
(2005) 09 DEL CK 0067

In the Delhi High Court

Case No : IAs 2005 of 2001 and 8139 of 2002 in CS (OS) 399 of 2001

Mrs. Binu Anand Khanna

APPELLANT

Vs

Mr. Ratan Tata, Chairman, Taj Group

RESPONDENT

Date of Decision : 01-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 11, 10
Court Fees Act, 1870 — Section 11(4)

Citation : (2005) 09 DEL CK 0067

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : V.K. Makhija and K. Dutta Adv, for the Appellant; Raj Birbal J.R. Midha and Amit Yadav, for the Respondent

Judgement

Swatanter Kumar, J.—By this order, I would dispose of two applications being is 8139/2002 filed by the plaintiff under Order 6 Rule 17 CPC for amendment of the plaint and is 2005/2001 filed by the defendant under Order 7 Rule 11 of the CPC (for short the CPC) for rejection of the plaint. Before I refer to the facts of the case and the merit of the rival contentions placed by learned counsel for the parties before the Court, it will be appropriate to record at the outset that learned counsel appearing for the defendant also prayed and made an oral submission that names of defendant Nos.1 to 6 may also be deleted within the ambit and scope of Order 7 CPC as they are neither necessary nor proper parties to the suit. Arguments from both sides were also addressed on this issue.

2. The suit has been instituted by the plaintiff against illegal and arbitrary termination of her service by defendants 1 to 8 and she claims on the basis of the conduct of the defendants prior to such termination relief of declaration, compensation and damages against all the defendants. Defendant No.7 is a Company registered under the provisions of the Companies Act, 1956 with its registered office at Bombay. The Company, inter alia, runs a chain of reputed hotels under the name and style of "Taj". Defendant No.8 is wholly owned

subsidiary of defendant No.7. It also owns and runs the reputed chain of exclusive variety stores known as 'Khazana'. Defendant Nos.7 & 8 are stated to be closely linked with each other and compliment and supplement each other in the hotel industry. As per the averments made in the plaint, defendant Nos.1 to 6 are its officers and responsible for the conduct and running of the business. Defendant No.1 is the Chairman and defendant No.2 is the Managing Director. plaintiff claims to have joined the service of defendant No.7 on 23rd October, 1980 on the terms and conditions stated in her letter of appointment. She was appointed as a Receptionist on a temporary basis and under paragraph 5 it is stated that when she was confirmed, she would retire from service on attaining the age of 55 years. Vide letter dated 14th July, 1981 she was confirmed and she was designated as Confidential Secretary in the then Managing Director's office of Taj Mahal Hotel, New Delhi at Chander Lok Building, Connaught Place, New Delhi. She was asked to take up the charge of 'Khazana' on full time basis, in addition to her duties. She was designated as Merchandizing and Sales Manager in defendant No.8 which was in addition to her work for the Vice Chairman's Office of defendant No.7. plaintiff worked with complete dedication in setting up and running collection stores and plaintiff earned steady promotion through the ranks of defendant No.7 and was promoted as General Manager to Grade X in the year 1987 vide letter dated 14th August, 1987, thus making her age of superannuation as 60 years. In discharge of her duties, she was looking after said stores in Delhi, Lucknow, Calcutta, Agra, Jaipur and Madras and there were great increase in the profits of income of the Khazana to the extent of 40% from 30% of the last year. The plaintiff performed her duties to the satisfaction of all stores and was doing very well in the service. In July-August, 1997, defendant No.7 was going through a tumultuous time on account of wide range changes in the management structure brought about by take over of the reins of Tata Group by defendant no.1 Shri Rattan Tata. He wanted to bring his own style of management and his own trusted officers at the helm of the affairs of the various companies owned by the TATA Group. The plaintiff has further averred in the plant that defendant No.3 was appointed as Deputy Managing Director of Taj Group of Hotels. From this point onwards, the victimization of various longstanding officers and employees of defendants 7 & 8 started as defendants 1,2 and 3 wanted to have their own set of officers, in charge of affairs of defendants 7 & 8. To this end they hatched a conspiracy to get rid of various officers of defendants 7 & 8 including the plaintiff herein, by a systematic process of harassment and removed from services. As a result of this, plaintiff has stated that she heard various rumors in the year 1998 and thereafter defendant No.6 was appointed as Deputy General Manager to the plaintiff and later her services were terminated in the most arbitrary, high handedness and illegal manner vide letter dated 31st December, 1998. According to the plaintiff, she pointed out various irregularities and even brought to notice of defendant Nos.1 and 2 for harassment, but of no consequence. According to her, vide letter dated 3rd February, 1999 from defendant No.2, she was informed that there was complete loss of confidence in the plaintiff's liability and it was recommended that she

should resign. The Secretary to defendant No.1 informed the plaintiff that he was out of station. However, vide letter dated 25th February, 2000 written by defendant No.2, the service of the plaintiff were terminated. Further according to the plaintiff termination of her services are illegal, arbitrary and is also a result of a kind of conspiracy between defendants 1 to 6, as such besides claiming damages for her wrongful termination, she also claims damages by way of compensation against all the defendants jointly and severally.

3. In the case, as stated by the plaintiff, only defendant No.7 filed written statement taking various preliminary objections. It was stated that services of the plaintiff have been terminated for lawful and correct reasons. It is also averred that instead of returning the company's assets, the plaintiff vide letter dated 25th February, 2000 made vague excuses and despite repeated requests have not returned the goods of the defendants. Despite her illegal and unlawful conduct, steps have been taken to release her provident fund, gratuity and superannuation funds and most of which had already been paid to her as stated at the Bar. The property of the Company to the extent of Rs.5,96,492/- is still lying with the plaintiff and despite repeated requests including the letters dated 9th December, 2000 and 22nd December, 2000, the same has not been returned. An excess amount of Rs.1,13,500/- was adjusted against the salaries of the plaintiff for the period November, 1998 to February, 1999. Therefore, no salary was payable to her for that period. On personal billing account, the plaintiff is stated to be owing to defendant No.7 a sum of Rs.84,705/-. It is not disputed that she joined as a Receptionist and confirmed in that post on 23rd July, 1981 and subsequently was promoted to different posts. The defendant No.7 had also taken various preliminary objections including that the suit has not been valued properly for the purposes of court fee and jurisdiction and the plaint does not disclose any cause of action against defendant Nos.1 to 6 and 8. They were only the Directors and/or senior executives of the Company. The suit was bad for misguide of defendants 1 to 6 and the plaint has not been verified properly in terms of provisions of the Code of Civil Procedure.

4. Other factual controversies have also been raised in the written statement. However, they are not necessary to be noticed in this order for the purposes of dealing and disposing of the two applications. In the application for amendment, the plaintiff has prayed that the defendant No.7 has filed the frivolous application under Order 7 Rule 11 CPC and have also taken certain preliminary objections in the written statement. In order to avoid any technical objection being raised in certain paragraphs of the suit of the plaintiff and its entertainment by the Court, the plaintiff wishes to amend the plaint and make certain additional averments in regard to payment of court fee, cause of action and also delete prayer B as stated in the original plaint. It is stated that though the plaintiff has paid the appropriate court fee still she would like to correct and make the following amendments, as prayed in the application. As per prayer of the plaintiff, she wishes to substitute para 40 of the existing plaint saying that the plaintiff has not been paid her salary from November, 1998 onwards and it is because of

malicious intent that the defendants have refused to pay the said amount. The plaintiff also wishes to amend the prayer clause of the plaint by deleting prayer D which related to passing of a decree for directing defendant No.7 and/or defendant No.8 to pay all statutory dues of the plaintiff, inter alia, provident fund, gratuity, superannuation fund and other benefits. Other prayer clause would remain the same and instead of prayers A to J, only prayer A to I would be retained in the plaint. Further the plaintiff wishes to amend paragraph 41 of the plaint and substituted the same by making certain changes and particularly non-payment of salary. As a consequence thereof, as to keep the plaint in conformity with the provisions of this law, the plaintiff also wishes to amend or substitute para 41A of the plaint relating to cause of action by referring to the already averred facts in greater details and consequent amendment in paragraph 42 in relation to payment of court fee. In order to meet the objection to the proper verification, the verification clause of the plaint is also proposed to be amended. To this application, reply has been filed by defendant No.7 wherein it is stated that interest of defendant No.7 will be prejudiced if the proposed amendments are allowed as the plaintiff's suit is not maintainable and is liable to be rejected under the provisions of Order 7 Rule 11 CPC. It is also averred in the reply that the application under Order 7 Rule 11 is maintainable and has been filed in accordance with law.

5. What cannot be disputed is that the proposed amendment by the plaintiff no way changes the cause of action or the basic case pleaded by the plaintiff in its original plaint. Once there is no substantial change in the cause of action in the case originally pleaded by the plaintiff, the law of amendment has received very liberal construction in the recent years. All that the plaintiff wants to do, is to correct certain defects in the plaint which in any case would be irregularities and not illegality of any nature which would fatal to the suit of the plaintiff. Even if the Court was to come to the conclusion that plaintiff has not affixed requisite court fee, it has to grant an opportunity in accordance with proviso to Order 7 Rule 11(c) of the CPC granting an opportunity to the plaintiff to make up deficiency in court fee. So if the plaintiff wishes to correct the paragraph in relation to the relief claimed as well as the court fee payable in accordance with law at the very initial stage of the suit when even replication has not been filed as yet, it would neither be just and proper to deny the relief of amendment prayed for by the applicant/plaintiff.

6. The other amendments relate to making composite averments in para 41A relating to cause of action, para 42 relates to valuation and the court fee and lastly the verification clause. The plaintiff also wishes to delete prayer A which relates to payment of gratuity, provident fund and other superannuation benefits. This prayer is sought to be deleted as pointed out during the course of arguments that substantial part of grant of relief is granted to the plaintiff and secondly to avoid the objection of court fee. The plaintiff has admittedly not stated indifferent prayer in this para, which she could not have. The deletion of this prayer no way prejudices the defendants because prior to filing of the written

statement, the Court is informed that the dues of the plaintiff in this regard were paid after making necessary deductions. In fact by deleting this prayer, the plaintiff would have to suffer the consequences of abandoning claim at a subsequent stage, if at all.

7. All these amendments in fact are intended to obviate the rejection of a plaint on the basis of these irregularities where the Court normally would grant time to the plaintiff to correct such clauses. The law in regard to amendments have been discussed in very recent judgment of this Court in the case of *Ajit Singh Gill & others v. Mr.Arjund Khosla and Ors.* (CS(OS) 234/1997) decided on 28th August, 2005, which held as under :-

5. At this stage it will be appropriate to discuss certain principles governing the provisions of Order 6 Rule 17. These principles were discussed by this Court in CS(OS) 301/2003 (*International Tractors Ltd. v. Punjab Tractors Ltd.*) decided on 28th July, 2005 wherein the court held as under :-

9. In the case of *Ragu Thilak D. John Vs. S. Rayappan and Others*, the Supreme Court while dealing with the question of amendment of a plaint and the relief prayed for was barred by time as contended by the defendant where the relief of recovery of damages was being added by way of amendment to a suit for injunction, held as under :-

5. After referring to the judgments in AIR 1921 50 (Privy Council) *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., Smt. Ganga Bai Vs. Vijay Kumar and Others*, , *Ganesh Trading Co. Vs. Moji Ram*, and various other authorities, this Court in *B.K.N. Narayana Pillai Vs. P. Pillai and Another*,

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 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.

6. If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in para 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a

subject-matter of the issue after allowing the amendment prayed for.

10. The material controversy in the suit between the parties is wide enough to take in its ambit the controversies relating to manufacturing of tractors alleged to have been covered by agreement of 13th August, 2004. This is a controversy to which the defendant would have every right to prove to the contrary and show to the court during the trial of the suit that the protection earlier given to it continues and it has a protected right to manufacture 20 HP tractors. Law of amendment should receive liberal construction and application in the suit. Reference in this regard can be made to the case of *Indian Sulphacid Industries Ltd. v. Joginder Kaur and Anr* 1999 (2) PLR 734. It is a settled principle of law that law of amendment should be liberally applied to the suits particularly to avoid multiplicity of litigation and unless application for amendment was filed by the party who was acting mala fide and would result in injury to the other side so as to take away a right or a benefit which had accrued to it as a result of negligence on the part of the applicant, the application should normally be allowed when it would cause no injustice to the other side and defendant would get full opportunity to meet the case of the applicant even if the amendment was allowed. Reference in this regard can be made to the judgments of the Supreme Court in *Raghunath G. Panhale (Dead) By Lrs. Vs. M/s. Chaganlal Sundarji and Co.*, and in *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, . It will also be appropriate not to compel the plaintiff to file a fresh suit which may liable to be stayed even u/s 10 of the CPC as the decision of the present suit is bound to have material bearing on the subsequent suit. Avoidance of multiplicity of litigation is one of the basic objects of procedural law and a party cannot be compelled to file other suit. In this regard, reference can be made to the judgment of the Supreme Court in *Dondapati Narayan Reddy Vs. Duggirddey Venkatanarayana Reddy and Others*, and *Balwant Singh v. Harbans Singh* 1999 (2) PLR 517.

8. In view of the above well settled principles of law, one has to now examine the question of prejudice to the rights of the defendants. What prejudice would be caused to the defendants have not even been stated in the reply to this application. The expression "prejudice" must be understood in its correct legal connotation and it has no linguistic meaning which in law can be considered as a sufficient ground for rejection of an application for amendment. Merely because some objections could be taken up by the defendants in his written statement which the plaintiff seeks to avoid by way of amendment can be no prejudice per se. The defendants have not been able to show what prejudice would be caused to them and even if the plaintiff is permitted to carry out, more or less, the afore noticed formal amendments in the plaint. Some variations in the amendment already made by the plaintiff in the plaint are not materially different or in contradiction to the averments made in the plaint. The amendment prayed for by the plaintiff are inconsistency to the pleaded case and the law of amendment would permit such amendments at the very initial stage of the proceedings.

9. In view of my above discussion, I would allow the amendment application of the plaintiff and the amended plaint already filed. Along with this application is permitted to be taken on record, subject to payment of Rs.5,000/- as costs.

10. Now it would be appropriate to look into the merits of the application of the defendants under Order 7 Rule 11 CPC as well as the oral prayer made by learned counsel appearing for the defendant for deletion of names of defendants 1 to 6 and 8 from the array of the parties in the plaint. Learned counsel appearing for the defendant/applicants at the very outset referred to the orders of the Court to show that summons in the suit have not yet been issued to the defendants 1 to 6 and 8 and as the plaint discloses no cause of action against them as stated in the application under Order 7 Rule 11 CPC, the suit qua them should be dismissed and/or in any case their names be ordered to be struck off from the record. No doubt summons in the suit, in fact, were never issued. On 28th February, 2001 when the suit came up for hearing for the first time, counsel for defendant No.7 had put in appearance as a Caveator. Vide this order, the Court had not directed issuance of summons to any other defendants and in fact to no one. An application being 1940/2002 under Order 7 Rule 11 was filed on behalf of defendant No.7 which was taken up by the Court on 2nd March, 2001. This application was adjourned from time to time, till arguments on this were heard by the Court on 25th August, 2005. The objection of the defendant in relation to deficiency in court fee was also noticed by the Court vide its order dated 15th February, 2002 and the defendant had also raised a counter claim for recovery of Rs.6,81,197/- with pendente lite and future interest @ 24% in favor of defendant No.7 and against the plaintiff. Vide order dated 9th August, 2002, the Court had noticed that the superannuatory benefits of the plaintiff could be claimed by the plaintiff in an appropriate manner by complying with the formalities and with this direction is 2005/2001 was disposed of while in is 2005/2000 the hearing was deferred. On 20th March, 2003, the Court passed the following order :-

Defendant No.7 has handed over an affidavit incorporation stand of defendant No.7, on the aspect of bearing of liability of the decree, if any, as may ultimately be passed by this Court. A copy has been handed over to learned counsel for the plaintiff, who wants to take instructions in the matter.

List the matter on 28.3.2003.

11. Vide order dated 24th September, 2003, the plaintiff was directed to make up the deficiency in Court Fees within one week and hearing of other application was deferred.

12. On these facts, with some emphasise, arguments were addressed on behalf of the parties on the application for rejection of the plaint with costs. The grounds primarily taken are that the suit has not been valued properly for the purposes of court fee, there is no cause of action in favor of the plaintiff and against the defendants 1 to 6 and 8. Merely because defendants 1 to 6 are

Chairman, Managing Director or other officers of defendant No.7, would not be individually liable to be sued and as such the suit is bad for misguide of the parties and no cause of action has arisen by the plaintiff against the said defendants. The objection has also been made with regard to verification of the plaint. The valuation of the suit for the purposes of his jurisdiction is also questioned.

13. Learned counsel appearing for the defendant relied upon the case of Kundan Singh Vs. Moga Transport Co. (P.) Ltd. and Others, and Tikam Chand Jain Vs. State Government of Haryana and Another, to contend that the Managing Director of a Company would not be personally liable under the statute for company's dues if the decree is against the company. The liability to discharge the decretal amount was that of the Company and not its Managing Director. It is also contended that there is no provision either in the Companies Act, 1956 or under special Acts which makes the Managing Director of the Company personally liable for recovery of the dues against the Company. Drawing an analogy there from it is contended that Chairman and Managing Director of the Company could not be impleaded as a party to the suit in their personal capacity for a relief against wrongful termination. The arguments raised on behalf of the applicant/defendant is without any substance. The judgment relied upon by learned counsel for defendant has no application to the present case on the principle of ratio decidendi, as neither the facts are similar nor the question of law being raised in the present case. There are definite averments made by the plaintiff against the defendants which I would shortly proceed to discuss. Allegations of such serious nature are to be denied by the defendants against whom such allegations are made. The said defendants had no opportunity so far to admit or deny such allegations as summons have not been issued against them as yet.

14. Defendant No.7 is a body corporate and can speak for itself. In case of H.S.Sidana v. Rajesh Enterprises (1993) 77 Comp Cas 251 (P&H) relied upon by the defendant, it was stated by the Court that the Managing Director of the judgment debtor Company could be sued if it came to the conclusion that the Managing Director was personally liable to discharge the decretal amount. In the present case, damages have been claimed of Rs.75.10 lacs against all the defendants jointly and severally. The principles governing the provisions of Order 7 Rule 11 CPC for rejection of the plaint by now are governed by well defined percepts of law. These principles have been summed up by this Court in one of the recent judgment of this Court in the case of Arunesh Punetha v. Boston Scientific Corporation & Ors (CS(OS) No.951/2004) decided on 25th August, 2005, where the Court held as under :-

7. It is a settled rule of law that the plea of rejection of plaint is founded on the "PLEA OF DEMURRER.

A person raising such plea in law has to take the facts as stated by the opponent as correct. Despite tentative admission of such correctness, the plaint does not

disclose a complete or even partial cause of action or the relief claimed is barred by law and thus, the plaint is liable to be rejected within the provisions of Order 7 Rule 11 of the Code of Civil Procedure. Plain language of this rule shows that for determination of an application under this provision, the Court has to look into the plaint. This concept has been extended by judicial pronouncement of various courts so as to take within its ambit even the documents filed by the plaintiff Along with plaint or subsequent thereto but prior to the hearing of such application.

3. The Supreme Court in a very recent judgment titled as Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another, discussed at great length not only the ambit and scope of these provisions but also commented upon certain vital issues in relation to maintainability and adjudication of an application under Order VII Rule 11 of the Code. This judgment in fact has been heavily relied upon by the learned counsel appearing for the non-applicant/plaintiff in support of his submissions. While describing the meaning of cause of action, the court held as under:-

128. As by reason of an order passed under Order 7 Rule 11 of the Code of Civil Procedure, the rights conferred upon the parties are determined one way or the other, *stricto sensu* it would not be an interlocutory order but having regard to its traits and trappings would be a preliminary judgment.

129. It is true that in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, it it stated that an order rejecting the plaint would be appealable but it does not expressly state that an order refusing to reject would not be appealable. Therein this Court gave 15 instances where an order would be appealable which are only illustrative in nature.

130. Such observations have to be understood having regard to the concept of finality which is of three types:-

- (1) a final judgment
- (2) a preliminary judgment
- (3) intermediary or interlocutory judgment.

131 In our opinion an order refusing to reject the plaint falls in the category of a preliminary judgment and is covered by the second category carved out by this court.

135. Yet again in *Samar Singh v. Kedar Nath* 1987 Supp SCC 563 it has been held:- (SCC p.665 para4)

"In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the CPC for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole

purpose of conferment of such powers is to ensure that the litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent.

Rejection of plaint

139. Whether a plaint discloses a cause of action or not is essentially a question of act. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

15. Having referred to the principles, governing the application of the provisions of Order 7 Rule 11, it has to be understood clearly that for adjudication of such an application, the averments made in the plaint are to be taken as correct. The applicant has to show that the plaint as framed is liable to be rejected despite such correctness on one or more grounds stated in clauses A to F of Order 7 Rule 11 CPC. Thus at this stage, Court would not examine whether the averments made in the plaint are correct or incorrect. The Court has to see whether or not the suit as framed, gives rise to cause of action against the defendants and whether the suit as framed is barred under any law for the time being enforce.

16. Paragraphs 10, 11, 15, 17, 18, 20 and 21 read in conjunction with paras 38, 41, 42 and the prayer clause make a complete and composite cause of action against all the defendants jointly and severally. Whether the plaintiff would succeed in getting a decree against the defendants or not is a matter of trial and the merits of the case ought not to be subject matter of court's discussion at this stage. In all these paragraphs, it has been specifically stated by the plaintiff that it was under the directions of defendant No.1 and with an intention to change the entire higher management of the defendant No.7 that services of the persons were terminated in an arbitrary and mala fide manner. It is also her allegation that she had tried to satisfy defendant Nos.1 & 2 that her performance was good and she was not in-competent but it was because of some personal reasons known to them that her services were dispensed with in a most arbitrary, illegal and malafide manner. The allegations made in the plaint are stated to be supported with some correspondence between the parties and also that prior and subsequent conduct of her termination of service by these defendants show that this was not a case of implicate bonafide termination of her services. Serious allegations have been made against these defendants. May be, they are not correct but that can only be done by the court after a complete trial. If that be so, the plaintiff would run the risk of facing consequences of a malicious prosecution, may be the Court would award costs to the such defendants or pass such order or direction at the end of the trial as the Court may deem fit and proper in the facts and circumstances of the case. At this stage, it certainly cannot be said that the plaint does not disclose any cause of action against these defendants. There are allegations against them. The allegations are in relation to wrongful termination of the plaintiff and definite reliefs have been claimed

against all these defendants. The formation of cause of action has to be examined and determined in the facts of each case. It cannot be subjected to any universal rule. Cause of action will constitute of every fact which would be necessary for the plaintiff to prove, if traversed, in order to support her claim before the Court for judgment, but clearly distinct from every piece of evidence which may be necessary to prove each fact. In the present case, the facts averred in the plaint are the ones which on their plain reading disclose a right of the plaintiff to sue the defendants for the relief claimed. The facts averred in different paragraphs are integral cause of action against the defendants. Reference in this regard, can also be made to the judgments of the Supreme Court in the case of Rajasthan High Court Advocates Association v. Union of India & Ors AIR 2001 SC 416 and Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, . The main objection of the defendants is related to clause (d) of the prayer clause which has already been deleted by the plaintiff. The application of the plaintiff for amendment in this regard has been allowed. Thus, this objection has no merit. As far as other reliefs are concerned, the plaintiff has valued the suit correctly for the purposes of court fee and jurisdiction. It has not been even pleaded in the application as to for what relief except the relief claimed in prayer of the original claim, the proper court fee has not been filed. The deficiency of court fee of Rs.500/- which was pointed out during the pendency of the suit was made good by the plaintiff in terms of the order of the Court dated 24th September, 2003. Learned counsel for the applicant relied upon a judgment of this Court in the case of Rampur Distillery and Chemicals Co. Ltd. Vs. Union of India, where when the plaintiff seeks avoidance of specified money liability, the plaintiff is liable to pay the court fee ad valorem. This objection relates to prayer D which does not exist in the amended plaint. There is no doubt that in terms of the judgment of Division Bench of this Court in the case of Commercial Aviation T.Co. v. H.L. Malhotra 1986 RLR 362, the Full Bench of this Court in the case of Purshottam Dass and Others Vs. Har Narain and Another, , Anil Rishi Vs. Gurbaksh Singh, and Fox Software Tech Ltd. v. Siltap Chemicals Ltd. (CS(OS) No.1747/2003) decided on 25th August, 2005, the Court held that the plaintiff cannot arbitrarily and vexatiously draft a plaint so as to avoid the court fee and must pay the requisite court fee in accordance with law as required u/s 11(4) of the Court Fees Act. I have already noticed that except prayer (d) nothing has been stated in the application or during the course of arguments as to on what relief the court fee has not been paid in accordance with law. On the averments made in the plaint as well as the clause of court fee and the valuation of the court fee and jurisdiction, at least, prima facie at this stage it is nowhere evident that the plaintiff has failed to pay the required court fee in accordance with law. Further more in the judgment of this Court relied upon in the case of Rampur Distillery & Chemicals Co.Ltd. (supra) it was held that the court while deciding the question of court fee should look into the allegations in the plaint to see what is the substantive relief that is asked for and mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for. In order to substantiate this objection of

court fee, it is obligatory on the part of the applicant to show that in the disguise of which relief the plaintiff is avoiding to pay the requisite court fee. At least, none appears from the bare reading of the plaint. The defect in regard to verification of the plaint which itself is an irregularity and is permissible to be cured has already been cured by the plaintiff. There is no misguide of parties demonstrated on the bare reading of the plaint. Consequently, I find no merit in this application and the same is dismissed.

17. The orders of the Court dated 28th February, 2001, 20th March, 2003 and the affidavit dated 20th March, 2003 filed by defendant No.7 in the Court are of no consequence or favorable to the applicant/defendant No.7. Merely because the defendant No.7 had stated that it shall bear the liability, if any, that may ultimately be determined against defendants 1 to 6 and 8 and that this is without prejudice to the rights and contentions of the parties to the suit, should per se be sufficient to delete the name of the parties in the suit, is to say the least is an erroneous approach in law. It is a well settled canon of civil jurisprudence that the plaintiff is dominus litus of the suit and is free to choose the defendant against whom she has a cause of action and claim such relief as she desires, provided the same is permissible in law. Obviously for such acts, the plaintiff also renders herself liable for such consequences as may flow in law, upon conclusion of the trial.

18. The application of defendant No.7 is dismissed while leaving the parties to bear their own costs.

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19. In view of the above orders passed, summons to defendants No.1 to 6 and 8 be issued, returnable on 18.10.2005.