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

% **DECIDED ON: 12.01.2018**

\+ LPA 14/2018, CM APPL.1308-1309/2018

ANKUR MUTREJA ..... Appellant
Through: Appellant in person.

Versus

BSES YAMUNA POWER LIMITED (BYPL) & ANR. ..... Respondents
Through: Mr. Sunil Fernandes with Mr. Arnav Vidyarthi and Ms. Anju Thomas, Advocate for R-1/BYPL.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE A.K. CHAWLA**

**S.RAVINDRA BHAT, J. (ORAL)**

**Facts:**

1. The appellant challenges an order of the learned Single Judge dated 14.12.2017 requiring him to pay the requisite court fees and dismissing his application for transposition of the second respondent, as plaintiff in the suit.

2. The appellant is a lawyer who has taken to writing and has published books. He is a resident of Unit 1, Ground Floor, Plot No. 156, Gagan Vihar Extension, Delhi 110051 (hereinafter, "Unit 1"). He separated from his family on 05.05.2006. He says that after separation, in 2007 he was allocated the property which now

constitutes Unit 1 by metes and bounds. According to the appellant, Gagan Vihar Extension, where Unit 1 is situated, is an unauthorized colony, as it is partly on public land, and has been granted a provisional regularization certification by the Government of NCT of Delhi by the order dated 04.09.2012.

3. On 03.06.2014 the appellant applied for electricity connection for the Unit 1 premises from BSES Yamuna Power Ltd. (hereafter "Yamuna Power"). Yamuna Power inspected the premises, and ultimately rejected the application stating, "*Original title deed of the property, along with NOC from other party to memorandum of family settlement required.*" The appellant contended that because the Gagan Vihar extension was an unauthorised colony in the process of regularisation, no title deeds have yet been issued. He, therefore, prepared an indemnity bond in favour of Yamuna Power and filed it with several other documents, including *inter alia*, an affidavit in reference to the original partition decree, affidavits by his grandfather, father, and mother in reference to the partition of the property, and several identification documents.

4. The appellant alleged that Yamuna Power regularly provides electricity connections on the signing of an indemnity bond. He also asserts that there is no legal requirement to prove title to secure an electricity connection. Denial of electricity connection, claims the appellant is an attack on his reputation amounting to defamation; thus he filed a suit. He insists that he will donate the damages received from this suit to the Delhi High Court Legal Services Committee

(hereafter, "DHCLSC") and has impleaded the DHCLSC as a *defendant/respondent*. Claiming that such impleadment (as defendant) was erroneous, he sought to have the DHCLSC transposed from a co-defendant, to a co-plaintiff. Additionally, upon filing a suit for defamation, the learned Single Judge was willing to issue summons to Yamuna Power, upon the payment of the requisite court fees amounting ₹8,78,324/-. The appellant requested an exemption from the payment of such fees.

5. The learned Single Judge denied the plaintiff/appellant's request to transpose the DHCLSC from defendant to co-plaintiff (IA No.14585/2017) and also denied the request for exemption of court fees (IA No. 14298/2017), directing him to pay the court fees within four weeks. The appellant is aggrieved by that order.

6. The appellant contends that under the Civil Procedure Code (hereafter, "CPC") Order I Rule 10(2), a party may file an application to transpose a defendant as a plaintiff, and that the learned Single Judge was wrong to hold that the DHCLSC was not a necessary and proper party to the suit. It is argued that because the appellant intends to donate any damages recovered from Yamuna Power in the defamation suit to the DHCLSC, the DHCLSC has a substantial interest in the matter.

7. On the contention regarding an exemption of court fees, it is argued that under Section 151 of the CPC, the court is empowered to pass any order in the interests of justice, including an order exempting a party from paying the necessary court fees.

**Decision and Analysis**

8. On the issue of transposing DHCLSC as co-plaintiff, undoubtedly, under Order I Rule 10(2) CPC, the Court has the power, either on application of either party, or *suo motu*, to modify the parties to the suit. However, this power is qualified by the wording of the rule itself. Rule 10(2) in its entirety reads,

> "***(2) Court may strike out or add parties****—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.*"

9. The CPC is clear that this power must only be exercised to effectuate the presence of parties whose presence the Court deems necessary and proper to effectively adjudicate upon the matter at hand. Thus, the Court will only allow the addition, deletion, or transposition of parties where the parties in question are "necessary and proper parties" to the dispute before the Court. A necessary party is one without which no effective decree can be passed. A proper party is one whose absence is not fatal to the suit, but whose presence would enable the court to effectively and adequately adjudicate upon the matter.

10. The question that arises here, therefore, is, whether the fact that the appellant insists that he will donate to the DHCLSC any damages recovered from the defamation suit against Yamuna Power is enough to make the DHCLSC a necessary or proper party. Some important observations regarding when a party's interest makes them a "necessary and proper party" were noted by the Supreme Court in *Razia Begum v Anwar Begum* AIR 1958 SC 886, where the Court stated,

> "*That in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation.*"

11. This interpretation was further articulated by the Supreme Court in *Ramesh Hirachand Kundanmal v Municipal Corporation of Greater Bombay* (1992) 2 SCC 524 where the Court explained the distinction between a commercial interest and a legal interest.

12. The Supreme Court also held in *New Redbank Tea Co. Pvt. Ltd. v Kumkum Mittal* (1994) 1 SCC 402 that:

> "*a party who is not directly interested in the issues between the plaintiff and the defendant but is only indirectly or commercially affected cannot be added as a defendant because the court has no jurisdiction under the relevant rule to bring him on record even as a proper party.*"

13. A perusal of the above decisions shows that a commercial interest in the outcome of a dispute is not sufficient to implead a party under Order I Rule 10(2) CPC. Something more must be shown.

Either the party must have a legally enforceable claim against the defendants in the dispute, their legal rights must be affected, or at the least their presence must enable the Court to effectively and appropriately adjudicate upon the dispute at hand. None of these conditions exist. Therefore, the denial of the application for transposition is not erroneous.

14. On the relief of exempting the appellant from paying court fees, the learned Single Judge refused to grant the exemption on the ground that the court neither had the power, nor was there any procedure in place to exempt a party from paying court fees. The appellant relies on Section 151 of the CPC. In examining whether the Court has such a power, it would also be wise to examine the scope of Sections 94, 149, and Order VII Rule 11 of the CPC, and Section 4 of the Court Fees Act, 1870. The relevant provisions are as follows:

> ***CODE OF CIVIL PROCEDURE, 1908***
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> ***94. Supplemental proceedings:****In order to prevent the ends of justice from being defeated the court may, if it is so prescribed,*
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> […]
>
> *(e) make such other interlocutory orders as may appear to the court to be just and convenient.*
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> *******
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> ***149. Power to make up deficiency of court fees:*** *Where the whole or any part of any fee prescribed for any document by the law for the time being in force*

*relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.*

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***151. Saving of inherent powers of court:*** *Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the court.*

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***Order VII Rule 11***

***11. Rejection of plaint.-****The plaint shall be rejected in the following cases:—*

[…]

*(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*

*Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or* *supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.*

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***COURT FEES ACT, 1870***

***4. Fees on documents filed, etc., in High Courts in their Extraordinary Jurisdiction:*** *No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction; or in the exercise of its extraordinary original criminal jurisdiction;*

***In their appellate jurisdiction:*** *or in the exercise of its jurisdiction as regards appeals from the 1[judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) or one] or more Judges of the said Court, or of a Division Court;—or in the exercise of its jurisdiction as regards appeals from the judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) or one or more Judges of the said Court, or of a Division Court;"*

*or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;*

***as Courts of reference and revision:*** *or in the exercise of its jurisdiction as a Court of reference or revision; unless in respect of such document there be paid a fee of an* *amount not less than that indicated by either of the said Schedules as the proper fee for such document.*

15. A joint reading of Sections 94, 148, 149 and 151 CPC shows that the Court has no power to exempt payment of Court fees. Rather, Rule 11 of Order VII dictates that short payment of Court fees can result in rejection of suit. Section 4 of the Court Fees Act creates an obligation that the fees prescribed in the First and Second Schedule of the Act ought to be mandatorily paid before a plaint or any documents can be proceeded with. Order VII Rule 11(c) states that a plaint will be rejected where the relief claimed is properly valued but has been insufficiently stamped and the plaintiff, upon being required to supply the stamp-paper within a stipulated time, fails to do so. The proviso to Rule 11 allows the Court, for reasons recorded in writing, to extend the time for supplying the requisite stamp paper, in exceptional circumstances. Thus, the power in the proviso is (i) to be applied sparingly, and (ii) is only a power to *extend time for payment* and cannot confer the power to grant an *exemption* from paying court fees.

16. It would be pertinent to take note of the Supreme Court's decision in *Mannan Lal v Chhotaka Bibi* (1970) 1 SCC 769. The Court held that Section 149 CPC reduces the rigour of Section 4 of the Court Fees Act and the Court must read both harmoniously. This can be done by reading Section 149 CPC as a proviso to Section 4 of the Court Fees Act. The court stated,

"*Apart from the decisions bearing on the point, there can in our opinion, be no doubt that Section 4 of the Court Fees Act is not the last word on the subject and the court* *must consider the provisions of both the Act and the Code to harmonise the two sets of provisions which can only be done by reading Section 149 as a proviso to Section 4 of the Court Fees Act by allowing the deficiency to be made good within a period of time fixed by it.*"

17. It is clear from a perusal of the provisions in question and the decisions cited above that the Court is not empowered to exempt a party from paying court fees, except for the situation envisaged in Order XXXIII relating to indigent persons. Order VII Rule 11 only grants the power of extending the date upon which court fees must be paid.

18. For the above reasons, this Court holds that there is no merit in the appeal; it is, therefore, rejected.

**S. RAVINDRA BHAT**
**(JUDGE)**

**A.K. CHAWLA**
**(JUDGE)**

**JANUARY 12, 2018**