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

% Date of Decision: 02.09.2016

+ CM(M) 861/2016

DR S S SRIVASTAVA Petitioner

Through: Mr. Swastik Singh Solanki, Advocate.

versus

SATYA PAL NANDA & ORS Respondents

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

C.M. No.32018/2016 (for exemption)

Allowed, subject to all just exceptions.

CM (M) No.861/2016 & C.M. No.32017/2016 (for stay)

1. By the present petition, the petitioner seeks to impugn the order dated 26.7.2016 by virtue of which the applications filed by respondent/defendant Nos.2 and 3 to amend the written statement have been allowed.

2. A reading of the plaint shows that it is an unfortunate incident that had taken place in a Senior Citizens Home. Be that as it may, the suit is filed for damages by the petitioner on account of an incident that has taken place in the Senior Citizens Home. It is the stand of the petitioner that respondent Nos.1 to 3 have hatched a conspiracy to humiliate and insult the petitioner and hence damages are sought to

the tune of Rs.10 lacs from the defendants jointly and severally for loss of reputation caused to the petitioner.

3. The learned counsel appearing for the petitioner submits that by the impugned order, the respondent Nos.2 and 3 seek to amend their written statement and add a completely new story which is contradictory to their earlier stand.

4. The trial court noted that recording of evidence has not yet commenced and the proposed amendment will not change the character or nature of the suit. It further held that respondent Nos.2 and 3 have not withdrawn any admissions.

5. To appreciate above contention, it may be necessary to look, at the first instance, at the averments made in the plaint, response of respondent Nos.2 and 3 in the written statement and the amendment which is now being sought.

6. In paragraph No.7 C and D of the plaint, the petitioner has stated as follows :-

“C. That when defendant No.1 came out of his room along with the society worker named Suresh and saw plaintiff scolding the maid, he accused plaintiff of maligning a maid. He proceeded to hurl abuses at the plaintiff and physically assaulted him. The defendant No.1 punched the plaintiff and then held his hands in an attempt to throw him down the stairs. Plaintiff was traumatized and suffered swelling and internal wounds, apart from a very public humiliation at the hands of the said defendant No.1.

D. That the plaintiff apprised the management of Senior Citizens Home (Gudhuli) being the defendant No.2 and No.3 regarding the whole matter. The plaintiff

requested them to take necessary actions in this regard and ask defendant No.1 to apologize. However, they, as it turned out, being part of an elaborate conspiracy did not take any action.”

7. Respondent No.3 in the written statement, replied to the said para as follows :-

“9. That the facts stated in Para No.7C of the plaint are not connected with defendant No.3 hence needs no reply.”

8. The said respondent No.3 now seeks to replace the said para and add the following para :-

“9. That the facts stated in para No.7C of the plaint are not connected with defendant No.3 hence need no reply. That one Mr. Suresh who is working as a sweeper in the senior citizen home and is also an eye witness of the alleged incident which took place on 04/07/2013 had submitted his statement in writing in the office of the Senior Citizen Home stating the true facts of the incident which took place on 04/07/2013 between the plaintiff and one maid Smt. Lalti on one hand and the plaintiff and defendant No.1 on the other hand.”

9. We now come to the amendment which is sought by respondent No.2. In response to the said para 7 D of the plaint, as stated above, the said respondent No.2 stated as follows :-

“10. That the allegations of facts stated in para No.7D of the plaint are incorrect/false, denied and the same are not admitted by defendant No.2 herein. That it is submitted by defendant No.2 that plaintiff reported about the dispute which had taken place on 4th July, 2013 between the plaintiff and defendant No.1 on one hand and the plaintiff and maid on the other hand after a gap of 12 days, i.e., on 15th July, 2013. That immediately after receiving the complaint from the plaintiff defendant No.2 had

summoned defendant No.1 in his office and has told defendant No.1 not to take an offensive stance towards the plaintiff. Further, defendant No.2 had counselled the plaintiff and defendant No.1 on the same day to forget about the dispute and to live with each other with peace and harmony. That defendant No.2 being part of the local management of Godhuli on receiving a complaint from the plaintiff on 15th July, 2013 did his professional duty and took the required action as stated above.

It is further submitted by defendant No.2 that the plaintiff has failed to specify as to how and in what manner and with what motive defendant No.2 along with defendant No.3 has allegedly conspired against the plaintiff.”

10. The said respondent No.2 now seeks to amend the said para 7 D to be read as follows :-

“10. That the allegation of facts stated in para No.7D of the plaint are incorrect/false, denied and the same are not admitted by defendant No.2 herein. That immediately after the day of incident, i.e., next day defendant No.2 had conducted an enquiry by orally examining Mr. Suresh about the whole incident that took place on 04/07/2013 in order to ascertain the true facts of the dispute and after orally examining him defendant No.2 found out that the plaintiff was the cause of disturbance in the room of defendant No.1. Further since neither defendant No.1 nor the plaintiff reported about the incident till 15/07/2013 the matter was kept pending as defendant No.2 was under the impression that defendant No.1 and the plaintiff have forgotten about the incident. That it is submitted by defendant No.2 that the plaintiff reported about the dispute which had taken place on 4th July, 2013 between the plaintiff and defendant No.1 on one hand and the plaintiff and maid on the other hand after a gap of 12 days, i.e., on 15th July, 2013 and the said complaint of the plaintiff was undated and unsigned. Further defendant

No.2 had also summoned defendant No.1 in his office and has told defendant No.1 not to take an offensive stance towards the plaintiff. Further, defendant No.2 had counselled the plaintiff and defendant No.1 on the same day to forget about the dispute and to live with each other with peace and harmony. That defendant No.2 being a part of the local management of Godhuli on receiving a complaint from the plaintiff on 15th July, 2013 did his professional duty and took the required action as stated above.

It is further submitted by defendant No.2 that the plaintiff has failed to specify as to how and in what manner and with what motive defendant No.2 along with defendant No.3 has allegedly conspired against the plaintiff.”

11. With regard to provision under Order VI Rule 17 CPC, reference maybe had to the judgement of the Supreme Court in the case of ***Abdul Rehman and Anr. vs. Mohd. Ruldu and Ors.; 2012 11 SCC 341***. Relevant para read as follows:

“18. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

12. Similarly, the Supreme Court in the case of ***Ganesh Trading Co. vs. Moji Ram, (1978) 2 SCC 91*** held as follows:-

“4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of

all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

5. It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time. But, mere failure to set out even an essential fact does not, by itself, constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could sometime be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpretation; to be put on every defective state of pleadings. Defective pleadings are generally curable, if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute cause of action where there was none, provided necessary conditions, such as payment of either any

additional court fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings.”

13. A reading of the proposed amendments shows that at best respondents No.2 and 3 seek to add certain facts about an alleged enquiry conducted and examination of Sh. Suresh. As per the application, Sh. Suresh is working as a sweeper in the Senior Citizen Home and is an alleged eye witness of the alleged incident that took place on 04.07.2013. It is further stated that on 04.07.2013, the police had also recorded the statement of Sh. Suresh. In similar criminal proceedings initiated by respondent No.1, Sh.Suresh has also deposed as a complainant witness. It appears that the averments regarding the said statement appear to have been left out more by inadvertence. The additions sought to be made do not change the cause of action or nature of the case. They do not amount to withdrawal of any admissions as alleged. It is settled law that shortcomings can be removed by taking appropriate steps by a party and that defective pleadings are generally curable.

14. In view of the above, there is no merit in the petition. Accordingly, the petition is dismissed.

JAYANT NATH, J.

SEPTEMBER 02, 2016
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