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

Date of Decision: <u>14.01.2021</u>

\+ **CM(M) 453/2020 & CM No.22687/2020**

S.P. SINGH & ORS. ..... Petitioners

Through Mr.S.B.Upadhyay, Sr. Adv. with Ms.Sujata Kashyap, Adv. with Mr.Ram Niwas, Asstt. Legal Manager (DTTDC).

versus

PIYUSH AGARWAL & ANR. ..... Respondents

Through Mr.Dinesh Goyal & Mr.Rupesh Goyal, Advs. for R-1. Mr.S.B.Upadhyay, Sr. Adv. with Ms.Sujata Kashyap, Adv. for R-2 with Mr.Ram Niwas, Asstt. Legal Manager (DTTDC).

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

<u>NAVIN CHAWLA, J. (Oral)</u>

1. This hearing has been held by video conferencing.

2. This petition has been filed challenging the order dated 03.03.2020 passed by the learned Additional District Judge-01 (South East), Saket Court, Delhi in CS DJ 1493/2017, ***Piyush Agarwal v. Delhi Tourism and Transportation Development Corporation Ltd***

dismissing the application of the defendant nos.2 and 5 seeking their deletion from the array of defendants.

3. At the outset, the learned senior counsel for the petitioners submits that an application for deletion of the defendant nos.2 to 6, that is, the petitioners herein was filed before the learned Trial Court and, a separate application seeking deletion of only defendant nos.2 and 5 was also filed. The order therefore in a way dismisses the application filed by all the petitioners.

4. It is the case of the petitioners that the plaint filed by the respondent no.1 before the learned Trial Court did not disclose any cause of action against the petitioners herein. In this regard, the learned senior counsel for the petitioners has drawn my reference to the various allegations made in the plaint.

5. On the other hand, the learned counsel for the respondent no.1 submits that as allegations of *mala fide* have been made against the petitioners in the plaint, they were necessary and proper parties in the suit and the learned Trial Court has therefore rightly dismissed the application filed by the petitioners seeking their deletion. In this regard, he has placed reliance on the judgments of this Court in ***Indian Hotels Company Limited v. Binu Anand Khanna & Ors.***, 2016 SCC OnLine Del 55 and ***Anjum Nath v. British Airways PLC & Ors.***, 2005 SCC OnLine Del 1092. Further relying upon Order VI Rule 10 of the Code of Civil Procedure, 1908, he submits that circumstances from which malice is to be inferred need not be pleaded in the plaint; it is sufficient to plead malice as a fact alone.

6. I have considered the submissions made by the learned counsels for the parties.

7. A reference to the allegations made in the plaint would first to be apposite. It is not disputed that the respondent no.1 retired as Senior Chief Manager from the respondent no.2 on 30.09.2016. The plaint avers delay in payment of the retiral benefits, though admitting that the respondent no.1 was paid the leave encashment amount on 07.10.2016 and the retirement gratuity on 04.11.2016. The respondent no.1 has filed the suit claiming the following relief:

> *"(i) To pay a sum of Rs.21,275/- to the Plaintiff towards loss of interest on account of delayed payment of his retiral dues;*
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> *(ii) To pay a sum of Rs.10,00,000/- to the Plaintiff on account of compensation for mental pain, agony, harassment and humiliation caused to him on account of wrongful, mala fide and illegal withholding of his retiral dues and not paying the same on the date of his retirement;*
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> *(iii) To pay a sum of Rs.50,00,000/- to the Plaintiff on account of damages for loss of reputation caused to him as a result of wrongful, illegal and mala fide withholding of his retiral dues and not paying the same on the date of his retirement;*
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> *(iv) To pay a sum of Rs.25,000/- to the Plaintiff towards the cost of legal notice served upon Defendants;*
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> *(v) To allow pendente-lite and future interest @ 18% per annum on the decretal amount in favour of the Plaintiff;*
>
> *(vi) To allow costs of the present suit in favour of the Plaintiff."*

8. The allegations against the petitioners are contained in paragraph 4, 7, 8, 9 and 10 of the plaint, which are reproduced herein below:

> "*4. That Defendants No. 2 to 6 as Managing Director & CEO, Financial Controller (I/C), Senior Chief Manager (Vigilance), Chief Manager (Personnel) and Manager (Personnel) respectively of Defendant No.1 Corporation were directly responsible for sanction and payment of Plaintiff's retiral dues at the time of his retirement. However, Defendants No. 2 to 6 nurtured personal grudges against the Plaintiff and conspired together to harass, humiliate, malign, disgrace and defame him. In pursuance of their conspiracy, the Defendants wrongfully, malafidely and illegally withheld Plaintiff's retiral dues at the time of his retirement causing him immense mental pain, agony, harassment, humiliation and loss of reputation besides causing him pecuniary loss.*
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> *xxxxx*
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> *7. That having achieved their wrongful, mala fide and illegal object, the Defendants sanctioned payment of Plaintiff's gratuity and leave encashment amount soon after his retirement vide office orders dated 07.10.2016 without any vigilance, clearance whatsoever and the leave encashment amount of Rs.10,78,435/- was directly disbursed in his account on 07.10.2016 while the retirement gratuity amount of Rs.10,00,000/- was paid to him on 04.11.2016 vide cheque no. 92264 dated 03.11.2016.*
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> *8. That as per record received by the Plaintiff under the Right to Information Act from Defendant No. 1 Corporation, all the concerned departments had granted*

their no objection for grant of sanction and payment of Plaintiff's retiral dues by 16.09.2016 though the process of departmental clearance in Plaintiff's case was belatedly commenced under signatures of Defendant No.6 vide U.O. Note No. Per/1048/4/1981/DTTDC/PF (Z)/1829 dated 16.08.2016. However, Defendants No. 2, 3, 5 and 6 in furtherance of their conspiracy deliberately did not sanction payment of Plaintiff's retiral dues on the pretext of non-receipt of vigilance clearance.

9. That Defendant No. 4 was at the relevant time heading the Vigilance Division in Defendant No.1 Corporation as its Senior Chief Manager (Vigilance) and was squarely responsible for timely grant of vigilance clearance, if required any, but he deliberately, wrongfully and malafidely withheld the same in furtherance of conspiracy with other Defendants, who also deliberately turned a blind eye and did not take further necessary steps in the matter.

10. That the Plaintiff was very much entitled to receive his retiral dues on the date of his retirement and Defendants' act of withholding Plaintiff's retiral dues at the time of his retirement was on the face of it wrongful, malicious and illegal in nature. The Plaintiff has not only suffered loss of interest on account of delayed payment of his gratuity and leave encashment amount by the Defendants but he has also undergone immense mental pain, agony, harassment and humiliation besides suffering tremendous loss of reputation on account of wrongful, mala fide and illegal acts/omissions on part of Defendants and is entitled to be compensated for the same."

9. A reading of the above averments in the plaint would clearly show that barring making general and vague allegations of *mala fide*

against the petitioners, no particulars thereof have been given in the plaint. The plaint has to be read in holistic and meaningful manner. Vexatious suits are to be nubbed at its bud. The plaint clearly complains about delay in sanction of the post retiral benefits to the respondent no.1. Though the respondent no. 1 avers *malafide* against the petitioners, not even a reason for harboring such *malafide* has been asserted. All the petitioners are/were officers of respondent no. 2 at different positions. Continuation of such a suit against them will certainly cause immense injustice.

10. This Court in ***Anjum Nath v. British Airways PLC & Ors.***, 2007 SCC OnLine Del 758, which is an order passed subsequent to the order relied upon by the learned counsel for the respondent no.1 reported as 2005 SCC OnLine Del 1092, in the same proceedings has observed as under:

> ***"9.*** *Now in the present case, there are no allegations, whatsoever, of any duress or coercion attributed to defendant nos. 2 and 3. No such role is even attributed to them. Therefore, the question of the plaint containing any particulars, much less material particulars in respect of duress or coercion against defendant nos. 2 and 3 does not arise at all.*
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> *Even Order 7 Rule 11 empowers the Court to reject a plaint where it fails to disclose cause of action. The plaint may be totally rejected or may be rejected against a particular defendant, if no cause of action is disclosed against all the defendants or a particular defendant respectively."*

11. In ***Indian Hotels Company Limited*** (supra), this Court was considering the case where specific averments had been made against the defendants who sought their deletion. In fact, this Court observed as under:

> *"**17.** In this case, there is no denial that the plaint does contain averments suggesting a concerted action, or conspiracy between the various defendants (including those on whose behalf Indian Hotels has moved for deletion from the array of parties). The court cannot in the absence of a full trial comment on the strength or weakness of those averments; nor can it dismiss the charges as vague or vexatious, with the definiteness that Indian Hotels' counsel does. If the law as to pleadings is that every averment, which constitutes a step in outlining the cause of action motivating the litigation is to be taken at face value and evaluated on the basis of materials and evidence adduced during the trial, unless either the action itself is barred, or the plea is so prohibited by some law the Court cannot preclude trial. Such being the case, it is inconceivable for a Court to say that the plaintiff should be precluded from leading evidence which any defendant may have to answer during the trial. That such would undeniably be the case, is undisputed by the appellant, because there is no manner a court of law can conclude that a group of individuals or some of them acted in concert or conspired in some manner, without hearing them or taking their account into consideration. That is quite simply, the rationale for rejecting the plea of the appellants. The court is also mindful that (a) besides the liberty given by the Division Bench the appellant has not adverted to any material and (b) the appellant cannot say that any finding or submission on merits as to the truth or correctness of the assertions made individually (which might ultimately lead up to liability that might be borne solely by the seventh defendant)*

against any individual defendant, can be considered in their absence."

12. The said case would therefore be clearly distinguishable to the facts of the present case.

13. As observed above, in the present case, I find that the plaint does not disclose any cause of action against the petitioners and they are neither necessary nor proper parties to the suit.

14. In view of the above, I find merit in the present petition. The petition is allowed. The order dated 03.03.2020 of the learned Trial Court is set aside and the petitioners are ordered to be deleted from the array of parties.

15. The parties shall bear their own costs.

NAVIN CHAWLA, J

JANUARY 14, 2021/Arya