

(2008) 03 DEL CK 0149

In the Delhi High Court

Case No : IA No. 4332 of 2007 in CS (OS) No. 2132 of 2006

Nisha Somaia

APPELLANT

Vs

Outlook Publishing (India) Ltd. and Others

RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115

Citation : (2008) 149 DLT 734 : (2008) 103 DRJ 331

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Malvika Rajkotia, for the Appellant; A.J. Bhambhani and Nisha Bhambhani, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—This is an application filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure, for amendment of the plaint.

2. The plaintiff/applicant has filed the present suit against the defendants claiming damages to the tune of Rs. One Crore on account of defamation. Notice was issued in the suit on 17.11.2006. During the pendency of the suit, a previous application under Order VI Rule 17 CPC for amendment of the plaint was filed on behalf of the plaintiff/applicant, which was however dismissed as withdrawn vide order dated 14.2.2007, with liberty granted to the plaintiff/applicant to file an appropriate application in accordance with law. In the meantime, the defendants filed their written statement on 8.3.2007. Thereafter the present application for amendment of the plaint under Order VI Rule 17 CPC came to be filed by the plaintiff/applicant on 28.3.2007.

3. By way of amendment, the plaintiff/ applicant wishes to amend the cause title of the suit from "A suit for damages on account of defamation for Rupees one crore" to "Amended suit for damages on account of defamation, breach of confidence and privacy and deceit for Rupees one crore", besides adding three

paragraphs, being paragraphs No. AA, 6A and 25A to the plaint.

4. Learned Counsel for the plaintiff/applicant submitted that no additional facts are sought to be added to the plaint by way of the proposed amendment, and that it was already stated in paragraph 6 of the original plaint that the defendant No. 5 had misrepresented to the plaintiff and made her believe that the article to be published in the magazine "Outlook", owned by defendant No. 1 would be related to fashion and large size women and thus the plaintiff allowed herself to be photographed for a cover feature in March, 2006. It was further contended that the amendments being sought in the original plaint only amplify the stand already taken by the plaintiff and specifically state the rights being breached, on the basis of which she claims entitlement to damages. Counsel for the plaintiff/applicant submitted that the said amendments are necessary to decide the real controversy between the parties, and that even if the amendments sought are allowed, the nature of the suit would remain the same. In support of her submissions, learned Counsel for the plaintiff/applicant relied on the following judgments:

- i. A.K. Gupta and Sons Vs. Damodar Valley Corporation,
- ii. B.K.N. Narayana Pillai Vs. P. Pillai and Another,
- iii. M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.,

5. On the other hand, the present application for amendment of the plaint was strongly opposed by the learned Counsel for the defendants, who submitted that by way of the present application, the plaintiff/applicant is seeking to introduce pleas which are destructive of/inconsistent with the stand taken by her earlier. Counsel for the defendants contended that the plaintiff had changed her stand on material facts in the plaint and is seeking to resile from the material admissions made by her in favor of the defendants in the earlier plaint. He pointed out that by way of the present application, the plaintiff/applicant also seeks to change the nature of the suit itself and to include within its ambit other heads of relief, namely, breach of confidence, breach of privacy and deceit, which were not a part of the original plaint. It was urged that the plaintiff has not furnished any reasons for seeking the amendments and by trying to do so, she is attempting to widen the scope of defendants' alleged liability, which he submitted, ought not to be allowed by this Court.

6. The second limb of the arguments advanced on behalf of the defendants is that the present application is belated, inasmuch as the same has been filed only on 28.3.2007, long after the defendants filed their written statement to the original plaint, i.e. on 8.3.2007. It was stated that since the defendants have already filed their written statement, the plaintiff has come to know of the exact nature of their defense and after assessing the strength of her case on the basis of the said written statement, the present application has been moved with the malafide intention to misuse and abuse the process of the Court. Lastly, it was urged that a perusal of the earlier application filed by the plaintiff/applicant for

amendment of the plaint, when juxtaposed against the present application shall reveal the contradictions in the stand of the plaintiff, which itself is reason enough to reject the application.

7. In support of his arguments, learned Counsel for the defendants placed reliance on the following judgments: Kanailal Das and Another Vs. Jiban Kanai Das and Another,

8. Gurdial Singh and Others Vs. Raj Kumar Aneja and Others, . I have heard the counsels for both the parties and have given my careful consideration to the arguments advanced by them.

9. The provision of Order VI Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. It is a settled position of law that the Courts while deciding a prayer for amendment should not adopt a hyper-technical approach. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Such of the amendments that are directed towards putting forth and seeking determination of the real questions in controversy between the parties ought to be permitted to be carried out.

10. The general rule is that pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof since in the former case, it can be assumed that the defendant would not be prejudiced as he would have the complete opportunity to counter the stand of the plaintiff/applicant post amendment. In cases where amendment is sought at a post-trial stage however, the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case.

11. The Supreme Court in the case of B.K.N Pillai (supra) after referring to a number of decisions, held as under:

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 hyper technical 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 the following passage from the judgment in A.K.

Gupta and Sons Ltd. (supra) was quoted:

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 AIR 1921 50 (Privy Council) and *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*,

12. In the present case, contrary to the stand taken by the defendants, the amendments sought to be made in the plaint do not appear to be such as to introduce a new cause of action, or set up a new case. Rather, it amounts to an additional approach towards seeking the same relief of damages. In the case of *Akshaya Restaurant Vs. P. Anjanappa and Another*, , the Hon"ble Supreme Court allowed the amendment application, even though a different stand was taken by the plaintiff therein in its amendment application. Relevant extract of the said judgment is reproduced herein below:

3. Learned Counsel for the appellant vehemently contends that having made an admission that the respondents had entered into an agreement of sale and having made certain averments in support thereof, it was not open to the respondents to wriggle out from the admission. Admission is a material piece of evidence which would be in favor of the appellant and binds the respondents when the admission is sought to be withdraw and some additional facts are sought to be introduced, it would be inconsistent and the High Court was not justified in permitting such an amendment.

4. We find no force in the contention. It is settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It is seen that in paragraph 6 of the written statement definite stand was taken but subsequently in the application for amendment, it was sought to be modified as indicated in the petition. In that view of the matter, we find that there is no material irregularity was committed by the High Court in exercising its power u/s 115 C.P.C. in permitting amendment of the written statement.

13. In view of the aforesaid judgment, the argument of the defendants that by way of the present application the petitioner/applicant has resoled from the admissions made by her in the original plaint, also, cannot be sustained and deserve to be rejected.

14. Coming to the second plea of the defendants that the present application is belated, as it has been filed after filing of the written statement and that the application ought not to be allowed in view of the fact that the same is an attempt on the part of the plaintiff/applicant to improve upon her case, as a response to the written statement of the defendants, the records of the present case do not support the aforesaid plea. The cause of action for institution of the

present suit arose in favor of the plaintiff/applicant on 14.08.2006, the present suit was filed well within the period of limitation, i.e., on 7.11.2006. The first amendment application was moved on 6.2.2007, and was withdrawn on 14.2.2007, with liberty to move an application at the appropriate stage. Thereafter, the present application was filed within a period of less than 2 months from the date on which the previous application was withdrawn, i.e., on 28.3.2007. Thus, even if the plea of the defendants that the plaintiff is seeking to change the nature of the suit by way of amendment is accepted, it is not as if any of the proposed amendments are barred by limitation.

15. Merely because the defendants filed their written statement in the meanwhile, is not reason enough to deny the plaintiff/applicant an opportunity to file an application under Order VI Rule 17 CPC and seek amendment of the plaint. There is substance in the submission of the counsel for the plaintiff/applicant that the grounds she wishes to amplify by seeking the proposed amendments, already find reference in the plaint. The suit is still at a nascent stage, and the pleadings are yet to be completed in the suit. Fact also remains, that the defendants would not be prejudiced in any manner if the present application is allowed, for the reason that they would have ample and adequate opportunity to meet the case of the plaintiff/applicant by filing a written statement to the amended plaint.

16. The other plea raised on behalf of the defendants that the earlier application filed by the plaintiff for amendment of the plaint, which was subsequently permitted to be withdrawn, with liberty to file an appropriate application, leading to the filing of the present application, does not mean that the court cannot look into the averments made in the previous application to contrast it with the present application, to show variance in the stand taken, is unacceptable for the reason that the moment the plaintiff/applicant was permitted to withdraw her previously filed amendment application, and she filed the present one, then the court need not look beyond the submissions made in the latter and the only surviving application to exercise its discretionary jurisdiction, to either allow or refuse the prayer for amendment.

17. Also, the judgments relied on by the counsel for the defendants do not take his case any further. In both the cases referred to by the counsel, the Supreme Court and the Calcutta High Court only reiterated the principles established by judicial decisions in respect of amendment of a plaint. A decision ordinarily is a decision on the case before the Court, and each case is to be decided in view of its own peculiar facts and circumstances.

18. Accordingly, it is held that the amendments sought by the plaintiff/applicant to the plaint are necessary for the purposes of determining all the issues in controversy between the parties. No such irreparable prejudice shall be caused to the defendants in case the amendments as sought by the plaintiff are permitted, as the case is still at the stage of completion of pleadings.

19. Consequently, the application of the plaintiff/applicant for amendment of the plaint is allowed. The plaintiff/applicant is permitted to incorporate the amendment sought by her as detailed in the application, by substituting the cause title of the suit, and by adding paras AA, 6A and 25A to the plaint. The amended plaint filed with the application is taken on record.

20. The application is disposed of.