

(2025) 05 GAU CK 0315
In the Gauhati High Court
Case No : CRP Of 26 Of 2020

Brahmaputra Tele Production Pvt. Ltd. And Anr. APPELLANT
Vs
Dwipayan Das RESPONDENT

Date of Decision : 26-05-2025

Acts Referred:

Constitution Of India, 1950 — Article 227
Indian Evidence Act, 1872 — Section 52, 53, 54, 55
Code of Civil Procedure, 1908 — Order VI Rule 17

Citation : (2025) 05 GAU CK 0315

Hon'ble Judges : Susmita Phukan Khaund, J

Bench : Single Bench

Advocate : A K Bhuyan, B Bhuyan, N Choudhury, M Borah, P Pathak, P S Deka, P Daimari, B K Bhagawati, K Kalita

Final Decision : Dismissed

Judgement

Susmita Phukan Khaund, J

1. Heard Ms. B. Bhuyan, learned counsel for the petitioners and Mr. B.K. Bhagawati, learned counsel for the respondent.

2. This petition is filed under Article 227 of the Constitution of India, challenging the order dated 30.11.2019 passed by the learned Civil Judge, Morigaon in connection with Title Suit No. 1 of 2012, whereby M.J. Case No. 47/2017 of the petitioners under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC for short) for amendment of the written statement, was dismissed.

3. The petitioner No. 1 in this case is Brahmaputra Tele Production Private Limited, represented by its Editor-in-Chief Sri Monoj Goswami and the petitioner No. 2 is the Editor-In-Chief Sri Monoj Goswami himself. The respondent is Sri Dwipayan Das. The petitioner No. 1 is a private limited company running a TV channel in the name of DY365. They were arrayed as defendant Nos. 1 and 2 respectively, in Title Suit No. 1 of 2012 pending in the Court of the learned Civil

Judge, Morigaon.

4. The title suit was brought up against the present petitioners by Sri Dwipayan Das/respondent, claiming damages and compensation to the tune of Rs.5,00,00,000/-(Rupees Five Crores) for defamation against all the defendants/petitioners jointly and severally, allegedly for telecasting, publishing and circulating news items in DY365 channel.

5. The petitioners/defendants contested the title suit and filed written statement and thereafter, issues were framed and the plaintiff i.e. the respondent adduced evidence-in-chief of 10 (Ten) witnesses, amongst whom the respondent, Sri Dwipayan Das was PW-10. PW-1, 2, 5, 9 and 10 have been cross-examined. It is submitted that the respondent/plaintiff could not produce the remaining witnesses for cross-examination and their evidence had been expunged by the learned Trial Court and this case was fixed for the defendant's evidence.

6. The present petitioners have filed a petition praying for a report of the FACT Finding Committee, North Eastern Regional Institute of Science & Technology, Nirjuli, Arunachal Pradesh (NERIST for short). The petitioners learnt about certain facts pertaining to the depositions of the witnesses, which were not available at the time of filing the written statement in the original Title Suit. This petition filed by the petitioners was rejected by the learned Civil Judge, Morigaon vide order dated 24.03.2017. This petition is numbered as petition No. 911/16. This petition and the order dated 24.03.2017 are marked as Annexure-3 of the petition. Against this order, the petitioners preferred a Civil Revision Petition before this Court registered as CRP (I/O) No. 73 of 2017 and in this revision petition, this Court vide order dated 08.05.2017 granted liberty to the petitioners to file an application under Order VI Rule 17 of CPC for amendment of the written statement (Annexure-4).

7. Thereafter, the petitioners filed a petition under Order VI Rule 17 of CPC, numbered as Misc (J) Case No. 47 of 2017 before the learned Civil Judge, Morigaon. After hearing both the parties on the 08.08.2017, the learned Civil Judge, Morigaon, allowed the prayer of the petitioners to amend the written statement with costs of Rs.3000/- (Rupees Three Thousand). Thereafter, the respondent, Dwipayan Das preferred a civil revision petition against the said order dated 08.08.2017 before this Court, registered as CRP (I/O) No. 291/2017 and, vide order dated 27.02.2019, this Court disposed of the revision petition with a direction to the Court of learned Civil Judge, Morigaon to decide the application under Order VI Rule 17 filed by the petitioners afresh (Annexure-6).

8. Accordingly, the petitioners appeared before the learned Civil Judge, Morigaon for hearing of the application under Order VI Rule 17 of CPC, numbered as Misc (J) Case No. 47/2017 and after hearing both the sides, the learned Civil Judge vide order dated 30.11.2019 rejected the petition on the ground that since 26.07.2012 i.e. the closure of PWs evidence and at the stage of the evidence of DWs, the petitioners have learnt about certain facts about the deposition of the

witnesses on 23.08.2016 i.e. at the stage of adducing the evidence of DWs. Owing to the delay, it was held by the learned Civil Judge that the amendment is not bonafide due to the inexplicable delay and on the mandate of proviso to Order VI Rule 17 of CPC, the amendment petition with prayer for amendment was rejected by the learned Civil Judge, Morigaon.

9. It is contended that the learned Trial Court while passing the impugned order dated 30.11.2019 (Annexure-7) has erred in law by holding that the amendment is not bonafide as the respondent's traits could not be discovered at the earlier stage. It is submitted that Section 55 of the Indian Evidence Act, 1872 (the Evidence Act for short) lays down that reputation and disposition are relevant facts in a case for damages, and thus, disposition in general life is a relevant fact which has been ignored by the learned Trial Court.

10. It is further contended that the learned Civil Judge after hearing both the sides on 08.08.2017, allowed the prayer of the petitioners to amend the written statement with costs. A civil revision petition was preferred against the order dated 08.08.2017 before this Court and registered as CRP (I/O) No. 291 of 2017.

11. This Court vide order dated 27.12.2019 in CRP (I/O) No. 291/2017 directed the learned Civil Judge to decide the application under Order VI Rule 17 of CPC afresh, but the same Court i.e. the Civil Judge, Morigaon, who allowed the earlier petition paradoxically after hearing both the parties, rejected the subsequent petition when there was a direction to decide the petition afresh.

12. It is further submitted that the learned Trial Court did not maintain civil discipline. It is submitted that there is a prima facie case and the impugned order dated 30.11.2019 passed by the learned Civil Judge, Morigaon in Title Suit No. 1 of 2012, whereby Misc (J) Case No. 47 of 2017 has been dismissed, is liable to be set aside and necessary orders may be passed.

13. An affidavit-in-opposition has been filed by the respondent Dwipayan Das against this petition contending inter-alia that the petition filed by the petitioners with prayer for summoning two witnesses and calling for records of the Fact Finding Committee was correctly dismissed by the learned Trial Court vide order dated 24.03.2017. Thereafter, vide order dated 08.05.2017, this Court granted liberty to the petitioner to file a petition under Order VI Rule 17 of CPC directing the learned Trial Court to dispose of the matter under the provisions of law.

14. It is further submitted that according to paragraphs 10 and 11 of petition regarding the statements with respect to application under Order VI Rule 17 of CPC numbered as Misc. (J) Case No. 47/2017, this application was correctly rejected by the learned Trial Court.

15. It is submitted that the learned Trial Court while deciding the aforementioned petition vide order dated 30.11.2019 ascribed sound reasonings after considering all the submissions, statements and reasons stated by the petitioners and this order does not require any interference by this Court. It is submitted that there

is legal embargo to call for the documents in respect of the alleged ragging under the guidelines issued by the UGC, Courts of law as well as various Committees for tackling ragging, as such report, including alleged Fact Finding report cannot be circulated publicly as these documents are not to be circulated publicly. It is submitted that these documents are exclusively private documents/ correspondence between the Institution and the UGC and in the event if the Trial Court would allow the petition under Order VI Rule 17 of CPC, then the Institution as well as the UGC have their rights to reject forwarding such documents.

16. It is averred that an application on 24.03.2021 seeking information under the RTI Act,

2005 from the Institution namely NERIST was filed and vide letter dated 22.04.2021, and reply was furnished to the deponent Dwipayana Das, by the NERIST. RTI reply is Annexure – A of the affidavit-in-opposition.

17. It is informed through the RTI reply that the said report has not been circulated or provided to any third party including the petitioners i.e. DY365 news channel. It is therefore submitted that the said documents have been obtained by the petitioners through illegal means.

18. It is further submitted that the alleged Fact Finding Committee report is in no way related with the instant subject matter of the suit. The cause of action of the suit arose between 27.01.2011 to 07.08.2011 whereas the alleged Fact Finding report as alleged in page 77-95 of this petition is relating to an incident which occurred in the year 2013. So, stating it is submitted that these documents have no relevance to decide the suit brought up against the respondents.

19. It is further submitted that the documents annexed as in page 77-95 of this petition cannot be handed over to a third party as these documents are confidential and exclusively private to the respondent. The respondent has thus prayed to dismiss this petition.

20. It is submitted that a title suit being T.S. No. 1/2012 is pending in the Court of learned Civil Judge, Morigaon for filing written statement and evidence on affidavit of the petitioners who have procured innumerable adjournments for filing their evidence. It is submitted that the title suit is at the fag end of trial and no due diligence have been demonstrated by the petitioners as to why they could not raise the issue at an earlier date.

21. The respondent has prayed to dismiss this petition with exemplary costs.

22. I have considered the submissions at the bar with circumspection. Through the petition, the petitioners have prayed for amendment of the written statement under Order VI Rule 17 of CPC, by setting aside the order impugned.

23. After paragraph 37, paragraph 37-A was proposed to be inserted and the relevant part of the paragraph is that "the respondent made a legal offence by

declaring that he will kill somebody and then he will commit suicide putting this threat message on social media and was asked to submit declaration highlighting such offensive act in near future”.-

24. It has been contended by the learned counsel for the respondent that Annexure-A of the affidavit-in-opposition clearly reveals that the respondent Sri Dwipayan Das obtained information through an RTI application and he was informed by the Central Public Information Officer that the Fact Finding report of ragging case AR 947 was sent to UGC only, and it was not for public circulation. It was also reported that this Fact Finding report was not provided or circulated to any third party nor to DY365 news channel. It was also reported by the Central Public Information Officer that documentary evidence of every comments made by Dr. Ajanta Kalita and others are not available in the Office. It has been asserted by the Central Public Information Officer that the UGC never circulated any report relating to the report of the said Fact Finding Committee or statements of witnesses as per its minutes of meeting dated 27.11.2013 and 28.11.2013. It is also contended that the paragraph proposed to be inserted contains materials which are confidential to both the parties i.e. the Fact Finding Committee and the respondent Dwipayan Das.

25. It is alleged that this information has been obtained in a clandestine manner to tarnish the reputation of the respondent, which has already been tarnished by the petitioners. As this Fact Finding Committee submitted its report on the basis of statements of witnesses and other records as per minutes of meeting dated 27.11.2013 and 28.11.2013, it is not relevant to the instant case which was brought up by the respondent against the petitioners way back in the year 2012.

26. Learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in *Estralla Rubber vs. Dass Estate (P) Ltd.* reported in (2001) 8 SCC 97 wherein it has been observed that:

“8. It is fairly settled in law that the amendment of pleadings under Order 6 Rule 17 is to be allowed if such an amendment is required for proper and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings, subject to certain conditions such as allowing amendment should not result in injustice to the other side; normally a clear admission made conferring certain right on a plaintiff is not allowed to be withdrawn by way of amendment by a defendant resulting in prejudice to such a right of plaintiff, depending on facts and circumstances of a given case. In certain situations, a time-barred claim cannot be allowed to be raised by proposing an amendment to take away the valuable accrued right of a party. However, mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. Amendment is to be allowed when it does not cause serious prejudice to the opposite side. This Court in recent judgment in *B.K. Narayana Pillai v. Parameswaran Pillai* after referring to number of decisions, in para 3 has stated, thus: -

"3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation."

In para 4 of the same judgment this Court has quoted the following passage from the judgment in A.K. Gupta and Sons Ltd. v. Damodar Vally Corpn.: (AIR pp.97-98, para7)

"The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: Weldon v. Neal. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See Charan Das v. Amir Khan and L.J. Leach and Co. Ltd. V. Jardine Skinner and Co."

This Court in the same judgment further observed that the principles applicable to the amendment of the plaint are equally applicable to the amendment of the written statement and that the courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event. It is further stated that the defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice and that any admission made in favour of the plaintiff conferring right on him is not withdrawn."

27. Learned counsel for the petitioners has laid stress in her argument that no new cause of action will be introduced through the amendment. In a case of character as affecting damages as per Section 55 of the Evidence Act is relevant and it reads:- In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation. – In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but [except as provided in section 54], evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown."

28. It is submitted that the character and disposition of the respondent is a

subject matter of the corresponding title suit.

29. This Court cannot ignore the fact that the defamatory telecast/publish/circulation of news item was circulated from the period between 27.01.2011 to 07.08.2011 in DY 365 TV channel as alleged. The paragraph proposed to be inserted is relating to the Fact Finding Committee report, on the basis of the statements of the witnesses and other records as per the minutes of the meeting dated 27.11.2013 and 28.11.2013. Although meetings were held on 27.11.2013 and 28.11.2013, it is discernible that the meetings were related to ragging in the Institution and suicide and death threats in the Institution.

30. To contest a proceeding relating to defamation, Section 55 of the Evidence Act is relevant. The character and disposition of any person in a case, affecting damages, has to be taken into consideration and the evidence may be given relating to general reputation and disposition of that particular person whose reputation has been alleged to have been tarnished by imputations through print or through social media or circulation through TV news channels.

31. The title suit, which was brought up in the year 2012, was not in the proximate past as the meetings were held as late as 27.11.2013 and 28.11.2023.

32. It is submitted that no new case is proposed to be brought up but only additional evidence which was not with the petitioners at the time of institution of the title suit, is required for the just decision of this case. The materials of the Fact Finding Committee and the paragraph proposed to be introduced are required only to portray the disposition of the respondents.

33. It is further submitted that the amendment was not proposed at the end of trial but during the pendency of the trial when new materials have surfaced which is relevant to this case. The proposed amendment is to elaborate the defence and to take additional plea in support of its case. It is also required for proper adjudication of the controversy between the parties and to avoid multiplicity of proceedings.

34. Learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in Ramchandra Sakharam Mahajan Vs. Damodhar Trimbak Tanksale (Dead) & others reported in (2007) 6 SCC 737 wherein it has been observed that :-

"14. The question, therefore, is whether the plaintiff had established his title to the suit property. The plaintiff, though somewhat belatedly, attempted to amend the plaint to make his claim more precise so as to enable the Court to adjudicate upon it more satisfactorily. We see force in the contention of learned senior counsel for the appellant that the trial Court ought to have allowed the amendment so as to enable it to decide the dispute in a more satisfactory manner. The appellate Court, it appears to us, was also not justified in harping upon the so-called absence of bona fides on the part of the plaintiff in approaching the Court. What was called for, was an independent appraisal of the

various documents produced by the plaintiff in the light of the pleadings and the oral evidence available, to come to a conclusion whether the plaintiff had established his title or not. In that context, the appellate Court ought to have seen that the trial Court was in error in refusing the amendment of the plaint which would have enabled the Court to render a decision in a more satisfactory manner.”

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“17. We find that the trial Court and the appellate Court were not justified in refusing the amendment of the plaint sought for by the plaintiff. No doubt there had been delay in seeking amendment but that delay could have been compensated by awarding costs to the contesting defendants 1 to 9. Therefore, we are satisfied that the amendment sought for by the plaintiff ought to have been allowed. We are inclined to allow the amendment sought for, since it would enable the Court to pin-pointedly consider the real dispute between the parties and would enable it to render a decision more satisfactorily to its conscience. We, therefore, allow the amendment as sought for by the plaintiff at a belated stage. The amendment will be carried out by the plaintiff in the trial Court within three months from this date as per the practice followed in the trial Court. Obviously defendants 1 to 9 would have an opportunity to file an additional written statement to the amended plaint. They will be entitled to file an additional written statement within a period of four months from the date of this judgment.”

35. It has also been held by the Hon’ble Supreme Court in Estralla Ruberber’s case (supra) that in certain situations, a time barred claim cannot be allowed to be raised by proposing an amendment to take away the valuable accrued right of a party. It is true that in certain cases mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. However, in this instant case the situation is not so. It appears that this amendment may take away the valuable right accrued of a party and it may cause serious prejudice to the respondent.

36. Moreover, the ratio of the decision of the Hon’ble Supreme Court in Ramchandra Sakharam Mahajaram’s case (supra) is not applicable to this case.

37. In the instant case, the amendment sought to be brought in is related to an incident of ragging which took place in the year 2013 in NERIST, which is not at all related to the petitioners’ defence which was relating to publication of news article in the year 2011. No doubt, the amendment may throw light to the disposition and character of the respondent to arrive at a decision but the submissions of the learned counsel for the petitioners that the amendment is an addition to the pleadings i.e. written statement and not a deviation of the pleadings, cannot be accepted.

38. I have also relied on the decision of the Hon’ble Supreme Court in the case of Basavaraj Vs. Indira and Others reported in (2024) 3 SCC 705 wherein it has been observed that :-

"14. This Court in Revajeetu case enumerated the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing the application.

15. If the amendment is allowed in the case in hand, certainly prejudice will be caused to the appellant. This is one of the important factors to be seen at the time of consideration of any application for amendment of pleadings. Any right accrued to the opposite party cannot be taken away on account of delay in filing the application."

39. In the instant case too, it is apparent that the report of the Fact Finding Committee from pages – 77-95 of this petition, pertains to incidents which are not at all related to this case. Moreover, the parties of Ragging Case No. AR 947 are also not impleaded in this case. It appears that this amendment would cause prejudice to the respondent and may fundamentally change the nature and character of the suit.

40. In the case at hand Annexure-A of the objection filed by the respondent clearly reveals that certain documents are confidential and cannot be circulated to a third party and therefore, no documents which were confidential and purely individual and between the respondent and the concerned office of NERIST, were forwarded to the petitioner.

41. It has been clearly mentioned that the Fact Finding report of Ragging Case No. AR 947 of the Institute is not a public document. However, it is not clear if the Fact Finding report of Ragging Case No. AR 947 was meant just for communication between the UGC and the Institute and not for public circulation despite the fact that the report was not circulated to any third party (DY 365).

42. While allowing the earlier petition vide order dated 08.08.2017, it was observed by the learned Trial Court that "it appears that the petitioner/defendant have shown reasons that the proposed amendment was not within his knowledge at earlier stage, the same is convincing when viewed in light of cross-examination part of PWs."

However, while dismissing the petition vide the impugned order dated 30.11.2019, it was observed by the learned Trial Court that "only cause shown is that after evidence of plaintiff witnesses have been recorded, when the case was posted for defendant's evidence, the defendant came to know of certain facts pertaining to the plaintiff's disposition/character, which were not available at the time of filing written statement."

43. Petitioner has emphasized through argument that the same Court cannot vacillate. Initially, the Court allowed the amendment with a costs of Rs.3000/- (Rupees Three Thousand) vide the order dated 08.08.2017 and thereafter, the

Court dismissed the amendment after a direction from this Court in CRP/291/2017, vide order dated 27.09.2019.

44. This amendment was sought at the stage of defendants'/petitioners' evidence. The respondent has clearly substantiated through Annexure-A that certain documents are confidential documents relating to an enclosed and confidential meeting of Fact Finding Committee and these documents were not sent to any third party. The Fact Finding meeting was exclusively between the Fact Finding Committee and the respondent and his family members. The UGC has its own guidelines relating to confidentiality of matters pertaining to certain institutes and so has the NERIST.

45. Annexure-A clearly reveals that the report of the Fact Finding Committee from page-77 to 95 of this petition were not given to any third party.

46. Petitioners have also not submitted how they have procured the report of the Fact Finding Committee. Despite rigorous submission of the learned counsel for the respondents, the petitioners have failed to submit how the petitioners could procure the report of the Fact Finding Committee annexed along with this petition. The petitioners have failed to refute that the report of the Fact Finding Committee was a confidential report and exclusively private to concerned parties only.

47. The petitioner has also failed to refute the Annexure-A of the objection, even by oral submissions.

48. In the wake of the foregoing discussions, this Court is hesitant to allow the amendment. This petition is hereby dismissed.

49. Order staying the proceeding of Title Suit No. 1/2012 stands vacated.

50. No order as to costs.