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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 12th April, 2018

+ CM(M) 222/2017 and CM 7472/2017

MOHIT GUPTA & ANR

..... Petitioners

Through: Mr. Abhijat, Mr. Sumant De and
Mr. Shaashwat Jindal, Advocates

Versus

RAJIV KHOSLA & ORS

..... Respondent

Through: Mr. Tajinder Singh, Adv. for R-1
with Respondent no.1 in person
Respondent no.4 in person

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition seeks to assail the order dated 22.12.2016 passed by the Additional District Judge on the file of the civil suit (CS no.736/2016) which was instituted on the date of the said order by the first to fourth respondents (collectively, the plaintiffs) impleading, amongst others, the petitioners as the defendants. The case relates to grievances of the plaintiffs vis-à-vis the election held for the various posts in the Executive Committee of Delhi High Court Bar Association (DHCBA) i.e. the fifth respondent on 18.11.2016. The plaintiffs seek declaration that the said election and the results announced in its wake are null and void. The plaint also makes a prayer for mandatory injunction, *inter alia*, for holding fresh elections in a fair, free and transparent manner.

2. When the suit came up before the court of the Additional District Judge, he noted some portions of pleadings in para 39 (the cause of action clause) making a reference to certain orders passed by this court on the judicial side on 19.09.2016, 30.09.2016 and 03.10.2016. The Additional District Judge was of the view that it was not open for the plaintiffs to “*draw cause of action from a judicial order*” and further that if there were any grievances vis-à-vis such judicial orders, the remedy of appeal or review as may be available under the law will have to be exercised. The plaintiffs, at that stage, submitted before the Additional District Judge that the portion making a reference to such judicial orders in para 39 of the plaint as had been presented may be treated as “*taken off the record*”. The Additional District Judge allowed the said prayer and accordingly made endorsement on the plaint and thereafter issued summons in the suit and notice on the application filed therewith.

3. The petitioners contend that the procedure adopted by the Trial Judge for striking off the part of the pleadings in the manner indicated above was impermissible. Though initially the counsel arguing on behalf of the petitioners made reference to the law in the context of the provision contained in Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) on the subject matter of amendment of the pleadings, upon his attention being drawn to the provision contained in Order VI Rule 16 of the CPC, he argued that the impugned order cannot be upheld even in light of said provision of law there being, in his submission, no express finding that the portion of the pleadings which has been struck off was either unnecessary or scandalous or

frivolous or vexatious or prejudicial to fair trial of the suit or embarrassing or it to be cause of delay or, further, be in the nature of “*abuse of the process of the court*”. He places reliance on the rulings in *D. Ramachandran Vs. R.V. Janakiraman and Ors.*, (1999) 3 SCC 267 and *MTNL Vs. V.K. Jain*, 1998 (44) DRJ.

4. This court has given considered thoughts to the submission made on behalf of the petitioners but finds no reason why the impugned order should not be upheld. Unlike the cases cited at bar, the irrelevance and impermissibility of reference to the judicial orders in the cause of action clause of the plaint, as presented, was pointed out to the plaintiffs by the Additional District Judge himself. It is inherent in the impugned order that the court was finding such part of the pleadings to be unnecessary and frivolous. The plaintiffs did not resist and immediately agreed to make suitable amends by suggesting the concerned portion to be “*taken off the record*”. This order, it is clear, is in the nature of striking out the pleadings within the meaning of Rule 16 of Order VI CPC. It is clear from a bare perusal of the said provision of law, that it is not necessary for the power to strike out the pleadings to be invoked, that an application should first be moved. The order to strike out the pleadings which are unnecessary or frivolous may be passed by the court on its own initiative.

5. The petition, thus, is found devoid of merit and is dismissed. The pending application also stands dismissed.

R.K.GAUBA, J.

APRIL 12, 2018/yg