

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

% **Reserved on: 26th July, 2021**

Pronounced on: 24th August, 2021

+ **CM (M) 477/2021 & CM APPL.22129/2021 (for stay)**

HITESH BHARDWAJ

.....Petitioner

Through: Mr. Manav Gupta, Mr. Sahil Garg,
Mr. Ankit Gupta and Mr. Prateek
Vats, Advocates

Versus

SHIKSHA BHARTI EDUCATIONAL SOCIETYRespondent

Through: Mr. Jayant K. Mehta, Sr. Advocate
with Mr. Rajat Agnihotri, Mr.
Kunal Mittal and Mr. Surya
Kapoor, Advocates

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

[VIA VIDEO CONFERENCING]

1. This petition has been filed by the defendant before the learned Trial Court, against the order dated 9th April, 2021 passed by learned Senior Civil Judge, South-West District, Dwarka Courts Complex, Delhi (hereinafter referred to as the “learned Trial Court”) whereby the learned

Trial Court allowed the application of the respondent/plaintiff filed under Order VI Rule 17 the Code of Civil Procedure, 1908 (“CPC”, for short) seeking amendment of the plaint.

2. A civil suit being CS SCJ No. 472/2020 was filed on behalf of Shiksha Bharti Educational Society (hereinafter referred to as the “**respondent/plaintiff**”) through Ms.Nistha Bhardwaj, described as the General Secretary and representative of the Society. Permanent and mandatory injunctions were sought against the petitioner/defendant alleging that he was a trespasser, and seeking a restraint on him from entering the premises of Shiksha Bharti Global School situated at Sector-8, Dwarka, New Delhi (hereinafter referred to as “**the School**”) or from creating hindrance, obstruction or disruption in the peaceful functioning of the School.

3. The petitioner/defendant in his written statement denied every claim and allegation of the respondent/plaintiff and further contended that the respondent/plaintiff had concealed the fact that the petitioner/defendant was working as a Director of the School since 2014. On such a claim being made in the written statement, the respondent/plaintiff filed an application under Order VI Rule 17 CPC to incorporate allegations that the documents relied upon by the petitioner/defendant were entirely forged and fabricated. The respondent/plaintiff also sought to raise questions on the alleged convening of the meeting on 16th August, 2020, as claimed by the petitioner/defendant to have been so held, to submit that the petitioner/defendant had fabricated Minutes of a meeting that had never been held. Amendment was also sought to incorporate an additional

relief, namely, a decree of declaration that the appointment letter dated 5th February, 2014 and the minutes of the meeting allegedly conducted on 16th August, 2020 and all the incidental acts, including alleged induction of new members and expulsion of existing members of the respondent/plaintiff, as null and void ab initio and as having no legal consequences thereof. The reliefs, including permanent injunction restraining the petitioner/defendant from entering the School premises and creating hindrance in the functioning of the respondent/plaintiff and the School, were also sought.

4. Vide the impugned order dated 9th April, 2021, the learned Trial Court was of the view that the matter was still at the nascent stage and no harm would be caused to the petitioner/defendant if the plaint was amended. It was also observed that the incorporation of the facts were necessary for the final determination of the issues and the disputes between the parties. Thus, the amendments were allowed.

5. Mr. Manav Gupta, learned counsel for the petitioner/defendant, submitted that the original prayers were limited to permanent injunction to restrain the petitioner/defendant from entering the School premises, with a direction to him to hand over the complete record of the respondent/plaintiff and the School, which was in his unlawful possession. Learned counsel for the petitioner/defendant submitted that in fact, Ms.Nistha Bhardwaj was not authorized to act as the General Secretary of the respondent/plaintiff and herself was a stranger and an outsider to it and had not been authorized to file the suit against the petitioner/defendant on its behalf, whereas the petitioner/defendant had

been duly appointed as the Director of the School vide appointment letter dated 5th February, 2014 and was functioning as such since then. On 13th August, 2020 and thereafter, on 14th August, 2020, Ms.Nistha Bhardwaj had tried to force her way into the School premises and take into her custody the documents belonging to the School, which was opposed and police was called to the spot and an F.I.R. lodged.

6. All these facts were mentioned in the written statement of the petitioner/defendant, and the document being the appointment letter dated 5th February, 2014 was also filed along with the written statement. The Minutes of the meeting dated 16th August, 2020 were also placed on the record reflecting the fact that the respondent/plaintiff had unanimously considered the petitioner/defendant to be fit for appointment as the Manager of the School. In the same meeting, as recorded in the Minutes, Ms.Nistha Bhardwaj was found to be not very serious about the respondent/plaintiff as she was lax in discharging her obligations, and consequently, her membership was terminated.

7. It was submitted that when these documents were brought on record by the petitioner/ defendant, an application under Order VI Rule 17 CPC was filed to set up a new case by amending paras 3, 6, 7 and inserting para 7A, 13 to 19, and renumbering existing paras 13 to 19 as paras 20 to 25. The amendments related to defalcation of funds by the petitioner/defendant, the averments to the effect that there was no provision for the post of Director or the Manager to the School, and that the appointment letter dated 5th February, 2014 was forged and fabricated, etc., and finally, to add to the prayers, to not only seek permanent and

mandatory injunctions, but also declarations to the effect that the appointment letter dated 5th February, 2014 and the meeting conducted on 16th August, 2020 and all other incidental acts and consequences were null, void ab initio and bereft of legal consequences

8. Learned counsel for the petitioner/defendant also submitted that the defendant in the suit is not the Society, as it is the petitioner/defendant who has been impleaded as a defendant in the matter and therefore, no declaration can be sought against him. Moreover, Ms.Nistha Bhardwaj was now seeking to agitate her personal rights to continue as the General Secretary in the respondent/plaintiff, but no such relief can be claimed against the petitioner/defendant. By doing so, the cause of the action has been changed as also the nature of the suit. It was submitted that this could not be allowed.

9. Reliance has been placed on ***Just Lifestyle Pvt. Ltd. v. Advance Magazine Publishers Inc.***, 2013 SCC OnLine Del 117, ***Archie Comic Publications Inc. v. Purple Creations (P) Ltd.***, 2010 SCC OnLine Del 3101 and ***Brijpal v. PGF Limited and Ors.*** [judgement dated 06th March, 2018 in CS(OS) 95/2018], to contend that the subject matter of the suit cannot be changed by way of an amendment. Relying on the judgment of this court in ***Crocs Inc. USA v. Aqualite India Ltd.*** [order dated 1st March, 2018 in CS(COMM) 52/2018], the learned counsel for the petitioner/defendant submitted that where dishonesty, on the part of the respondent/plaintiff, had become apparent, amendments could not be allowed and thus, it was prayed that the petition be allowed and the impugned order set aside.

10. It is also the submission of the learned counsel for the petitioner/defendant that when the suit itself was not maintainable, and such a plea had already been taken by him, there was no occasion to allow an amendment. Even the application seeking interim stay was dismissed after noticing all these material averments in the written statement, but the learned Trial Court had allowed the application under Order VI Rule 17 CPC without due application of mind. It was also pointed out that the learned Trial Court had heard arguments on the application under Order VII Rule 11 CPC and the orders have been reserved thereon.

11. On the other hand, Mr. Jayant K. Mehta, learned senior counsel appearing on behalf of the respondent/plaintiff, submitted that the respondent/plaintiff was not in the know of the meeting, as claimed by the petitioner/defendant, and therefore, the amendments challenging the meeting and the minutes, as also the claim of having been appointed as a Director, were required to be raised for the just determination of the disputes between the parties. Reliance has been placed on ***Sampath Kumar v. Ayyakannu & Ors.***, (2002) 7 SCC 559, ***Rajesh Kumar Aggarwal & Ors. v. K. K. Modi & Ors.***, (2006) 4 SCC 385 and ***Northern Eastern Railway Admn. v. Bhagwan Das*** (2008) 8 SCC 511 in support of these submissions.

12. It was submitted that the President of the respondent/plaintiff has the power to institute legal proceedings and he had delegated the power to the General Secretary, Ms. Nishtha Bharadwaj, through whom the suit was properly filed on behalf of the respondent/plaintiff. Learned senior

counsel for the respondent/plaintiff further submitted that though the suit was originally filed for injunctions, it was in response to the claims made in the written statement that the petitioner/defendant had been appointed as a Director on the basis of appointment letter dated 5th February, 2014 and that on 16th August, 2020, a meeting had been held and resolution passed to remove the General Secretary, that the need to question those facts arose, as both these documents dated 5th February, 2014 and 16th August, 2020 were fabricated.

13. It was also submitted by the learned senior counsel that the counsel for the petitioner/defendant has expanded his arguments before this Court as, before the learned Trial Court, the only objection raised was that a new cause of action could not be added. The respondent/plaintiff had not set up a new case and by allowing the amendment, multiplicity of litigation would be curtailed as the respondent/plaintiff had the right to question the documents, now disclosed by the petitioner/defendant. It was argued by the learned senior counsel that no new cause of action has been set up and the respondent/plaintiff was merely supplementing the cause of action already accrued in its favour and the suit remained one questioning the petitioner/defendant's authority to interfere in the functioning of the School and the Society.

14. It was, therefore, submitted that the amendments were rightly allowed by the learned Trial Court. The learned senior counsel further submitted that the amendments had been sought at the nascent stage as issues were yet to be framed. Reliance has been placed by learned senior counsel for the respondent/plaintiff on the judgment of the Supreme

Court in *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344 to submit that even in cases where the trial has begun, amendments can be allowed, if it can be shown that despite application of due diligence, the said amendments could not have been brought before the court earlier.

15. The written submissions filed by both sides, along with the citations, have also been perused.

DISCUSSION

16. In two of the cases relied upon by learned counsel for the petitioner/defendant, namely, *Just Lifestyle Pvt. Ltd. (supra)* and *Archie Comic Publications (supra)*, the fact situation was vastly different from that prevailing in the present suit. In both those cases, amendments were sought to change the cause of action in order to bring the suit within the territorial jurisdiction of this court. It was in that background that such amendments were disallowed. The said judgments have no direct bearing on the facts of this case.

17. As regards the judgment in *Crocs Inc. USA (supra)*, while there is no quarrel that if there is suppression of facts and dishonesty disclosed, discretion ought not to be exercised in favour of such a party. However, that case was dealing with suppression of facts relating to filing of a previous suit and an attempt made to obtain interim relief by suppressing material facts. In *Brijpal (supra)*, no doubt, this court had opined that the plaintiff in that case could not be permitted to change the facts and cause of action, as the attempt was to get over the bar of limitation. The

amendments prayed for in the present suit neither seek to incorporate facts relating to jurisdiction nor limitation.

18. What are the factors that have to be kept in mind, while dealing with an application seeking amendment, have been set out by the Supreme Court in *Revajeetu Builders & Developers v. Narayanaswamy & Sons*, (2009) 10 SCC 84, as below: -

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would

be barred by limitation on the date of application. ”

19. Thus, it is clear that if the amendments are such that do not change the nature of the claim and are not time barred, but are of the nature that would avoid multiplicity of litigation, and are also found to be essential for the just determination of the *lis* between the parties, such amendments should ordinarily be allowed, particularly, when the amendments sought are at the initial stage of the case and the trial has not commenced. Even, where the trial has commenced, if due diligence is disclosed, then too, the court has the discretion to allow necessary amendments.

20. In the present case, it cannot be overlooked that the amendments to the plaint are being sought in order to meet the claim set up by the petitioner/defendant in his written statement. Even if the respondent/plaintiff had mentioned in the original plaint that the petitioner/defendant was claiming himself to be the Director, it was only when the petitioner/defendant disclosed his appointment letter dated 5th February, 2014 that the respondent/plaintiff claims to have come to know of the document. The Minutes of the meeting have also been filed only with the written statement. At the earliest opportunity the amendments have been sought.

21. The petitioner/defendant has alleged that the suit filed by the respondent/plaintiff through Ms.Nistha Bhardwaj was not proper, as she had been removed from the position of the General Secretary and her membership in the Society stood terminated. The document that has been placed on the record in support of this allegation are the Minutes of the

meeting and the resolution dated 16th August, 2020. Interestingly, the very document reflects that Ms.Nistha Bhardwaj was not present in the said meeting. Therefore, it cannot be said that these facts were already in her know or in the know of the respondent/plaintiff and despite such knowledge, a false suit had been filed and now, amendments were being sought as an afterthought.

22. Rather, it is amply clear that the amendments sought are necessary for the just determination of the disputes between the parties. When the petitioner/defendant has raised an objection to the capacity of Ms.Nistha Bhardwaj to file the suit on behalf of the respondent/plaintiff, she and the respondent/plaintiff necessarily have the right to explain how this plaint has been properly moved. If, in that regard, the respondent/plaintiff seeks to incorporate averments to the effect that the President of the respondent/plaintiff has the powers, which have been delegated to Ms.Nistha Bhardwaj as the General Secretary, to file the suit, that is a necessary averment to determine the maintainability of the suit. Again, the averments that she has a life-membership and she could not be removed or that the meeting of 16th August, 2020, as claimed by the petitioner/defendant, did not take place and the resolution was fabricated and the appointment letter dated 5th February, 2014 was also fabricated, are also averments that appear to be necessary to determine, not only the maintainability of the suit filed by the respondent/plaintiff through Ms.Nistha Bhardwaj, but also the merits of the suit, whereby injunction has been sought to restrain the petitioner/defendant from entering the School premises or interfering with the functioning of the

respondent/plaintiff.

23. By making an additional prayer for declaration, the nature of the suit has not been materially changed. The declarations have been necessitated on account of certain pleadings of the petitioner/defendant and if such a prayer is not made, the respondent/plaintiff would be left without remedy. In the event that another suit was to be filed seeking declaration, the petitioner/defendant would still have been impleaded as it is his appointment letter that is being questioned, as also the resolution, to which he also claims to be a party. The respondent/plaintiff is already before this Court. The grievances are of the respondent/plaintiff and the respondent/plaintiff can act only through its officials. To that extent, when Ms.Nistha Bhardwaj seeks to affirm her position in the respondent/plaintiff, it may appear to be an assertion of her individual right, but it is to be seen in the context of her capacity as the General Secretary of the respondent/plaintiff to file the suit.

24. Therefore, there is no merit in the contention of the learned counsel for the petitioner/defendant that declarations of individual rights are being sought and that too, against the petitioner/defendant alone. The respondent/plaintiff has not supported the petitioner/defendant to uphold his claims that the appointment letter was duly issued as well as the meeting dated 16th August, 2020 was properly convened and the resolution was valid in law. Thus, as of now, it is not Ms.Nistha Bhardwaj who is asserting her rights against the petitioner/defendant in her individual capacity, but seeking remedies against the petitioner/defendant on behalf of the respondent/plaintiff being its

General Secretary.

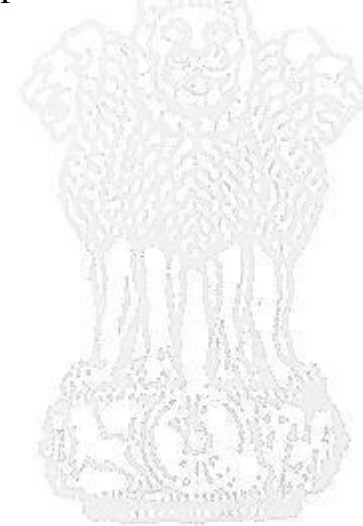
25. Finally, it must be always borne in mind that when the court is considering whether or not to allow the amendments, the merits of the pleas sought to be incorporated, are not to be assessed at all.

26. The learned Trial Court had rightly allowed the amendments. There is no merit in the present petition. The same is accordingly dismissed along with the pending application.

27. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

AUGUST 24, 2021
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