorce Act. On the 13th January 1927 the petitioner applied for leave to amend the plaint by adding the Rev. Samuel Dutt, a Methodist Minister, as a co-respondent for his whereabouts could not be traced at the time of institution of this suit. On opposition by the respondent

* Civil Rule No. 214 of 1927, against the order of G. C. Sankey, District Judge of Alipore, dated Jan. 21, 1927.

the learned District Judge rejected that application and passed the following order:—

“Pleaders on both sides heard. This is an application for permission to amend the plaint by adding the name of one Samuel Dutt as co-respondent. The grounds given are that the petitioner was previously unaware of the address of the said Samuel Dutt. The application is opposed by the respondent on the ground that it will cause vexatious delay. I am not prepared to amend the plaint at this stage. There is a definite allegation in the plaint that the respondent is living the life of a prostitute, and it is evident that it was on this ground that the Court excused the plaintiff from making any one a co-respondent. It appears that Samuel Dutt is a Pastor in the Methodist Episcopal Mission. I do not therefore believe that it was not possible for the petitioner to ascertain his address when the plaint was filed. Issues were framed in the suit on 29th November 1926, and the amendment proposed would certainly delay the disposal. The prayer for amendment is therefore rejected. Issue summons on the petitioner's witnesses as prayed for. The parties must be ready on the next date”.

The petitioner thereupon moved the High Court under section 115 of the Code of Civil Procedure and obtained this Rule.

Babu Suresh Chandra Talukdar, for the petitioner. The Indian Divorce Act provides that the alleged adulterer *shall* be made a party unless the respondent is living the life of a prostitute and the petitioner knows of no person with whom the adultery has been committed. But, in view of the definite allegations of adultery with three persons named in the plaint, this divorce suit is likely to be dismissed on the technical ground of not having formally made any one a co-respondent, and in that case the petitioner will suffer irreparable loss and be seriously prejudiced if Samuel Dutt is not made a party.

[B. B. GHOSE J. There is a Special Bench of three Judges to hear divorce matters from the mofussil. It is not the practice for a Divisional Bench to interfere with an interlocutory order in a divorce suit.]

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The Methodist Episcopal Mission refused to furnish us with the address of the Rev. Samuel Dutt, who was not in Calcutta. We have subsequently traced his address in the mofussil. That Mission was clearly screening their pastor and my client is not to blame for not having been able to make him a party.

[B. B. GHOSE J. You have your remedy in the appeal against the final order if it be against you.]

In that case I shall be satisfied if your Lordships will be pleased to say so in your judgment.

No one for the opposite party.

GHOSE AND MALLIK JJ. This is a Rule against an order refusing an application for addition of a party as a co-respondent in a suit under the Indian Divorce Act. The application was rejected by the Court below. The plaintiff obtained a Rule against that order. As it is not the usual practice of this Court to interfere in revision with an order made by the lower Court in an interlocutory matter this application is rejected. If the petitioner has any real grievance on account of the adverse order by the Court below he has a right of appeal against the final order and upon the appeal this Court will be able to pass the proper order.

The Rule is, therefore, discharged. No order is made as to costs as there is no appearance on behalf of the opposite party.

Rule discharged.

G. S.