

(2023) 05 DEL CK 0266

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 1259 Of 2022

Anju Kumari

APPELLANT

Vs

Sumit Kumar @ Sunny

RESPONDENT

Date of Decision : 31-05-2023

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Civil Procedure, 1908 — Order 6 Rule 17
Code Of Criminal Procedure, 1973 — Section 125
Protection of Women from Domestic Violence Act, 2005 — Section 12
Hindu Marriage Act, 1955 — Section 9

Citation : (2023) 05 DEL CK 0266

Hon'ble Judges : Tushar Rao Gedela, J

Bench : Single Bench

Advocate : Shekhar Aggarwal, Rahul Mahod

Final Decision : Dismissed

Judgement

Tushar Rao Gedela, J

[The proceeding has been conducted through Hybrid mode] CM APPL. 30672/2023 (for early hearing)

1. This is an application seeking early hearing of the present petition.
2. The application is allowed. The petition is taken up today for hearing.
3. The application stands disposed of.

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4. Petitioner challenges the order dated 12.09.2022 passed in CS SCJ 936/2019 titled as "Sumit Kumar @ Sunny vs. Anju Kumari" whereby the learned Trial Court had allowed an application under Order VI Rule 17 CPC seeking an amendment in the plaint to include and clarify para No. 7 A and para No.21 in the plaint.

5. Learned counsel appearing for the petitioner/ defendant submits that by virtue of the amendment to para 7 A and para 21 of the plaint, the respondent/ plaintiff is seeking to change the nature of the suit and include a claim which is time barred.

6. Learned counsel submits that the amendment application seeking to include para 7 A in the plaint is based on the allegation that the FIR, which has been mentioned in para 7 of the original plaint was circulated amongst the neighbours by the petitioner/ defendant.

7. Learned counsel submits that this particular allegation was not taken in the original plaint and, therefore, it would not only change the nature of the suit but also include something which is extraneous to the original plaint.

8. Learned counsel further submits that the time barred claim cannot be entertained by way of an amendment application.

9. Mr. Aggarwal, learned counsel for the petitioner also submits that by virtue of such amendment, the petitioner/ defendant would need to stand trial against the new allegations, which were never a part of the original plaint.

10. Learned counsel further submits that by virtue of such amendment having been allowed, the petitioner shall also now have to defend himself against third party, which is not the purport of the provision under Order VI Rule 17 of the CPC, 1908.

11. This Court has heard the submissions made by the learned counsel for the petitioner and perused the impugned order as also the original plaint and the amendment application placed on record by the petitioner.

12. In order to appreciate the contentions of learned counsel for the petitioner, it would be appropriate to extract para 6 to 9 of the original plaint, which are as follows :-

"6. That the plaintiff and his family members were shocked and surprised to learn that the defendant had filed a false and frivolous complaint against the plaintiff and his family members in Crime against Women Cell, Patparganj, East Delhi, Delhi on dated 24.06.2017 & SHO Police station Ghazipur and also in office of the brother of the plaintiff Puneet Kumar, alleging all false and frivolous allegations against the plaintiff, his brother Puneet and other family members without any substantiating proof. However, on the complaint of the accused, the FIR No. 353, U/s.: 498-A/406/34 IPC, P.S.: Ghazipur was registered against the plaintiff and his family members including his brother namely Puneet Kumar.

7. That after going through the FIR bearing No. 353. U/s.: 498-A/406/34 IPC, P.S.: Ghazipur, the plaintiff was shocked and surprised to read out the allegations which the defendant has levelled against the plaintiff in para no.2 of the FIR which is read as under:

'Mera Devar Sumit Kumar mere prati galat bhavna rakhne lagatha. Kabhi bhi

mujhe touch kar deta tha. Main ye samjhti rahi ki devar bhabhi ka rishta hai mazak main aisa kar diya hoga'

8. That the defendant has circulated the copy of FIR bearing No. 353/2017, U/s.: 498-A/406/34 IPC, P.S.: Ghazipur, along with a representation to the Head Office, Bank of Allahabad, Kolkata, as the brother of plaintiff Sh. Puneet is working in Bank of Allahabad as Branch Manager, and on the basis of which the brother of the plaintiff Puneet Kumar had received a letter bearing reference no. Ser. Br/ND/Admin/PK/2995 and they had sought an explanation regarding the same from the brother of the plaintiff Sh. Puneet Kumar, which has degraded him and the plaintiff much more in the fraternity apart from the society at large. That the copy of FIR bearing No. 353/2017, U/s.: 498 A/406/34 IPC, P.S.: Ghazipur is annexed herein as Annexure-A. That the copy of representation given by the defendant to the Head Office, Allahabad Bank Kolkatta and Allahabad bank branch office, Connaught Place, New Delhi is annexed herein as Annexure-B.

9. That it is also pertinent to mention herein that the defendant has not only alleged the above mentioned allegations against the plaintiff in the abovementioned FIR, but has gone to the extent of mentioning the abovementioned allegations in the petition under section 125 Cr.P.C petition under section 12 of Protection of Women from Domestic Violence Act, and in the petitioner under Section 9 of Hindu Marriage Act, which has been filed by the defendant against the brother of the plaintiff namely Sh. Puneet Kumar. That the alleged allegations against the plaintiff by the defendant are highlighted in the respective petitions as mentioned hereinabove, as the same have not been repeated herein for the sake of brevity. That the copy of petition under Section 125 Cr.P.C. is annexed herein as Annexure-C petition under section 12 of the Protection of Women from Domestic Violence Act is annexed herein as Annexure-D and the petitioner under section 9 of Hindu Marriage Act is annexed herein as Annexure-E."

A reading of the aforesaid suggests that the respondent/ plaintiff has based his contentions on the edifice of the FIR so mentioned in para 6 and 7 of the original suit. The aspect regarding the circulation finds mention in para 8 too, in continuation of the aforesaid allegations in the paragraphs above.

It would now be relevant to also consider the amendment that the respondent/ plaintiff sought to insert by way of para 7 A and 21, which are extracted hereunder :-

"A. The plaintiff wants to insert/ add the following paragraph 7A after the para 7 and before para no.8, as under :-

"7A. That on 21.10.2017 the defendant received the copy of the said FIR in which the aforesaid paragraph against the plaintiff was highlighted at his residence i.e. H.No. 46-A, DDA SFS Flats, Sector-7, Pocket-1, Dwarka, New Delhi-110075. It is submitted that when the plaintiff came out of his house to check that who is circulating the said copies, he was informed from the

neighbourhood that the copies of this FIR have also been delivered at their houses also.”

B. That in these circumstances, the plaintiff further wants to add at the end of para no.21 as under :-

“The cause of action further arose on 21.10.2017 when the defendant circulated the aforesaid FIR with highlighted portion against the plaintiff at his residence and in the neighbourhood at Dwarka, New Delhi”.

13. A general perusal of the aforesaid amended para 7A as also the amended para 21, brings to fore the fact that the allegations which were made by the respondent/ plaintiff against the petitioner/ defendant were only sought to be clarified and no such allegation which would go beyond the four corners of those allegations which were originally contained in the original plaint, have been mentioned at all.

14. The submission that on account of the aforesaid allegations in para 7A, the nature of the suit would change is unsustainable in law and on facts since the respondent/ plaintiff has only clarified and explained the aspect in respect of the circulation of the said FIR.

15. The petitioner/ defendant does not dispute that the original plaint contained the detailed reference not only to the FIR and its number but also to the sections under which it was registered apart from the fact that the contents which, in the submission of the respondent/ plaintiff, were defamatory.

16. The petitioner obviously will have ample opportunity to meet the said allegations in the amended written statement to be filed as also during trial at the time of cross-examination of the plaintiff’s witnesses, if any.

17. Moreover, the Supreme Court in the judgment of Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another reported as (2022) SCC OnLine SC 1128 had categorically held that wherever there are clarificatory amendments, the Court should ordinarily allow and it can always grant an opportunity to the defendants in such cases to file their amended written statements taking all objections and grounds and contentions which would negate such assertions made by the plaintiff.

18. Learned counsel for the petitioner could not provide any other counter judgment as against the judgment of the Supreme Court passed in LIC (supra).

19. In that view of the matter, this Court is of the considered opinion that the impugned order does not suffer from any infirmity or material irregularity or any judicial impropriety for this Court to interfere in the exercise of jurisdiction under Article 227 of the Constitution of India and as such the petition is dismissed, however, with no order as to costs.

20. The next date i.e. 28.08.2023 stands cancelled.

21. Needless to observe that the petitioner would be at liberty to take the appropriate objections in the amended written statement.