

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 25th May, 2016

+ RFA 305/2016 & CMs No.17613/2016 (for stay), 17615/2016 (for exemption for filing decree sheet) & 17616/2016 (for condonation of 41 days delay in re-filing the appeal)

KAMLESH SHERAWAT & ANR

..... Appellants

Through: Mr. Raghav Kapoor, Adv.

Versus

LALJI PATEL & ORS

..... Respondents

Through: None.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This first appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree dated 8th January, 2016 of the Court of Additional District Judge (ADJ)-03, Patiala House Court, New Delhi in CS No.240/2014 filed by the appellants/plaintiffs for “recovery of damages/compensation and litigation expenses on account of defamation” in the sum of Rs.5 lakhs, consequent to rejection of the plaint under Order 7 Rule 11 of CPC, on the ground of the relief claimed therein being barred by time.

2. The appeal came up before this Court first on 10th May, 2016, when the counsel for the appellants/plaintiffs appearing on the second call sought adjournment contending that he had as annexure to the memorandum of appeal filed a copy of the plaint as originally filed and not the amended plaint.

3. On the next date of hearing i.e. 12th May, 2016, though the counsel for the appellants/plaintiffs had filed the copy of the amended plaint but had not filed certain other documents. Owing thereto, the matter was posted for today and the Trial Court record requisitioned.

4. The learned ADJ has rejected the plaint holding that the suit had been filed on the basis of erroneous impression of the appellants/plaintiffs of the period of limitation under the Schedule to the Limitation Act, 1963 for filing of such a suit being of three years, when as per Articles 75 & 76 of the said Schedule, the period of limitation was of one year only.

5. It was/is the contention of the counsel for the appellants/plaintiffs before this Court that the order of the learned ADJ is erroneous, as it failed to consider the break-up of the amount of Rs.5 lakhs as given in the amended plaint.

6. The counsel for the appellants/plaintiffs in para 51 of the amended plaint has *inter alia* stated as under:

“51. That the Defendants have caused huge damages to the reputation, prestige and character of the Petitioner’s and the damage / compensation can be compensated in terms of money, however the petitioner’s are claiming compensation to the damages caused in the form of “DEFEMATION” to the tune of Rs.5,00,000/- which is in the denomination of:-

***ELECTRICITY/WATER CHARGES AND
MAINTENANCE TOTAL OF RS.90,000/-***

(Rs.42,000/- including arrears of electricity/water bills pending for past two years i.e. 2010 to 2012) + (Rs.48,000/- for maintenance charges for past two years including

maintenance of two booster pumps, two overhead tanks, sanitary expenses, plumber expenses, pipe fitting, repairs etc.)

***HARASSMENT PHYSICAL & MENTAL FACED
BY BOTH THE PETITIONERS SINCE AUG. 2012 TILL
TODAY AMOUNTING TO RS.2,00,000/-***

(Including daily police station visits, losses of businesses, loss of Mental peace, unnecessary harassment to both the Petitioners by filling frivolous litigation by the Defendants, harassment to both the Petitioners when defendants filed Civil Appeal which was dismissed, physical harassment when kalandara was prepared because of the Defendants, transportation expenses for both the Petitioners travelling from MAHIPALPUR to DWARKA, litigation expenses).

DEFAMATION AMOUNTING TO RS.2,10,000/-

(Defaming the reputation of the Petitioners in the society where Petitioner No.2 is living since his childhood by calling the Police Officials daily at the residence of the Petitioner's & also stating & addressing the Petitioner No.1 as not a good woman as she is into gambling and other illegal activities). Hence, making a Total of Rs.5,00,000/- in totality altogether, with an up to date interest @ 24% Per Annum."

7. On a reading of the plaint, it is quite clear that the entire amount of Rs.5 lakhs is claimed under the head 'Defamation' only, as also apparent from the title of the suit.

8. However, even if we are to treat the plaint as also being for recovery of Rs.90,000/- towards electricity, water and maintenance charges and Rs.2,00,000/- towards harassment, besides the sum of Rs.2,10,000/- towards defamation, the appellants/plaintiffs have claimed the sum of Rs.90,000/- towards electricity, water and maintenance charges without pleading

monthly break-up and by vaguely stating that the sum is for the period of two years i.e. from 2010 to 2012.

9. The suit is found to have been instituted on 15th March, 2014; the counsel for the appellants/plaintiffs today also is unable to state, as to what is the monthly break-up of the electricity, water and maintenance charges claimed therein. No bills or any other document to show that bills were raised by the appellants/plaintiffs on the respondents/defendants month by month or any demand made by the appellants/plaintiffs for the said amounts, has been pleaded.

10. Looked at in this way also, the plaint does not satisfy the requirements of Order VII Rule 6 of the CPC. In fact, a reading of the entire plaint shows the same to be long winded, without following any principles of pleadings and meandering from paragraph to paragraph. Certainly, such documents do not qualify as pleadings within the meaning of law and I am of the opinion that the plaint, even if held to be for recovery of electricity, water and maintenance charges to the extent of Rs.90,000/-, has to be rejected on this ground alone. Similarly, there is no pleading as to when the acts of physical and mental harassment on account of which damages in the sum of Rs.2,00,000/- were claimed / occurred. Again, it is vaguely stated that the same occurred from 2010 to 2012.

11. The counsel for the appellants/plaintiffs today also is unable to state which Article of the Schedule to the Limitation Act, 1963 would apply to such a claim. The same shows the plaint to have been drafted without regard to the Limitation Act.

12. It may be mentioned that a lot of the time of the Court is wasted when such pleadings are made and are put to trial and which trial, owing to the inherent weakness in the pleadings, is bound to fail. The time of the Court is not to be wasted in such matters, which appear to have been filed not with the intent to get any relief or for adjudication of any bona fide dispute but only to be used as a process of harassment of the opposite party by engaging the opposite party in litigation.

13. Pleadings of the parties form the foundation of their case on which issues are raised, evidence let in and findings arrived at for deciding litigation. Parties are bound by the pleadings. A case not set up cannot be allowed to be proved. If evidence is let in outside the pleadings it cannot normally be looked into. From the pleadings, the opposite party must know what is the case he has to answer and prove. Otherwise, the rule of pleadings and the provision for amendment of pleadings for deciding the real question in controversy between the parties will become meaningless. Decision of a case cannot normally be on grounds outside the pleadings. It is a case pleaded that alone could be proved. Without the necessary pleadings, relief cannot be granted even if there is evidence.

14. Supreme Court in ***Bachhaj Nahar Vs. Nilima Mandal*** (2008) 17 SCC 491 reiterated that the object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases from being expanded and grounds being shifted during trial. It was held that the object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an

opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. It was yet further held that when the facts necessary to make out a particular claim or to seek a particular relief are not found in the plaint, the Court cannot focus the attention of the parties or its own attention on that claim or relief by framing appropriate issue and the Court, on finding that the plaintiff has not made out the case put forth by him, cannot grant any relief.

15. Supreme Court as far back as in ***Kapil Deo Shukla Vs. The State of Uttar Pradesh*** AIR 1958 SC 121 disapproved the practice of not taking specific grounds either of law or facts, in that case in the memorandum of appeal under the Cr.P.C. It was held that a memorandum of appeal which does not specifically raise points of fact and law must be rejected *in limine*. It was reasoned that a memorandum of appeal is meant to be succinct statement of the grounds upon which the appellant proposes to support the appeal and serve as a notice to the Court that such and such specific grounds are proposed to be urged on behalf of the appellant, as also a notice to the respondent that he should be ready to meet those specific grounds. A memorandum of appeal with a bald ground was held to be of no help to any of the parties or to the Court. It was held that such a bald ground may have the merit of relieving the person responsible for drawing up the grounds of appeal of applying his mind to the judgment under appeal and its weak point but this slight advantage is very much out-weighed by the serious disadvantage to the parties to the litigation and the Court which is to hear the appeal. Such a bald statement of the grounds was held to leave the door

wide open for all kinds of submissions thus tending to waste the time of the Court and taking the respondent by surprise.

16. In spite of the Supreme Court having held so more than half a century ago and having reiterated the same again in *Amanullah Vs. State of U.P.* (1973) 2 SCC 81, the pleadings continue to be drafted recklessly and without regard to the requirements of law. In fact, the Division Bench of this Court in *Dr. H.L. Raskaran Vs. Union of India* MANU/DE/3459/2011 commented upon the falling standards of pleadings resulting in judicial time being wasted and contributing as one of the many reasons amongst others for judicial delays. It was observed that hours are spent to grapple with the pleadings to understand what the controversy is. Another Division Bench of this Court in *Zulfiqar Ali Khan Vs. Straw Products Limited* 87 (2000) DLT 76 observed that only such pleas as give rise to clear and *bona fide* disputes are triable and not illusory and unnecessary or *mala fide* untenable pleas, to delay the suit and that if a plea is not valid and tenable in law, the Court would not be bound and justified in framing issue on the same thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable Court time.

17. Though it is also a principle of law that the Court should not dismiss on mere technicality but I am of the view that since, in spite of the Courts having commented repeatedly on the subject such pleadings continue to be brought before the Court, a time has come for the Court to curb the said practice and as aptly observed by the Supreme Court in *Ramrameshwari Devi Vs. Nirmala Devi* (2011) 8 SCC 249 and reiterated in *Maria*

Margarida Sequeira Fernandes Vs. Erasmo Jack De Sequeira (2012) 5 SCC 370, by striking down such pleadings, in order to curb uncalled for and frivolous litigation. It was similarly observed in *Prabodh Verma Vs. State of Uttar Pradesh* MANU/SC/0061/1984 that from the principle that the Court should not dismiss on a mere technicality or just because a proper relief is not asked for, it does not follow that the Court should condone every kind of laxity in drafting pleadings and which appears to have become a rule rather than an exception. It was held that an ill-drafted pleading is an offspring of the union of carelessness with imprecise thinking and its brothers are slipshod preparation of the case and rambling and irrelevant arguments leading to waste of time which the courts can ill-afford by reason of their overcrowded dockets.

18. No case for entertaining this appeal is made out.
19. Dismissed.
20. I refrain from imposing further costs on the appellants/plaintiffs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MAY 25, 2016

Bs/gsr..