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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 887/2022, CM APPL. 37943/2022 and CM APPL. 37944/2022

SANDHYA BINDAL @ SANDHYA MALIK.... Petitioner
Through: Mr. Sandeep Jindal, Adv.

Versus

MUKESH SHARMA & ORS. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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31.08.2022

1. This petition under Article 227 of the Constitution of India assails the order dated 6th December 2021, passed by the learned Additional District Judge (“the learned ADJ”) in CS 401/2017 (*Mukesh Sharma and Ors v. Mamta Gupta*). By the impugned order, the learned ADJ has, adjudicating an application filed by the defendant in the suit Mamta Gupta, seeking impleadment of certain parties as additional defendants, allowed the application to the extent of impleadment of the petitioner Sandhya Bindal, the Principal of Ramjas School, as a defendant in the suit.

2. The submission of Mr. Sandeep Jindal, learned Counsel for the petitioner is essentially that the suit is entirely directed against the defendant Mamta Gupta and that, therefore, there was no justification for the learned ADJ to implead the petitioner as an additional



defendant in the suit.

3. Without going into the details of the controversy in the plaint, specific allegations of *malafides* and other associated misdemeanours, against the petitioner are to be found in the following paras thereof:

“(4)

(A) The children of plaintiffs have been harassed by various mode and ways by the HOS, management and teachers of said school. Both the children i.e Aditya Vashisht and Jiya Vashisht were suspended by the Principal Ms Sandhya Bindal of Ramjas School.....In her pursuit to harass the said children of plaintiffs, the HOS, Ms Sandhya Bindal alongwith Shri Sandeep Gothwal also wrote defamatory messages on Whatsapp against plaintiffs & their children and in this respect a complaint was given by plaintiff to the P.S.Anand Parbat vide DD No.50A, dt 24/08/2016 and when no action was taken by the police, then a criminal complaint was also filed by plaintiff against the HOS Smt Sandhya Bindal and anr which is still pending before concerned Ld MM.Tis Hazari, Delhi.

(B) That even thereafter, the HOS, Smt Sandhya Bindal did not stop to defame and mentally harass the plaintiffs and their children and continued to write the defamatory and insulting comments on Whatsapp and further complaints were given by plaintiffs against HOS Smt. Sandhya Bindal and defendant.

(C) That on 09/09/2016, a false FIR bearing no. No. 422/2016 U/S 354/506/34 ,IPC & 12 POSCO Act with P.S. Anand Parbat) was got registered by HOS Smt Sandhya Bindal against Deepak Sethi and plaintiff no. 1 namely Shri Mukesh Sharma.



(5) That Chairman, School Management and HOS of Ramjas School all in unison are carrying forward their malafide agenda of harassment, false aspersion, imputation, accusation and mental agony to plaintiffs as well as to other PTA Members of Ramjas School to pressurize them to give up their efforts to object the illegalities and misdeeds being committed in the management of the school and defendant have also joined the said league against plaintiffs which is shown from her conduct of harassment of daughter (Jiya Vashisht) of plaintiffs and her recent campaign of defamation and accusation of plaintiffs on Whatsapp **Group Class IIIrd D** at the instance and instruction of Chairman, HOS & Management of Ramjas School.

(6)The plaintiff No.1 being mother of Jiya Vashisht, gave a written complaint dated 24/10/2016 to Sh. B.S. Narula DCPCR (i.e. Delhi Commission for Protection of Child Right), Kashmiri Gate, Delhi and to various other concerned authorities, complaining that her said daughter is being harassed by Defendant at the instance of School Principal (Smt. Sandhya Bindal).....

16. That defendant had committed the above inexcusable act of defamation in connivance and conspiracy with HOS, Smt. Sandhya Bindal and management of Ramjas School to degrade and lower the image, respect, reputation and honor of plaintiffs and their minor children....”

4. Mr. Jindal submitted that the choice of the parties against whom to proceed is essentially the prerogative of the plaintiff as the *dominus litis* instituting the proceedings. In *Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre and Hotels Pvt. Ltd.*¹, the Supreme Court has clearly held that, while ordinarily the

¹ (2010) 7 SCC 417



principle is that the plaintiff, as the *dominus litis*, can choose the parties who he seeks to implead, under Order I Rule 10(2) of the CPC is an exception to the said principle. Order I Rule 10(2) of the CPC reads thus:

“Suit in name of wrong plaintiff. –

(1)

(2) **Court may strike out or add parties-**The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

5. Clearly, Order I Rule 10(2) of the CPC empowers a Court either *suo moto* or through an application by a party, to join, whether as plaintiff or defendant, any party whose presence is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit.

6. Inasmuch as there are specific allegations on *malafides* in the afore-extracted passages from the plaint in the suit instituted by Respondent 1, the impleadment of the petitioner would definitely be necessary in adjudication of the said allegations.

7. That apart, it is also well settled, as held, *inter alia*, in *State of*



*Bihar v. P.P. Sharma*², that a party against whom allegations of *malafides* are levelled has to be impleaded in the proceedings. The specific words of the Supreme Court, as contained in para 55 of the report read thus:

“It is a settled law that the person against whom *mala fides* or bias was imputed should be impleaded *eo nomine* as a party respondent to the proceedings and given an opportunity to meet those allegations.”

8. Mr. Jindal also sought to draw attention to sub paras (A) and (B) of para 4 of the plaint, to submit that in the said paragraphs, the respondents-plaintiffs have acknowledged that they were separately prosecuting the criminal complaints and other proceedings against the petitioner, qua their grievances against her.

9. To my mind, the submission is completely irrelevant to the issue in controversy on here. I may, for that purpose, reproduce para 4(A) and 4(B) as under:

“(4) Due to the above support given by the plaintiffs, both plaintiffs are being victimized by school/HOS and the management by various modes. A little background and circumstances of the said harassment are being stated hereunder:

(A) The children of plaintiffs have been harassed by various mode and ways by the HOS, management and teachers of said school. Both the children i.e. Aditya Vashisht and Jiya Vashisht were suspended by the Principal Ms Sandhya Bindal of Ramjas School. Master Aditya Vashisht (aged 13 years) was illegally suspended for indefinite period by giving a written

² 1992 Supp (1) SCC 222



notice by the HOS of said School on false and fabricated ground by putting fire crackers in the bag of Master Aditya Vashisht. The said suspension of son of plaintiffs was in violation of Right of Children to Free and Compulsory Education Act, 2009. Jiya Vashisht was mentally harassed by insulting here in front of other students and staff and she was also suspended by the said school without any written notice. The plaintiff no.2 was constrained to file a writ petition bearing no. 11195/2016 before Hon'ble High court of Delhi against the above illegal suspension of her both child and for harassment. In her pursuit to harass the said children of plaintiffs, the HOS, Ms Sandhya Bindal alongwith shri Sandeep Gothwal also wrote defamatory messages on Whatsapp against plaintiffs & their children and in this respect a complaint was given by plaintiff to the P.S. Anand Parbat vide DD No.50A, dt 24/08/2016 and when no action was taken by the police, then a criminal complaint was also filed by plaintiff against the HOS Smt Sandhya Bindal and anr which is still pending before concerned Ld MM Tis Hazari, Delhi.

The copy of suspension letters, writ petition bearing no. 11195/2016 before Hon'ble High court of Delhi filed by the plaintiff no.2 alongwith order dated 08/03/2017, Two Email Letter dated 14/10/2016 & 21/10/2016 of Sh Devesh Gupat, ex manager of Ramjas School sent of Sh Raj Gopal ji (Manager of Ramjas School) and to Principala of Ramjas are annexed as **Annexure -D (Colly)**.

The physical copy of Whatsapp defamatory messages written by Smt Sandhya Bindal are annexed as **Annexure-E**.

The copy of Complaint given by the plaintiffs to P.S. Anand Parbat, vide DD No. 50A, dt 24/08/2016 against smt Sandhya Bindal & Anr is annexed as **Annexure-F**.

(B) That even thereafter, the HOS, Smt Sandhya Bindal did not stop to defame and mantally harass the plaintiffs and their children and continued to write the



defamatory and insulting comments on whatsapp and further complaints were given by Plaintiffs against HOS Smt. Sandhya Bindal and defendant. The complaints given by plaintiffs to P.S. Anand Parbat, Delhi in this respect were DD No. 37B dated 29/11/2019, DD No. 37A dated 15/12/2016, DD No. 7A dated 18/02/2017, DD NO. 38B dated 21/02/207, DD No 29A dated 26/02/2017. The copies of all the above complaints are annexed as **Annexure-G (Colly).**”

10. It is clear, beyond any measure of doubt that the respondents-plaintiffs have levelled serious allegations against the petitioner. It is only as a part of the recital of the facts that they have also alluded to the fact that other proceedings, including criminal proceedings, are also to be initiated by them against the petitioner. The reference to the said proceedings in the plaint cannot be regarded, by any stretch of imagination as any abandonment, on the part of the respondents, of the grievances, in the plaint, as directed against the petitioner. The reliance, by Mr. Jindal, on paras 4(A) and 4(B) of the plaint is, therefore, completely misconceived.

11. In view of the above, there is obviously no error in the decision of the learned ADJ to implead the petitioner as an additional defendant in CS 401/2017.

12. Indeed, I am somewhat surprised at this petition, as, if the prayers of the petition were to be granted, the suit would proceed and the allegations against the petitioner would be adjudicated behind her back. It is difficult, therefore, to appreciate why the petitioner chose to prefer this petition in the first place. For this reason, in fact, I



repeatedly queried of Mr. Jindal as to whether his client would be willing to have CS 401/2017 adjudicated in her absence. No ready answer was forthcoming.

13. For the aforesaid reasons, this petition is dismissed with no order as to costs.

14. Miscellaneous applications also stand disposed of.

C.HARI SHANKAR, J

AUGUST 31, 2022
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