

**EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SUIT NO: NEVHMT2014/0026

BETWEEN:

Shilpika Saxena

and

Vishal Saxena

Sheldon Noble

Petitioner

Respondent

Cited

Appearances:

Mrs. Cindy Herbert for the Petitioner.

Ms. Midge Morton with Ms. Anmarieta Staines for the Respondent.

2015: February 23
2015: March 30

DECISION

[1] **WILLIAMS, J.:** This Application before the Court is brought by the Petitioner by way of Summons filed on the 29th December 2014. The Petitioner requests Leave to file a reply to the answer of the Respondent filed on the 9th December 2014 and served on the 15th December 2014.

- [2] The Application is two pronged:
- a) The Petitioner applies for leave under Rule 18 of the Matrimonial Causes Rules 1937 since no relief was claimed in the Answer of the Respondent.
 - b) The Petitioner is also requesting Leave under Rule 20 of the Matrimonial Causes Rules 1937 to file the Reply out of time.
- [3] The Respondent has filed an Affidavit in opposition to the Summons for Leave to file a reply dated 28th January 2015.

Background Information

- [4] The Petitioner has been married to the Respondent from the 22nd January 1998 at E 13 Shastri Nagar, Ajmer, Rajasthan India.
- [5] After the marriage, the Petitioner and the Respondent co-habited at E 13 Shastri Nagar, Ajmer, Rajasthan, India and moved to St. Kitts and Nevis in May 2009 and have lived in Nevis for over five years.
- [6] On the 6th November 2014, the Petitioner filed for a dissolution of her marriage to the Respondent and cited as grounds for the dissolution of the marriage, physical and mental cruelty and other behaviour of such kind as to render intolerable the continued habitation of the spouses.
- [7] On the 9th December 2014, the Petitioner filed an Answer and an Affidavit in Support of the Answer to the Petition for Divorce.
- [8] On the 29th December 2014, the Petitioner filed a Summons for Leave to file a Reply with an Affidavit in support.
- [9] On the 29th January 2015, the Respondent filed an Affidavit in opposition to the Summons for Leave to file a reply on the ground that the Petitioner's Summons was filled out of time

and in any event, the Summons was not in compliance with Rule 18 of the Matrimonial Causes Rule 1937.

[10] On the 2nd February 2015, the Petitioner filed a further affidavit in support of the Summons for Leave to reply pursuant to Rule 18, Rule 3 (3) of the said Matrimonial Causes Rules 1937.

The Submissions

[11] Counsel for the Petitioner, Mrs. Cindy Herbert in written submissions contends that in the case at Bar, leave is required under Rule 18 of the Matrimonial Causes Rule 1937, as no relief was claimed in the Answer of the Respondent.

[12] Counsel also submits that Rule 18 of the Matrimonial Causes Rule 1937 provides as follows:

1. That **NO** reply shall be filed without leave except where relief is claimed in the answer in which case a reply may be filed within fourteen days from the delivery of the answer.
2. **NO** subsequent pleading shall be filed except by leave.

[13] Learned Counsel also submits that Rule 17 of the Matrimonial Causes 1937 defines the content of an Answer and what relief may be prayed for.

[14] It is also being submitted by Counsel that Relief means the relief to which the Respondent would have been entitled to as if he had presented a Petition.

[15] Mrs. Herbert cites **Halsbury Laws of England 4th Edition, Vol. 13 para 764,** **Relief for Respondent in Divorce Proceedings** to bolster her submission that the Court may give to the Respondent the relief to which he would have been entitled as if he had presented a Petition seeking that relief.

[16] Counsel also cites Rayden's Practice and Law of Divorce 16th Edition where it is stated that "if the answer contains a claim for Matrimonial relief, that is if the Respondent is asking for a decree- then subject to the provisos mentioned, any claim which the Respondent proposes to make for most forms of Ancillary relief must be included in the prayer of the Answer."

Further at paragraph 153 of Rayden's it is stated that,

"Relief can be claimed in an answer in the same manner as in a Petition which may include a prayer for Divorce, nullity of marriage or Judicial separation."

[17] Learned Counsel contends that in the case of an answer that alleges Adultery and prays for relief, the alleged Adulterer shall be added to the Title and shall be served with an office copy of the Answer endorsed with a Notice to appear as if it were a petition. Therefore Counsel submits that a Court can give the Respondent on review of his Answer, the relief which he would have been entitled as if he had presented a Petition.

[18] Learned Counsel further contends that although the Respondent made charges of Adultery against the Petitioner, he did not request the Court to dissolve his marriage nor did he seek Ancillary relief from the Petitioner.

[19] Mrs. Herbert argues that since no prayer for relief was made pursuant to Rule 17&18 of the Matrimonial Causes Rules, the Petitioner is entitled to apply to the Court for Leave to file a Reply pursuant to Rule 18 of the Matrimonial Causes Rules.

[20] However Rule 20 of the Matrimonial Causes Rules provides that **NO** pleadings shall be filed out of time without Leave, and Counsel cites the case of Rose vs. Rose¹ to bolster her submission.

¹ Civil Appeal No. 19 of 2003 Saint Lucia

Counsel further contends that she filed a reply within 14 days of the delivery of the Answer in compliance with Rule 18 of the Matrimonial Causes Rules 1937 (MCR).

- [21] Learned Counsel explains that there was no delay in the filing of the Summons for Leave to file a reply and that the Respondent has not demonstrated that he would be prejudiced if leave is granted to the Petitioner to file a Reply.

Respondent's Submissions

- [22] Counsel for the Respondent, Ms. Midge Morton submits that the general rule is that an Applicant cannot file a reply unless Leave was sought in Court by way of Summons pursuant to Rule 18 and 3 (3) of the MCR 1937.

However Rule 18 stipulates that once relief is sought in the Answer filed, there is no need to seek leave of the Court rather, the party filing the Reply must do so "within fourteen (14) days from the delivery of the Answer".

- [23] In the case at Bar, the Respondent filed an Answer to the Petition for Divorce filed on the 9th December 2014 which was served on Counsel for the Petitioner on the 15th December 2014.

- [24] Counsel for the Respondent argues that since relief was sought by the Answer filed by the Respondent, the Petitioner should have filed a Reply within 14 days of the delivery of the Answer. However according to Counsel the Petitioner opted to file a Summons for Leave to file a Reply with an Affidavit in support. In that Affidavit, the Petitioner claimed that leave of the Court was sought because of the Respondent's failure to seek relief in the Answer filed on the 9th December 2014, and relied on Rules 18 and 3 (3) of the MCR 1937.

- [25] Learned Counsel Ms. Morton, proceeded to define what the rule means when it states "Relief" and referred to the Oxford Dictionary of Law to define "Relief".

It states that Relief is,

“Any of the methods available at Law for the Enforcement, protection or recovery of rights, or for obtaining redress for their infringement.... It may include damages, an Injunction, a decree of specific performance, or a declaration.”

[26] It was also submitted by Counsel that Relief was not limited to relief provided by statute, but relief pursuant to what the Respondent wants the Court to consider and if possible grant.

[27] Counsel for the Respondent further submitted that a Summons to file Leave for Reply does not amount to a Reply and that at the time the Petitioner filed her Summons she would still have been within the time period for filing a Reply.

[28] Therefore Counsel for the Respondent contends that the proper course of action for the Petitioner to have taken was to file a Reply, and states further that in the Summons for Leave to Reply, she provides no good reason in Law or otherwise for her failure to file a Reply in time.

The Law

[29] Sections 16-18 of the Matrimonial Causes Rules 1937 are pellucid on the process to be followed in relation to the filing and service of an Answer in reply to a Petition of Divorce. At Section 17 (1) it states;

1. “There shall be filed with every answer, which contains matters other than a simple denial of the facts stated in the Petition, an Affidavit by the person filing the answer, verifying such other matters so far as he has personal cognisance thereof and deposing to his belief in the truth of the rest of such other matter....

2. Where the Answer of a husband alleges Adultery and prays for relief the alleged adulterer shall be added to the title of the cause as "A. B cited" and shall be served personally with an office copy of the Answer endorsed with a Notice to Appear as if it were a Petition.
3. Where the answer of a husband alleges Adultery, but does not pray for relief, an office copy of the Answer shall be served personally on the alleged adulterer endorsed with a Notice in accordance with Form 12 that he is entitled within the Time thereby limited to apply for Leave to intervene in the cause.

[30] Section 18 entitled "Reply" states;

"1. No reply shall be filed without leave except where Relief is claimed in the Answer, in which case a reply may be filed within fourteen days from the delivery of the Answer.

2. No subsequent pleading shall be filed except by Leave."

[31] At Section 20 of the said Rules, it also states that "No pleading shall be filed out of time without leave after a step-in-default has been taken.

[32] **The M.C.R 1937 of St. Kitts and Nevis** does not provide a definition or meaning of "Relief" as stated under the Rules, while the **Divorce Act No. 32 of 2005** speaks to "Corollary relief proceedings" and defines it as "proceedings in which either or both former spouses seek a support order or a custody order or both such orders."

[33] To assist the Court further, the **Halsbury Laws of England Vol. 30 at paragraph 764** was submitted for clarity on the definition of "Relief", the paragraph stated;

"If in any proceedings for Divorce, the Respondent alleges and proves any such fact as is mentioned in Section (1) (2) of the Matrimonial Causes Act 1973 (treating the Respondent as the Petitioner and the Petitioner as the Respondent for that purpose), the Court may

give to the Respondent the relief to which he would have been entitled if he had presented a Petition seeking that relief.”

[34] The learned Authors of **Rayden’s Practice and Law of Divorce at page 469 10th Edition** state as follows;

“Any claim which the Respondent proposes to make for most forms of Ancillary relief must be included in the prayer of the Answer; the following are the forms of relief which must be so claimed: Alimony pending suit, Maintenance of the children (if custody is claimed in the Answer) Maintenance, a secured provision, a lump sum and permanent Alimony.”

[35] On a perusal of the Respondent’s Answer filed on the 9th December 2014 there is no prayer for relief in the forms of relief outlined although he alleges Adultery and the alleged Adulterer has not applied for leave to intervene in the cause in compliance with Section 17 (3) of the MCR.

[36] Consequently since the Respondent has not claimed relief as outlined in the **Halsbury Laws of England paragraph 764** the Petitioner has applied by Summons for leave to Reply and has also filed a subsequent Affidavit dated 2nd February 2015 in which she states at paragraph 17 the reason for the delay in filing an Application for Leave to Reply.

[37] The Petitioner states that there was a technical error with her e-mail address at the Medical University of the Americas and she could not access her mail. She also exhibits a copy of a letter from the IT Administrator of the said University. – (Exhibit S.S 3)

Court’s Analysis

[38] It is not disputed by both Counsel that the case of **Rose vs. Rose** clearly explained the factors to consider in an Application for extension of time to comply with a Rule or Order. The factors explained by Chief Justice Dennis Byron (as he then was) are;

1. The length of the delay;
2. The reasons for the delay;
3. The chances of success
4. The degree of prejudice to the Respondent if the Application is granted.

[39] It is clear from the Affidavits that not all the factors outlined in **Rose vs Rose** apply to the present case as there was no delay in filing the Summons for Leave to Reply.

The Petitioner is in effect seeking an extension of time to file her pleadings out of time in accordance with Rule 20 of the MCR 1937. In her Affidavit of the 2nd February 2015, she gives her reason for that Application at paragraph 7.

[40] What emerges from Mrs. Saxena's affidavit is that she had communication difficulties and this was the main reason why she could not contact her Attorney-at-law.

[41] Our Courts are replete with Authorities where it is stated that difficulties experienced in communication or volume of work is **not** a good reason for delay in filing pleadings.

In the present case, **NO** Affidavit evidence has been presented as to the efforts made by Mrs. Saxena to communicate with her Counsel Mrs. Herbert, or any efforts made by Mrs. Herbert to communicate with her client.

The Affidavit is woefully inadequate in this regard, and does not permit the Court to test the credibility of the factual assertions made.

In the words of Barrow JA in **Christenbury Eye Centre vs. First Fidelity Trust**²

“That explanation is meaningless in the age of daily air travel, courier services, facsimile and Internet.”

² HCVAP [2007] 014 (Nevis)

[42] Therefore I am of the considered opinion that there is no sufficient evidence to satisfy me that there is a good and substantial reason for extending the time within which to file a Reply to the Answer of the Respondent.

[43] I also hold the view that learned Counsel for the Petitioner had sufficient time to file a reply in the time period permitted by the M.C.R 1937.

[44] In the premises the Petitioner's Summons for Leave to file a reply dated 29th December 2014 and the Affidavit of 2nd February 2015 is struck out.

Conclusion

[45] I accept the submissions of Counsel for the Respondent and find that on the totality of the evidence presented, the Applicant/Petitioner has not provided the Court with good and substantial reason for extending the time to file a reply to the Respondent's Answer to the Petition.

- i. Accordingly the Summons for Leave to file a reply dated 29th December and the Affidavit of the Petitioner dated 2nd February 2015 is hereby struck out.
- ii. Costs to the Respondent to be assessed if not agreed upon in accordance with Part 65 of the Civil Procedure Rules.

[46] I am grateful to both Counsel for their very useful submissions in this matter.

Lorraine Williams
High Court Judge.