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

Decided on: 21st February, 2018

+ C.R.P. 17/2015 and CM 10652/2016 (O.22 R.4 CPC)

ASHOK KRIPLANI Petitioner

Through: Petitioner in person

versus

MADAN LAL SHARMA Respondent

Through: Mr. Vipul Jai, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had instituted civil suit (suit no.682/2014) on 03.06.2014 impleading the respondent as second defendant, his brother-in-law Dr. Jethanand Jethwani, being the first defendant. The suit prayed for damages against the said defendants on account of vengeance, mis-representation, concealment of facts, mental agony, defamation, abuse of power and possession, mindless collusion and dragging of case. On questions about maintainability of the suit against the respondent (second defendant) being raised as per proceedings recorded by the trial judge on 29.10.2014, the matter was heard. By order dated 28.11.2014, the Additional District Judge in *seisin* of the matter found the plaint not disclosing any cause of action against the respondent and, thus, dismissed the case qua him. It is the said order which was assailed by the revision petition at hand.

2. During the pendency of the petition before this court, the respondent died. It is in that context that an application has been moved (CM 10652/2016) under Order XXII Rule 4 of the Code of Civil Procedure, 1908 (CPC) seeking the respondent to be substituted by Mr. Mukesh Sharma, Advocate, the legal heir. The issue as to whether the cause of action, if any, would survive against the legal heir of the deceased respondent, in the given facts and circumstances, is intertwined with the issue as to whether the plaint disclosed any cause of action or not.

3. Having heard the petitioner, the plaintiff in person, he insisting on doing so (he himself being a practicing advocate) and having perused the record, this court finds no merit in the main petition and consequently in the application seeking substitution of legal heir under Order XXII Rule 4 CPC.

4. A perusal of the plaint, copy whereof has been submitted, would show that the prime allegations made in the case were against the first defendant, the dispute concededly arising out of dispute over property between the wife of the plaintiff on one hand and the first defendant on the other. It appears the first defendant is a medical officer employed in ESI Scheme in the Department of Health of the Government of Rajasthan. It also appears that the wife of the first defendant is an officer of Rajasthan Administrative Service. It appears that the plaintiff had made certain complaints against the first defendant attributing certain misconduct, such complaints having been addressed to the department where he is employed and also to the police. It was his case that the department employing the first

defendant had acted on the said complaints in 2010 which prompted the first defendant to lodge false, irrelevant and frivolous complaints against him (plaintiff) with Bar Council of Delhi. Referring to the allegations made by both sides (plaintiff and the first defendant) against each other, the cause of action pleaded against the second defendant was set out in (para 7 of) the plaint wherein reference was made to a communication sent by him (second defendant) to Honorary Secretary to Bar Council of Delhi with regard to the complaint dated 07.04.2011 and with reference to the letter dated 25.02.2011 of Bar Council of Delhi. It is alleged in the plaint that the complaint of the first defendant got “vitiating” as he had taken the second defendant “in his confidence” and had sought “*a letter of favour from him in the name of Ex-Hon. Secretary of BCD, Mr. Nitin Ahlawat to get his complaint decided in his favour.*”

5. A perusal of the copy of the letter (page 20 of the paper book) shows that the letter is not addressed to “former Honorary Secretary” of Bar Council of Delhi but to the Honorary Secretary of the Bar Council of Delhi. It is clear from the tone and tenor of the said communication that it was made by the respondent (second defendant) as the counsel representing the interest of the first defendant. The manner in which the second defendant described himself as the ex-chairman of Bar Council of Rajasthan in this communication could not be a subject matter of the inquiry in the suit. An advocate cannot become party to the design, if any, of his client to harass the opposite party by simply making communication to the disciplinary authority under the Advocates Act in the manner done.

6. In the above facts and circumstances, this court finds that the trial court took an appropriate view in the matter by holding that the plaint does not disclose any cause of action and therefore, striking of the name of the respondent from the array, dismissing the suit as far as he was concerned. Since the said order is being affirmed, the application for substitution under Order XXII Rule 4 CPC cannot survive.

7. For the above reasons, both the petition and the application are dismissed.

FEBRUARY 21, 2018

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R.K.GAUBA, J.



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