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

+ CM(M) 717/2022 & CM APPL. 32316/2022, CM APPL. 32317/2022

GOPI CHAND

..... Petitioner

Through: Ms. Seema Singh, Adv.

versus

VIJAY KAPOOR

..... Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****J U D G M E N T (ORAL)**

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25.07.2022

1. The impugned order dated 6th April, 2022, passed by the learned Additional District Judge ("the learned ADJ") in CS DJ 3383/2017 (*Vijay Kapoor v. Gopi Chand*) allows two applications of the respondent and dismisses one application of the petitioner.

2. The applications of the respondent, allowed by the impugned order, were preferred under Order VI Rule 17 and Order VII Rule 14 of the Code of Civil Procedure, 1908 ("the CPC"), whereas the application of the petitioner, which stands dismissed by the impugned order, invoked Order VII Rule 11 of the CPC.

3. CS DJ 3383/2017 was instituted by the respondent against the petitioner, claiming damages from the petitioner for having subjected the respondent to malicious prosecution by allegedly registering, against the respondent, a false First Information Report (FIR), resulting in, inter alia, the respondent having to remain incarcerated for a protracted period of time and to face a trial which, according to



the respondent, was completely without basis.

4. The said FIR, subsequently, came to be quashed by this Court *vide* order dated 3rd November, 2016.

5. As it happened, the plaint, as originally preferred by the respondent, made reference to an FIR registered by the respondent against the petitioner at PS Patel Nagar, Central District. It also stated that the cause of action, for filing the suit, arose on 30th January, 2008.

6. The petitioner, in his written statement, filed by way of response to the suit, completely disowned any connection with the FIR registered at PS Patel Nagar or with any event which took place on 30th January, 2008. It was alleged, *inter alia*, that the FIR on the basis of which the suit was filed did not implicate the petitioner in any manner.

7. The respondent, thereafter, moved two applications, under Order VI Rule 17 and Order VII Rule 14 of the CPC.

8. In the application filed under Order VI Rule 17 of the CPC, filed through learned Counsel, it was submitted that, as the respondent had filed the plaint in person, certain errors had crept into the plaint. Specifically, the details of the FIR, on the basis of which the plaint had been filed, had erroneously been entered and the details regarding quashing of the FIR by this Court were required to be incorporated.

9. Paras 3 to 8 of the Order VI Rule 17 application of the



respondent read thus:

“3. That the plaintiff in original suit the respective Para No.8 & 9 about the Jurisdiction and Limitation were not formulated and did not disclose the same properly. The extract of paras no.8 & 9 are reproduced for kind perusal of Hon'ble Court as follows:

“8. That the cause of action for filing the present suit arose in favour of the plaintiff and against the defendant on 30.1.2008. The cause of action further arose when the Plaintiff obtained bail from the Hon'ble A.S.J. The cause of action is still subsisting because the plaintiff still suffering with mental pain and agony and defendant is still filing more false criminal cases against the plaintiff.

9. That the FIR was registered by the defendant against the plaintiff at P.S. Patel Nagar, Central Distt., Delhi, cause of action also arose at Delhi and plaintiff also suffered loss within jurisdiction of this Court, hence this Hon'ble Court has got jurisdiction to try and decide the present suit.”

5. That the aforesaid mistakes were occurred by the plaintiff due to fact that he was unrepresented through legal representation at the time of filing suit.

6. That the plaintiff wants to amend the suit to the extent to include the amend the legal paras of original suit i.e. Para No.8 & 9.

7. That Plaintiffs wants to amend the following Para as Para No.8 & 9 in place of Para No.8 & 9 of original suit in following manner-

“8. That the cause of action for filing the present suit arose in favour of the plaintiff and against the defendant firstly on 18.10.2007 when the Defendant made a Complaint to SHO, Daryaganj. It further arose on 10.01.2008 when 10.01.2008 when a Complaint under Section 156(3) was filed by Defendant and



further arose on 30.1.2008 when the FIR No.33/2008 PS Daryaganj was registered against the Plaintiff on the basis of false averments and forged Documents of Defendant. The cause of action further arose when the Plaintiff obtained bail from the Hon'ble A.S.J. The cause of action further arose on 03.11.2016 when the Hon'ble High Court of Delhi quashed the FIR NO.33/2008 PS Darya Ganj u/s 406/471/468/120B/34 and all consequential proceedings. The cause of action is still subsisting as the plaintiff is still under the mental pain and agony caused due to registration of FIR No. 33/2008 on the basis of forged documents and defendant is still filing more false criminal cases against the plaintiff.

9. That since the FIR was registered by the defendant against the plaintiff at P.S. Darya Ganj, Central Distt., Delhi which falls within the Jurisdiction of present court and further the Defendant is residing within the jurisdiction of this court and also cause of action also arose at Delhi, hence this Hon'ble Court has got necessary jurisdiction to try and adjudicate the issues involved, in the present suit.”

8. That the amendment sought by the plaintiff will not change the nature of the suit and the amendment sought by the plaintiff is necessary and material for deciding the controversy between the parties in a just and fair manner effectively and completely and the suit is at the initial stage.”

10. Side by side, the respondent also filed an application, under Order VII Rule 14(3) of the CPC, to place on record the judgment dated 3rd November, 2016 passed by this Court in Crl. MC 3784/2011 (*Gurdeep Kaur & Anr. v. State & Anr*). It was pointed out, in the said application, that, by error, instead of the said decision, an order dated 21st January, 2016 passed by this Court in Crl. MC 3292/2013 had been placed on record.



11. Prior to the filing of said two applications, it may be noted, the petitioner had filed an application against the respondent under Order VI Rule 11 of the CPC, seeking rejection of the plaint as the averments contained in it did not disclose any cause of action against the petitioner.

12. As already noted, the impugned order dated 6th April, 2022 allows the respondent's applications under VI Rule 17 and under Order VII Rule 14 of the CPC, and rejects the petitioner's application under Order VII Rule 11 thereof.

13. The learned ADJ has held that, as the plaint had originally been filed in person, and, apparently, a wrong FIR had been placed on record, and the details regarding quashing of the FIR by this Court had not been incorporated, the amendments sought to be introduced in the plaint were bonafide and justified. Side by side, the prayer for placing on record the judgment dated 3rd November, 2016, passed by this Court in Crl. MC 3784/2011 was also found to be justified.

14. Ms. Seema Singh, learned Counsel for the petitioner has vociferously challenged the impugned order. She submits that the amendment application, and the application to place the additional documents on record, were in the nature of afterthoughts, based on the objection taken by the petitioner in the written statement filed by way of response to the suit.

15. She further submits that, by the time of filing of the application for amendment, the prayer for damages stood already barred by time,



reckoning one year from the date of quashing of the FIR by this Court on 3rd November, 2016. Such a time barred claim, she submits, could not have been allowed to be introduced by way of amendment.

Analysis:

16. The learned ADJ has, while allowing the respondent's application for amendment of the plaint and for placing the order dated 3rd November, 2016 passed by this Court in CrI. MC 3784/2011, on record, taken stock of the fact that the petitioner had filed the plaint in person and that, therefore, the error was inadvertent.

17. This is a subjective decision taken by the learned ADJ, based on judicious exercise of the discretion vested in him. It is not a decision which suffers from want of any jurisdiction. It cannot, therefore, brook interference under Article 227 of the Constitution of India.

18. If, as Ms. Seema Singh contends, the petitioner's applications were to be rejected, the result would be that, owing to an inadvertent error in placing the correct documents on record, the petitioner would be completely non-suited and would be deprived altogether of a right to prosecute his plaint. Such a consequence, needless to say, has to be avoided at all costs. To err, after all, is human. The right to seek legal remedy bears all the character of fundamental rights. The sequitur would, naturally, be that the application of the respondent under Order VII Rule 11 of the CPC must also be held to have been correctly rejected by the learned ADJ.



19. In the application under Order VII Rule 11, the petitioner sought dismissal of the suit, on the ground that (i) the facts stated in the plaint and the documents filed therewith did not make out any cause of action against the petitioner, (ii) the suit was bad for want of territorial jurisdiction and (iii) the claim in the suit was time barred, if one year were to be reckoned from the date of quashing of FIR as 3rd January, 2016.

20. Qua these three issues, the learned ADJ holds, in the impugned order, that (i) with the allowing of the Order VI Rule 17 application of the respondent, the contention that there was no subsisting cause of action, in the plaint, against the petitioner, was rendered infructuous, (ii) as the petitioner was residing within the territorial jurisdiction of this Court, the suit was not bad for want of territorial jurisdiction and (iii) the suit had been filed within one year of quashing of the FIR by this Court on 3rd November, 2016.

21. I may note that Ms. Seema Singh does not dispute the fact that the original suit had been filed by the respondent within a year of 3rd November, 2016. Her contention is that the amendment application was filed beyond one year from 3rd November, 2016.

22. The principle that, by amendment, a time barred claim cannot be permitted to be introduced, is not cast in stone. The Supreme Court has, over a period of time, substantially diluted this principle and has accorded priority to the consideration, which finds place in the text of Order VI Rule 17, of allowing all such amendments as are necessary



to decide the real issue in controversy between the parties¹.

23. The suit filed by the respondent against the petitioner alleged of malicious prosecution. Malicious prosecution was alleged on the ground that the petitioner had launched a false FIR against the respondent. It goes without saying that, in order to appropriately adjudicate the real issue in controversy between the parties, the court would necessarily have to have, before it, the actual FIR, which formed the basis of malicious prosecution, as well as the order of this Court whereby the prosecution had been quashed. The applications of the respondent under Order VI Rule 17 and Order VII Rule 14 of the CPC merely sought to place these details on record, pointing out that the plaint, as originally filed, contained wrong details, as it had been filed in person. The necessity of the correct details regarding the FIR as well as the order of this Court, whereby the FIR was quashed, having to be before the court in order for it to adjudicate on the real controversy between the parties, cannot be gainsaid.

24. As such, the learned ADJ was entirely justified in allowing the respondent's application under Order VI Rule 17 and Order VII Rule 14 of the CPC. Resultantly, the learned ADJ was also justified in rejecting the petitioner's application under Order VII Rule 11.

25. At the end of the day, all that the learned ADJ has done is to ensure that the respondent was provided an opportunity to prosecute his claim. The respondent's claim may be meritorious or may be

¹ Refer **Rajkumar Gurawara v. S.K. Sarwagi & Co. (P) Ltd, (2008) 14 SCC 364,**



bereft of merits. The right of the respondent to prosecute his claim, however, could not be legitimately be foreclosed. The impugned order merely protects that right.

26. As such, I am unable to see any justification to interfere with the impugned order, least of all in exercise of the jurisdiction vested in me by Article 227 of the Constitution of India.

27. Having said that, as the issue of limitation, which was urged by the petitioner, has been dismissed only on the threshold of Order VII Rule 11 of CPC, on the basis of the averments contained in the plaint, this order shall not act as a fetter on the petitioner raising, at any subsequent stage, a submission that the claim was barred by time. Any such submission if advanced, would be decided on its own merits.

28. This Court, in the present order, has merely held that the learned ADJ was justified in rejecting the application to dismiss the suit under Order VII Rule 11 of CPC, at an incipient stage on the basis of such a stand.

29. With the aforesaid observations, the petition is accordingly dismissed in *limine*.

30. Miscellaneous applications, if any, also stand disposed of.

C. HARI SHANKAR, J.

JULY 25, 2022/dsn