

(1988) 12 DEL CK 0026
In the Delhi High Court

T.L. Arora and others

APPELLANT

Vs

Ganga Ram Agarwal (No. 3) and others

RESPONDENT

Date of Decision : 11-12-1988

Acts Referred:

Citation : (1988) 12 DEL CK 0026

Hon'ble Judges : Mahesh Chandra, J

Bench : Single Bench

Judgement

Mahesh Chandra, J.—This petition has been filed by defendants Nos. 1, 2, 3, 6 and 7 under Order VI, rules 2 and 16, read with section 151, of the CPC with the request that paragraphs 5, 6, 9 to 17(a) and (b) and 18 to 41 as well as the first sentence of paragraph 42 and the word "conspiracy" used in paragraphs 42 as well as 44 and the word "conspired" used in paragraph 46 of the plaint be struck out. The application is opposed on behalf of the plaintiffs. I have heard learned counsel for the parties and have given my considered thought to the matter before me and I have come to the following findings.

2. This application has been filed in the suit filed by the plaintiffs for a declaration that plaintiff No. 1 is a validly re-nominated director of defendant No. 7-company on the allegations that plaintiff No. 1 was a director of defendant No. 7 and at the annual general meeting held on March 31, 1986, he was to retire by rotation and to be re-elected as director thereof being the sole representative of the NRI group and being in possession of majority support of other local Indian shareholders in the form of proxy by defendant No. 1 in conspiracy with defendants Nos. 2 to 4 and two other directors objected to the re-nomination of plaintiff No. 1 and as director himself with the support of employees, directors and other bogus shareholders had forged the proceedings of the meeting in the minutes book which has cast a cloud on the right of plaintiff No. 1 and other plaintiffs and on the status and title of plaintiff No. 1.

3. The contention of learned counsel for the defendants is that keeping in view the cause of action of the plaintiffs as detailed in the plaint and the relief claimed

by the plaintiffs, it cannot be said that paragraphs 5, 6, 9 to 17(a) and (b) and 18 to 41 as well as the first sentence of paragraph 42 and the word "conspiracy" used in paragraph 42 as well as 44 and the word "conspired" used in paragraph 46 of the plaint are relevant; rather these are unnecessary, frivolous, vexatious and scandalous and are intended to cause prejudice and embarrassment to the defendants and as such should be struck out. I have been taken through each of the objections to the paragraphs and words in the plaint. As against this submission of learned counsel for the defendants, it has been submitted on behalf of the plaintiffs that the averments made in the plaint which are sought to be struck out are most material facts to show the real cause of the illegal and fabricated resolution and proceedings recorded on March 31, 1986, wrongly declaring plaintiff No. 1 as not re-elected and re-nominated as director of the defendant-company and would expose the ultra virus acts of these defendants and also the frauds committed by defendants Nos. 1 to 4 and 6 and that there was nothing in the plaint which was unnecessary, scandalous, frivolous or vexatious, much less anything to prejudice or embarrass these defendants. A perusal of Order VI, rule 2(1), of the CPC would show that it provides that "every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim of defense, as the case may be, but not the evidence by which they are to be proved. " This shows that, firstly, no evidence is to be stated in the plaint and, secondly, only the material facts on which the party pleading relies for his claim have to be stated and that too concisely. Order VI, rule 16, lays down as under :

"The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -

(a) which may be unnecessary, scandalous, frivolous or vexatious,

or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the court. "

4. In order to dispose of the contentions in this application, rule 2(1) of Order VI has to be read along with rule 16 thereof and such facts as are unnecessary, scandalous, frivolous or vexatious or which tend to prejudice or embarrass should be struck out. Whether a particular fact stated in the plaint is unnecessary, scandalous, frivolous or vexatious or would tend to prejudice or embarrass is mainly a question of fact.

5. Learned counsel for the defendants has drawn my attention to Shri Udhav Singh Vs. Madhav Rao Scindia, , in which it was held that "All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defense are "material facts"." Similarly, my attention was drawn to Ram Awalamb v. Jata Shankar AIR 1969 All 536, in para 54 in which it was held that "the term "cause of action", though nowhere defined, is now very

well understood. It means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment". This observation is based upon AIR 1949 78 (Privy Council) , which case was quoted with approval earlier even in *The State of Madras Vs. C.P. Agencies and Another*, , in para 3 whereof it was observed that cause of action means "Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved". There can be no dispute about these principles of law. However, what cannot be ignored are the observations of the Supreme Court in *Ganesh Trading Co. Vs. Moji Ram*, whereof, it was held that "procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take".

6. It may be mentioned at the very outset that pleadings is a difficult art and in India it has been mastered only by a few. The sole object of pleadings is to let the other party know the case of his rival so that a surprise is prevented at the trial and the other party has full opportunity to meet the case of his rival. The provisions regarding pleadings are to meet the case of his rival. The provisions regarding pleadings are contained in Order VI to Order VIII of the CPC which are mainly in the nature of procedural law intended to facilitate and not obstruct the course of substantial justice but these provisions equally aim at avoiding deviations from the course which litigation on particular causes of action must take. The intention of law on pleadings is that pleadings must contain a statement in concise form of material facts, which means all the primary facts which are necessary to be proved at the trial by a party to establish the existence of a cause of action or his defense. Whenever unnecessary, scandalous, frivolous or vexatious facts or such facts as tend to prejudice, embarrass or delay the fair trial of a suit have been introduced in the pleadings, the courts have been empowered under the Code to strike out such portions of pleadings so that the process of courts is not abused. It would be in the light of this position of law that the objection of the defendants to this application has to be considered.

7. Let us now consider in detail the specific paras which have been objected to by the defendant and for this purpose it would not be necessary to reproduce those paras verbatim in this order. Perusal of paras 5 and 6 shows that these paras relate to the payment of share money by the plaintiffs and as such these cannot be deemed to be either irrelevant or unnecessary or frivolous or vexatious or scandalous, much less can be said to be intended to cause prejudice and embarrassment to the defendants, and do not call for being struck out. Similarly, in para 9, the factual position with regard to defendant No. 1, being the working chairman of defendant No. 7, has been described and it has further been stated

that defendant No. 1 has constituted a managing committee comprising of defendants Nos. 2 to 4 and two others. This para also does not suffer from the infirmities alleged by the defendant. In para 10, the plaintiffs have stated that plaintiff No. 1 is a director of the company but is not member of the managing committee. It would be difficult to say if even this statement can be said to be irrelevant, much less unnecessary, frivolous, vexatious or scandalous or intended to cause prejudice and embarrassment to the defendants and this para is not for that matter liable to be struck out.

8. In para 11, the plaintiffs have alleged that defendants Nos. 1 and 2 have floated and incorporated several joint stock companies and other ventures from time to time to serve their ends and to divert funds of defendant No. 7-company and in para 12, it has been stated that defendant No. 1 was chairman or on the board of directors of some other companies and was controlling several financing and investment companies and in para 13, it has been alleged that defendant No. 1 was owning, managing and controlling those other companies and ventures through his benami shareholders or had a direct interest in the same. A perusal of these paras does go to show that they have no relevance to the suit of the plaintiff and are unnecessary and frivolous. In a way, it can be said that these are vexatious and scandalous also and are intended to cause prejudice and embarrassment to the defendants and, consequently, are liable to be struck out. In para 14, the plaintiffs have explained the purpose of incorporating paras 11, 12 and 13 in the plaint. The said purpose is stated to be to indicate a complex financial net work created by defendant No. 1 for siphoning off funds of defendant No. 7. In view of my finding with regard to paras 11, 12 and 13, it would follow that this para is also irrelevant and unnecessary and can be deemed to be frivolous, vexatious, scandalous and intended to cause prejudice and embarrassment to the defendants. Coming to para 15, although it would be difficult to say that this para is in any manner frivolous or vexatious or scandalous, yet it tends to be unnecessary and, Therefore, it can be safely said that it is irrelevant at least. Being unnecessary, it is liable to be struck out. Similar is the position with regard to paras 16, 17(a) and (b) and 18 to 36 in which also the plaintiffs have brought in facts relating to siphoning off and diversion of funds of defendant No. 7 and these are certainly not only not relevant but further also are unnecessary, frivolous, vexatious and scandalous and are intended to cause prejudice and embarrassment to the defendants.

9. In paras 37, 38 and 39, the plaintiffs have tried to give certain acts of non-feasance and misfeasance by defendant No. 1 which may not be vexatious or scandalous but are definitely unnecessary for the purpose of disposal of the matter in dispute between the parties in this suit and, consequently, are liable to be struck out.

10. In view of my discussion and findings above, only paras 11 to 39 of the plaint are liable to be struck out and this application is allowed to this limited extent. In view of the partial success of the defendants in this application, the parties would

bear their own costs in this application.