



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 16th December, 2021

Pronounced on: 10th January, 2022

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CM(M) 37/2019

SUMER SINGH SALKAN Petitioner
Through: Ms. Malavika Rajkotia with Mr. Mayank Grover, Advocates.

Versus

VIKRAM SINGH MANN & ORS Respondents
Through: Dr. Reema Salkan, R-2 in person and Power of Attorney Holder for R-1.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present petition under Article 227 of the Constitution of India seeks setting aside of (i) the order dated 6th February, 2018, whereby an application filed on behalf of the respondent no. 1/defendant no. 7 under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) seeking deletion from the array of parties has been allowed; and (ii) the order dated 12th July, 2018, whereby the review filed on behalf of the petitioner/plaintiff [hereinafter 'plaintiff'] against the order dated 6th February, 2018 has been dismissed.

2. Notice was issued in the present petition on 11th January, 2019 and pursuant thereto, counter affidavit has been filed on behalf of the respondents no. 1 and 2. Arguments of the counsels for the parties were heard on 16th December, 2021 and thereafter, the judgment was reserved.



Pursuant to the liberty granted by the Court to both sides, written submissions have been filed on behalf of the petitioner.

3. Brief facts necessary for deciding the present petition are set out hereinafter:

3.1 The plaintiff and the defendant no. 1 got married on 24th March, 2002 but soon thereafter, the petitioner left for Canada. Differences arose between them, which resulted in filing of police complaints by the defendant no. 1 against the plaintiff.

3.2 On 3rd March, 2004 a ‘Red Corner Notice’ (RCN) was issued against the plaintiff, who, at that point of time was in Canada, in which it was incorrectly recorded that the maximum possible penalty for the offences allegedly committed by the plaintiff was 10 years, whereas the maximum punishment prescribed for the said offences under Sections 498A, 406 and 34 of the Indian Penal Code, 1908 (IPC) was three years.

3.3 The plaintiff filed a writ petition before this Court seeking quashing of the illegal RCN and the LOC issued against the plaintiff, being W.P.Crl. 1315/2008, and vide the order dated 11th August, 2010, this Court allowed the petition and quashed the RCN.

3.4 The suit from which the present petition arises, being CS 58517/16, was filed on 10th August, 2011 seeking damages of Rs.50,00,000/- against, *inter alia*, the respondent no. 1, being defendant no. 7, and the respondent no. 2, being defendant no. 1, in the suit.

3.5 The suit was premised on damage to the plaintiff’s career, reputation and life caused by the misuse and abuse of the legal process in getting a ‘Look Out Circular’ (LOC) and RCN issued by the defendants against the plaintiff.



3.6 The case set up in the plaint was that the defendant no. 1, who was married to the plaintiff, used her brother, defendant no. 7, who was a senior IPS officer, to have a false FIR lodged and illegal LOC and RCN issued against the plaintiff, which caused immense harm to his career and reputation.

3.7 The said suit was contested by the defendants by filing a written statement. In the said suit, the defendants no. 5 and 6 filed two applications under Order I Rule 10 of the CPC seeking deletion of their names from the array of parties and the Single Judge, vide judgment dated 20th February, 2015 dismissed the application filed by the defendant no. 5 but allowed the application filed by the defendant no. 6. However, vide judgment dated 1st February, 2016, a Division Bench of this Court deleted defendants no. 5 and 6 from the array of parties. The plaintiff filed a Special Leave Petition against the said judgment, which is pending before the Supreme Court.

3.8 On 29th February, 2016, the suit was transferred to the District Court.

3.9 Thereafter, the defendants no. 1 and 7 filed a joint application under Order I Rule 10 and Order VII Rule 11(d) of the CPC seeking (i) their deletion from the array of parties; and, (ii) rejection of the plaint. The impugned order dated 6th February, 2018 allowed the application partially by rejecting the plaint *qua* the defendant no. 7 and deleting the defendant no. 7 from the array of parties. However, the plaint was not rejected *qua* the defendant no. 1. The impugned order held that:

- (i) in the whole plaint, there are vague allegations of collusion against the defendant no. 7;
- (ii) no particulars have been given by the plaintiff as to how the defendant no. 7 was involved in issuing of LOC or RCN;



- (iii) the defendant no. 7 being the brother of the defendant no. 1 and an IPS officer cannot be a ground to implead him in the suit on the basis of vague allegations of collusion;
- (iv) based on the aforesaid, it was held by the Trial Court that there is no cause of action against the defendant no. 7 and hence, the plaintiff *qua* him was rejected;
- (v) the application under Order I Rule 10 of the CPC has been filed on the same grounds as the application filed under Order VII Rule 11(a) of the CPC and accordingly, the defendant no. 7 was deleted from the array of parties.

3.10 The plaintiff preferred a review application against the aforesaid judgment of the Trial Court, which was dismissed by the impugned order dated 12th July, 2018 by observing that the judgment dated 11th August, 2020 passed by this Court in W.P. Crl 1315/2008 does not help the case of the plaintiff and there are no specific allegations against the defendant no. 7 in the plaint.

4. The counsel for the petitioner contended that (i) averments have been made against the defendant no. 7 with regard to his involvement and collusion with the defendant no. 1 so as to initiate various unlawful proceedings against the plaintiff, resulting in issuance of the RCN and the LOC. In this regard, attention of the Court is drawn to paragraphs 5, 6 (xiv), (xxii), (xxvi), (xxvii), (xxviii), (xxxii), (xxxiii) (xxxix) and 9 of the plaint; (ii) a Co-ordinate Bench of this Court in the judgment dated 11th August, 2010 in W.P.Crl. No.1315/2008 quashed the RCN issued against the plaintiff and observed in paragraph 10 of the said judgment that the LOC



against the plaintiff was issued in view of the fact that defendant no. 7 was the brother of defendant no. 1 and also an IPS officer; and, (iii) accordingly, keeping in mind the principles to be applied while deciding an application under Order I Rule 10 of the CPC, defendant no. 7 is a necessary and proper party to the suit and therefore, cannot be deleted from the array of parties.

5. Defendant no.1 appeared in person on her own behalf as well as on behalf of the defendant no. 7 as his Power of Attorney Holder. She submits that (i) there is no infirmity in the impugned order as only vague averments have been made in respect of the defendant no. 7; (ii) there is no finding in the judgment dated 11th August, 2010 against the defendant no. 7 and the observations in paragraph 10 relied upon by the plaintiff are only allegations made by the plaintiff and not findings of the Court. Even otherwise, any observations made in the aforesaid judgment are not binding on the defendant no. 7 since the defendant no. 7 was not a party in aforesaid writ petition; and, (iii) the defendant no.7 was not posted in Delhi at the relevant point of time and therefore, could not have played any role in the issuance of RCN and LOC against the plaintiff.

6. I have perused the record and heard the counsels for the parties.

7. In order to decide the controversy at hand, it may be useful to refer to the principles to be applied while invoking principles of Order I Rule 10 of the CPC. Order I Rule 10(2) of the CPC empowers the Court to delete or add parties to the suit. In ***Vidur Impex and Traders Pvt. Ltd. & Ors. Vs. Tosh Apartments Pvt. Ltd. & Ors.***, (2012) 8 SCC 384, the Supreme Court has succinctly laid down the principles to be followed while deciding an application filed under Order I Rule 10(2) of the CPC. Paragraph 36 in this regard is set out below:



"36. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.

2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff."

8. The Supreme Court in *Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. & Ors.*, (2010) 7 SCC 417 has observed that the general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief.

9. Applying the aforesaid principles to the present case, in my view, a bare reading of the plaint discloses that the plaintiff has made averments in the plaint against the defendant no. 7, which are sufficient in nature for the



defendant no. 7 to be a necessary and a proper party for the adjudication of the suit. Some of the averments made in the plaint with regard to defendant no. 7 are set out below:

"(xxii) The defendant No.1 using the contact network in the police and influence of her brother, Mr. Vikram Singh Mann, (who is a senior IPS officer) managed to get an illegal Look-Out-Circular (LOC) issued against the plaintiff on the 27.05.2003 by an who was not even authorised to issue LOC.

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(xxvi) The defendant No.1 continued to harass the plaintiff and his family in the garb of proceedings under Section 498-A/406/34 of IPC. The defendant No.1 with ulterior motives has spurned every effort by the plaintiff/his family and their representatives to resolve the matters in an amicable manner. Using her brother's, the defendant No.6, influence with the police, she managed to get an LOC issued against the plaintiff on 30.05.2003. After lodging the F.I.R No.127 of 2003 dated 22.04.2003, a Red Corner Notice was also issued by 'Interpol' on 03.03.2004 and displayed on internet containing wrong and misleading information about Nationality of plaintiff and alleged crimes for which he was allegedly wanted, when the same was factually incorrect.

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(xxxii) Since no response was received for a longtime, another notice dated 19.08.2008 was issued to defendant No.3 with a copy to the ACP, Sub-Division, Narela. A letter dated 28.08.2008 was, thereafter, received from defendant No.2 according to which the Red Corner Notice was issued at the behest of Delhi Police. The said notice was then amended but only the alleged offence of kidnapping had been dropped. The Interpol in their reply further stated that the 'Red Corner Notice' cannot be withdrawn unless Delhi Police asks for the same. Clearly such malicious acts were at the behest of defendant No.6 & 1. It was not understood why the false criminal charge of Crimes against life and health was not removed from the 'Red Corner



Notice'. This ought to have been done with immediate effect. Moreover, to the best of the knowledge of plaintiff there was no arrest warrant issued against him by any of the Hon'ble Courts in India."

10. Not only the averments above, even in the prayer, damages have been jointly sought by the plaintiff against all the defendants including the defendant no. 7.

11. The Trial Court has allowed the application under Order I Rule 10(2) of the CPC filed by the defendant no. 7 on the ground that only vague averments have been made against the defendant no. 7 and no specific incidents showing the role of the defendant no.7 have been given.

12. In my view, the averments made in the plaint, are sufficient for the impleadment of defendant no. 7 in the suit. Whether or not the said averments are true would be a matter of trial and the plaintiff would have to prove the said averments in the trial. But, at this stage, the plaintiff cannot be denied an opportunity of proving the averments made by him against the defendant no. 7 in the suit. Counsel for the plaintiff has correctly placed reliance on the judgment of the Supreme Court in **Syed Dastagir Vs. T.R.Gopalakrishnasetty**, 1999 (6) SCC 337 to contend that the pleading has to be read as a whole to gather what has sought to be conveyed.

13. Even though while deciding an application under Order I Rule 10(2) of the CPC, reference has to be made to the averments made in the plaint, there is merit in the submission of the counsel for the plaintiff that in the judgment dated 11th August, 2010 there are observations made by this Court in respect of the role played by the defendant no. 7 in getting the RCN/LOC issued against the plaintiff, which RCN was ultimately quashed by this Court vide the judgment dated 11th August, 2010. In this regard reference



may be made to the following observations made in paragraph 10 of the aforesaid judgment:

"10. In the present case, the LOC was issued against the petitioner soon after the registration of FIR. It is alleged by the petitioner that LOC was issued in view of the fact the complainant's close relative was an IPS officer. The allegation of the petitioner finds support from the fact that the punishment stated by the police to Interpol in respect of the offences committed has been deliberately given as 10 years while the prescribed punishment is maximum 3 years imprisonment."

14. There was no basis for the Trial Court to allow the application filed on behalf of the defendant no.1 under Order VII Rule 11 of the CPC on a piecemeal basis. While adjudicating an application under Order VII Rule 11, the plaintiff has a whole has to be rejected if the conditions mentioned under Order VII Rule 11 are fulfilled. However, the plaintiff cannot be rejected in a piecemeal manner. Therefore, the impugned order, to the extent it allows the Order VII Rule 11 application filed on behalf of the defendant no.1 *qua* the defendant no. 7, is clearly erroneous. In this regard, reference may be made to the judgment of the Supreme Court in ***Sejal Glass Ltd. Vs. Navilan Merchants Pvt. Ltd.***, (2018) 11 SCC 780. Paragraph 8 of the said judgment is set out below:

"8. We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order 7 Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order 7 Rule 11 will have no application at all, and the suit as a whole must then proceed to trial."



15. The reliance placed by the defendants on the judgment dated 01st February, 2016 of the Division Bench in respect of the defendants no. 5 and 6 is misplaced as the said judgment proceeded on the basis that the said defendants no. 5 and 6, who were officials of the Delhi Police, acted in the course of their official duty and therefore, the defendants no. 5 and 6 were not the necessary or proper parties in the suit. However, the reasoning of the said judgment cannot be applied in the present case. It is an admitted position that the defendant no. 7 was not posted in Delhi, nor was he directly involved with the issuance of LOC and/or RCN in the course of his official duty. The involvement of the defendant no. 7 is only based on the fact that he is the brother of defendant no.1 and was trying to help the defendant no. 1 in her matrimonial disputes against the plaintiff.

16. It was only after the judgment dated 01st February, 2016 of the Division Bench, when the defendants no. 5 and 6 were deleted from the array of parties, that the present application under Order I Rule 10 and Order VII Rule 11 of the CPC was filed by the defendants no. 1 and 7. Clearly, it was highly belated, five years after the institution of the suit, and appears to be in the nature of an afterthought.

17. In view of the above, the present petition is allowed and the impugned order, to the extent it rejects the plaint *qua* defendant no. 7 and allows deletion of the defendant no. 7 from the array of parties under Order I Rule 10(2) of the CPC, is manifestly erroneous and is accordingly set aside.

AMIT BANSAL, J

JANUARY 10, 2022
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