

\$~62

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

+ CM(M) 1189/2022 & CM APPL. 47475/2022 & CM APPL. 47476/2022

BRIJESH GUPTA Petitioner

Through: Mr. Brijesh Gupta, petitioner in person.

versus

SMT SAROJ GUPTA Respondent

Through: Mr. A.K. Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

% **09.11.2022**

1. The impugned order dated 19th September, 2022, passed by the learned Additional District Judge (the learned ADJ) in civil suit 10738/2016 (*Brijesh Gupta v. Saroj Gupta*) adjudicates four applications.

2. Three of these applications have been filed by the petitioner, as the plaintiff in the suit, under Order VI Rule 16 of the Code of Civil Procedure, 1908 (hereinafter, "CPC"), under Order X of the CPC read with Section 165 of the Indian Evidence Act and under Section 151 of the CPC respectively. The application of the respondent, as the defendant in the suit, which also stands adjudicated by the impugned order, was filed under Order VII Rule 14 of the CPC which, as the learned ADJ correctly holds, was the wrong provision.

3. Civil Suit no. 10738/2016 was instituted by the petitioner against the respondent, seeking (i) a decree of possession in respect of

CM(M) 1189/2022

Page 1 of 22

property located at A-793/1, Shastri Nagar, Delhi-110052 (hereinafter “the suit property”), (ii) a decree for recovery of ₹ 5,40,000/- along with *pendent lite* and future interest, (iii) a decree for *mesne* profits @ ₹ 15,000/- per month towards use and occupation charges of the suit property and (iv) a decree of permanent injunction restraining the respondent from creating any third party interest in respect of the suit property.

The Complaint

4. The petitioner, as the plaintiff in the suit, claims to be the owner of the suit property, having purchased it from Rakesh Kumar Puri, the erstwhile owner of the suit property, *vide* registered sale deed dated 27th September 2003 and 3rd October 2003. The complaint alleges that the respondent-defendant (who is the aunt of the plaintiff) has no right or title in respect of the suit property, though she is in occupation thereof. Alleging that the respondent was in the process of creating third party interest in the suit property, the petitioner instituted the aforesaid suit against the respondent praying, as already noted, for possession, *mesne* profits and permanent injunction.

Written Statement of the respondent-defendant

5. The respondent-defendant filed a detailed written statement by way of response to the suit. It was alleged, in the written statement, that the portion of the suit property over which the petitioner-plaintiff claimed rights, was originally owned by late Munshi Ram, the grandfather of the petitioner and the father-in-law of the respondent.

According to the written statement, Rakesh Kumar Puri who purportedly sold the suit property to the petitioner-plaintiff had no right, title or interest in the portion of the suit property sold to Munshi Ram. It was alleged that, after purchasing the aforesaid plot from Rakesh Kumar Puri, Munshi Ram erected certain constructions on the plot and of which Munshi Ram allowed Satbir Gupta, the father of the petitioner-plaintiff, to occupy a portion as a tenant. This fact, pleaded the written statement, was admitted by Satbir Gupta while applying to the Municipal Corporation of Delhi (MCD) for grant of municipal licence. The written statement further alleged that Suresh Gupta, the husband of the respondent, commenced business in the other portion of the suit property in 1979 and that, after Satbir Gupta vacated his portion of the suit property in 1981, Munshi Ram allowed Suresh Gupta to occupy the entire suit property. Proceeding from these assertions, the written statement averred thus in paras 4 to 13, 15 and 16, which paras alone constitute subject matter of the controversy in the present petition:

“4. That Shri Suresh Gupta, husband of the defendant had also started his business in other portion of the aforesaid property in the year 1979. However, after vacation of the property by Shri Satbir Gupta, late Munshi Ram allowed Sh. Suresh Gupta to use the entire property No. A-793/1 (also known as A-793/1A and as A-793).

5. That Shri Suresh Gupta, husband of the defendant, had been using the aforesaid property by giving No. A-793/1A or A-793/1, but infact and in reality both these numbers -related to the same property i.e. A-793/1. He started his business in the aforesaid property in the year 1979. He also applied for allotment of a plot in HSIDC in the year 1981. HSIDC allotted a plot in favour of Shri Suresh Gupta and sent letter dated 12.08.1981 and another letter No. HSIDCIINKP-49/8118220. Haryana Financial Corporation also sent letter dated 16.06.1982 to Shri Suresh Gupta all these letters were sent at the aforesaid suit property which fact amply

proves that the suit property is also known as A-793/1A, Shastri Nagar, Delhi.

6. That Shri Suresh Gupta applied for grant of electricity connection in the suit property and he was issued demand note bearing No.5519 dated 23.02.1984. Thereafter an electricity connection bearing K. No. 35300132664 was sanctioned and energized at the suit property by DESU in favour of the husband of the defendant.

7. That Shri Suresh Gupta also applied for grant of Municipal License for manufacturing of plastic and PVC in the suit property and he was granted municipal license bearing No. 45558 dated 27.12.1985, which was sanctioned on 01.11.1985. MCD also sent a letter dated 14.10.1985 to DESU for verification of power load used by M/s. Scrapwell Traders (India) which was the proprietorship concern of aforesaid Shri Suresh Gupta.

8. That Shri Suresh Gupta also applied for registration before Delhi Sales Tax Authorities regarding his firm M/s Scrapwell Traders (India) at the suit property and he was granted RC No. LC/44/119301/1286 in the month of December -1986. Likewise Shri Suresh Gupta also applied for registration under Central Sales Tax Rule vide application dated. 16.12.1986 and got himself registered at the suit property. Shri Suresh Gupta received assessment orders, notices, communications etc. from the Sale Tax Authorities regularly at the suit property i.e. A-793/1A (also known as A-793 and A-793/1) Shastri Nagar, Delhi, where he was working. It is pertinent to mention that Shri Suresh Gupta had worked only in the suit property in Shastri Nagar, Delhi.

9. That after getting registered with the Sales Tax Authorities, Shri Suresh Gupta had dealt with IPCL (Govt. of India Undertaking) from the suit property. He also purchased raw material from IPCL vide invoice No. 1943 dated 30.09.1987 and also received communications from IPCL at the suit property many a times with the number as A-793/1A, Shastri Nagar, Delhi.

10. That Shri Suresh Gupta also applied for a consent order before the Central Board for the Prevention and Control of Water Pollution for running his manufacturing unit of Scrapwell Traders (India) at the suit property and paid the consent fee against receipt dated 12.08.1987 and received consent certificate.

11. That Shri Suresh Gupta also applied for registration under Small Scale Industries and he was registered vide certificate No. CL/PMT/SSI/REGN/CI/88/6379 dated 23.08.1988 at the suit property by the Commissioner of Industry, Delhi.

12. That Shri Suresh Gupta also applied with MTNL for grant of Telephone connection at the suit property vide application bearing No. 14200 dated 25.08.1988. The Demand Note was raised by MTNL on 25.08.1988 and intimation of release of new telephone connection was sent at the suit property by MTNL vide letter dated 20.04.1989. Thereupon a telephone connection bearing No. 735185 was installed at the suit property by MTNL in the year 1989 in the name of Sh. Suresh Gupta.

13. That Shri Suresh Gupta also opened a current account on 30.01.1987 bearing No. 936 with PNB, Roshnara Road, Delhi under the name and style of his firm M/s. Scrapwell Traders (India) with the address of the suit property at A-793/1A, Shastri Nagar, Delhi.

15. That the aforesaid property was owned by late Shri Munshi Ram who bequeathed the same in favour of the defendant vide his WILL dated 01.11.1985. Shri Munshi Ram died at Delhi on 07.01.1995. After his death the suit property devolved upon the defendant and she became the owner of the same. It is pertinent to state that the execution and genuineness of the WILL dated 01.11.1985 executed by Shri Munshi Ram in favour of the present defendant relating to the suit property was duly acknowledged by Shri Satbir Gupta in the writing dated 14.08.1994.

16. That the defendant has been paying the house tax of the suit property and paid the house tax amounting to Rs.1500/- vide cheque bearing No. 554393 dated 28.03.1991. The defendant also paid House Tax of the suit property vide cheque bearing No. 929692 dated 31.03.1992. The assessment order dated 24.01.1994 regarding the suit property was passed in the name of the defendant by MCD. The said assessment order was effective from 01.04.1988. The defendant also paid house tax of the suit property against receipt No. 995024 dated 06.01.2003 and receipt No. 98227 dated 29.06.2010 in her capacity as an owner thereof.

The foregoing facts and circumstances relating to the said suit property clearly establishes that Shri Suresh Gupta had been occupying the suit property in his own rights since 1979 till the death of Shri Munshi Ram and after his death the defendant became the owner of the suit property as and by way of devolution as aforesaid.”

Petitioner-Plaintiff's Application under Order VI Rule 16 of the CPC

6. The first of the four applications which stand disposed of by the learned ADJ by the impugned order dated 19th September 2022 was preferred by the petitioner, as plaintiff in the suit, under Order VI Rule 16 of the CPC.

7. The said application stands rejected by the learned ADJ in the impugned order, thus:

“Heard arguments on application u/o.6 rule 16 CPC. Ld. Counsel for plaintiff submits that he had moved this application on the ground that there was an agreement between the predecessors of present plaintiff and present defendant in which they have agreed to withdraw all the litigations. Once they agreed to withdraw all the litigations, the pleas taken by parties in those pleadings cannot be re-agitated either as submissions or in defence. On the other hand, it is submitted by Ld. Counsel for defendant that since the plaintiff who is son of Sh. Satbir Gupta (son of plaintiff in earlier suit), had started the fresh round of litigation, it cannot be said that all the pleas cannot be taken.

The submissions of the defendant appears to be more appropriate. Moreover, parties can take any defences whatsoever available to them under law unless debarred by any Act of law or estoppel. So, the application is without merits and accordingly dismissed.”

8. Brijesh Gupta, the petitioner, who is a practicing advocate and appears in person advances, as the grounds for justifying the prayer for deletion of the aforementioned paras 4 to 13, 15 and 16 from the written statement, the contention that the extracted paragraphs adverted to facts within the especial knowledge of Suresh Gupta, and not within the particular knowledge of the respondent Saroj Gupta. He drew my attention to the affidavit filed with the written statement which reads thus:

“AFFIDAVIT

CM(M) 1189/2022

Page 6 of 22

Affidavit of Shri Suresh Gupta son of Shri Munshi Ram, aged about 60 years, resident of A -772, Shastri Nagar, Delhi-11 0052, do hereby solemnly state on oath as under:

1. That the deponent is General Attorney of the defendant in the present case and well conversant with the facts and circumstances of the case and also in know about the facts and status of the property involved in the present suit.
2. That the contents of the accompanying written statement has been drafted by my counsel under my instructions and the defendant's instructions and the same are true and correct.

Deponent

Verification:

Verified at Delhi on this 02nd day of Feb.20 16 that the contents of the above said affidavit are true and correct to my knowledge and nothing material has been concealed and suppressed therefrom.

Deponent"

9. Brijesh Gupta seeks to submit that an agent of a party to a litigation can only perform functions envisaged by Order III Rule 2 of the CPC and cannot therefore incorporate, in the pleadings purportedly filed on behalf of the parties, facts which are within his especial knowledge. That, according to Brijesh Gupta, would amount to the agent effectively filing the affidavit on his own behalf rather than on behalf of the principal who has engaged him as his attorney.

10. Brijesh Gupta also invokes, for this purpose, Order VIII Rule 1 of the CPC. He submits that Order VIII Rule 1 of the CPC has to be read with Order III Rule 2 of the CPC.

11. In my considered opinion, even if Order VIII Rule 1 of the CPC were to be read with Order III Rule 2 of the CPC, the contention of

Mr. Gupta would not commend acceptance.

12. Order VIII Rule 1 of the CPC merely requires the respondent to, within 30 days of service of summons on him, present a written statement of defence. It is not in dispute that the written statement has been filed by the respondent through Suresh Gupta within the stipulated period. Though the power of attorney granted by the respondent to Suresh Gupta has not been placed on record by the petitioner, Brijesh Gupta acknowledges that the power of attorney entitled Suresh Gupta to act and file pleadings on behalf of the respondent Saroj Gupta. He, however, submits that any authority which may be conferred on an attorney has necessarily to be circumscribed by Order III Rule 2 of the CPC.

13. The principal objection of Mr. Gupta is to the following recital in the affidavit accompanying the written statement:

“2. That the contents of the accompanying written statement has been drafted by my counsel under my instructions and the defendant's instructions and the same are true and correct.”

14. The High Court of Karnataka held, in *R. Narasimha v. S. P. Sridhar*¹, that a party may be permitted to prosecute his case through his Power of Attorney holder. This Court, too, in *Bank of Rajasthan Ltd. V. Pala Ram Gupta*², held that a Power of Attorney holder can verify and present a plaint. The Allahabad High Court has also, in *Syed Wasif Husain Rizvi v. Hasan Raza Khan*³, held that a Writ

¹ 2013 SCC OnLine Kar 10126

² 2000 SCC OnLine Del 789

³ 2016 SCC OnLine All 175

Petition under Article 226 of the Constitution of India can be filed through a Power of Attorney holder.

15. Mr. Gupta, submits that an attorney holder of plaintiff or the defendant cannot instruct the counsel. No such authority, according to him, is conferred on the agent under Order III Rule 2 of the CPC. The submission has merely to be noted to be rejected. Order III Rule 2 of the CPC reads thus:

“2. Recognized agents.— The recognized agents of parties by whom such appearances, applications and acts may be made or done are —

(a) persons holding powers-of-attorney, *authorizing them to make and do such appearances, applications and acts on behalf of such parties;*

b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.”

16. A bare reading of Order III Rule 2 (a) of the CPC clearly indicates that an agent who holds an attorney on behalf of a party in a suit is permitted by the CPC “to make and do such appearances, applications and acts on behalf of such parties” as is authorised by the power of attorney.

17. The words “acts” is all encompassing. In ***Purushottam Umedbhai and Co. v. Manilal and Sons***⁴, the Supreme Court held thus:

“10. One of the partners Manubhai Maganbhai Amin was the Manager of the firm Manilal & Sons. He had executed a Power of Attorney in favour of four persons including one Dunderdale. By this Power he authorized any one of these persons to sue for recovery of moneys due to the firm from the firm Purushottam Umedbhai & Co., the appellant. It also empowered these persons to appear and to represent the firm in any court, in any jurisdiction — civil, criminal, insolvency, original, appellate or otherwise — and before any official in any suit or proceeding or matter and to make, sign, verify, present and file any plaint. Dunderdale had signed and verified the plaint in the present case. We have no doubt, on a perusal of the Power of Attorney, that it authorized Dunderdale to file the plaint on behalf of the firm Manilal & Sons and also to verify it.”

It certainly includes in the opinion of this court, the authority to instruct counsel. If a power of attorney is granted by a litigant to a particular person to do all such acts on that litigant's as necessary in a case, it would include within its scope, the power to instruct the counsel.

18. It is well settled that any act which the law does not proscribe is permitted.⁵

19. There is no proscription in the CPC on an agent of a party instructing the party's counsel. Even if Suresh Gupta instructed the counsel who drafted and filed the written statement on behalf of the respondent, that cannot in any way be treated as an infraction of the procedure contained in the CPC, much less, Order VIII Rule 1(3) thereof.

⁴ (1961) 1 SCR 982

⁵ Rajendra Prasad Gupta v. Prakash Chandra Gupta, (2011) 2 SCC 705

20. In so far as the contention of Mr. Gupta to the effect that certain facts, which were within the especial knowledge of Suresh Gupta, have been incorporated in the written statement, I am unaware of any such principle in law, as would bind a party to a litigation to assert, in pleadings, only facts which are only the special knowledge of that party. Facts which may come to the knowledge or notice of the party through third persons or by any other means, can also be asserted in pleadings. The law only requires the party to remain bound by his pleadings, containing averments which are true to the conscious knowledge of the party, failing which the party bears the consequences thereof.

21. As such, I am not convinced with the submissions of Mr. Gupta that the pleadings of the respondent-defendant had necessarily to contain only such details as were within the respondent's personal knowledge and could not include details which were within the knowledge of the agent of the respondent i.e. Suresh Gupta.

22. In any event these cannot be grounds for seeking striking out the pleadings under Order VI Rule 16 of the CPC. Order VI Rule 16 of the CPC reads as under:

“16. Striking out pleadings.— The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

- (a) which may be unnecessary, scandalous, frivolous or vexatious, of
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the Court.”

23. What is to be pleaded is the pristine prerogative of the party who pleads. Ordinarily, a party is entitled to plead her, or his, best case, and it is not within the domain of the court to restrain a party from so pleading. Order VI Rule 16 of the CPC, therefore, envisages certain very specific exigencies in which a court may strike out the pleadings of the parties. The provision has three clauses, (a), (b) and (c).

24. Clause (a) of Order VI Rule 16 refers to pleadings which are “unnecessary, scandalous, frivolous or vexatious”. The expression “unnecessary”, as used in clause (a) of Rule 16, cannot, in my view, be allowed its full etymological play and effect, as, in that event, the provision would empower a court to arrogate, to itself, the authority to decide whether something which is pleaded was “necessary” or not. The prerogative to take a decision on the necessity of the particular plea fundamentally rests with the person pleading it. A court cannot strike out a pleading merely because the court does not consider the fact, or ground, pleaded necessary – as the word is commonly understood – to the case that the party seeks to canvas. That would amount to the court “monitoring” the pleadings of the party, which is neither the intent of, or envisaged by, Order VI Rule 16 of the CPC.

25. The word ‘unnecessary’ as employed in clause (a) of Rule 16, in my considered opinion, is to be read *ejusdem generis* with the words ‘scandalous’, ‘frivolous’ and ‘vexatious’. The words ‘scandalous’, ‘frivolous’ and ‘vexatious’ constitute a genus, referring to pleadings which are fundamentally abusive of the process of the court and which pertain to the character of misusing the process of the

court. The word ‘unnecessary’ which precedes these words is required, therefore, to also pertain to the same genus. Alternatively, applying the *noscitur a sociis* principle, which requires a word to be interpreted in line with the words whose company it keeps, the word ‘unnecessary’ has to be read analogously to the words ‘scandalous’, ‘frivolous’ and ‘vexatious’.

26. Viewed thus, it is only a pleading which per character, is analogous to ‘scandalous’, ‘frivolous’ and ‘vexatious’ pleadings and, therefore, is for that reason unnecessary, which can be struck off under clause (a) of Order VI Rule 16 of the CPC.

27. Clause (b) deals with pleadings which may tend to prejudice, embarrass or delay the fair trial of a suit. This provision has apparently been incorporated to conform to the requirement of fair, free and expeditious trial of proceedings and to avoid the incorporation, in pleadings of assertions which, if are allowed to stand, would prejudice, embarrass or delay speedy adjudication. This clause, thus, in my opinion, can be invoked only where the court comes to the clear conclusion that one or the other party is attempting prejudice or embarrass the proceedings by his pleadings. In any event, as this clause does not call for invocation in the present case, one need not cogitate any further thereon.

28. Clause (c) of Order VI Rule 16 refers to a pleading which is otherwise abusive of the process of the court. The word ‘otherwise’ indicates that the pleading must be abusive of the process of court process for reasons which are not attributable to clauses, (a) or (b),

which precede clause (c).

29. “Abuse of process of court” has its own legal connotation. Wharton’s Law Lexicon defines ”abuse of process of the court” thus:

“Actions manifestly frivolous or brought against good faith will be stayed as an abuse of the process of the court”

P. Ramanatha Aiyar, in his “Advanced Law Lexicon”, defines the expression in the following terms:

“A phrase used if a person resorts to judicial proceedings with an ulterior motive such as with the desire to injure another person; an abuse of process may constitute contempt of court”

In *Progressive Constructions Ltd. v. Bharat Hydro Power Corpn. Ltd.*⁶, this court quoted, approvingly, the following definition of “abuse of process”, from *Words and Phases* (Permanent Edition Vol. I):

“Abuse of process implies irregular and improper use of process, not merely the regular and proper use with a bad motive”

30. The care, caution and circumspection that must inform the exercise, by a court, of its powers under Order VI Rule 16 so as to ensure no unjustified or unwarranted incursion on the party’s right to plead his case as he desires results, stands tellingly underscored in the following passages from *Sathi Vijay Kumar v. Tota Singh*⁷ and *Abdul Razak v. Mangesh Rajaram Wagle*⁸:

⁶ AIR 1996 Del 92

⁷ (2006) 13 SCC 353

⁸ (2010) 2 SCC 432

Sathi Vijay Kumar⁷

“27. The above provision empowers a court to strike out any pleading if it is unnecessary, scandalous, frivolous or vexatious or tends to prejudice, embarrass or delay fair trial of the suit or is otherwise an abuse of the process of the court. The underlying object of the Rule is to ensure that every party to a suit should present his pleading in an intelligible form without causing embarrassment to his adversary (vide *Davy v. Garrett*⁹).

28. Bare reading of Rule 16 of Order 6 makes it clear that the court may order striking off of pleadings in the following circumstances:

- (a) where such pleading is unnecessary, scandalous, frivolous or vexatious; or
- (b) where such pleading tends to prejudice, embarrass or delay fair trial of the suit; or
- (c) where such pleading is otherwise an abuse of the process of the court.

29. In *Halsbury's Laws of England* (4th Edn., Vol. 9, Para 38), it has been stated:

“Certain acts of a lesser nature may also constitute an abuse of process as, for instance, initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious, or oppressive. In such cases the court has extensive alternative powers to prevent an abuse of its process by striking out or staying proceedings or by prohibiting the taking of further proceedings without leave. Where the court, by exercising its statutory powers, its powers under rules of court, or its inherent jurisdiction, can give an adequate remedy, it will not in general punish the abuse as a contempt of court. On the other hand, where an irregularity or misuse of process amounts to an offence against justice, extending its influence beyond the parties to the action, it may be punished as a contempt.”

30. In *Supreme Court Practice*, 1995, p. 344 (Sweet & Maxwell), it has been observed:

“This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will, in a proper case, summarily prevent its machinery from being used as a

⁹ (1878) 7 Ch D 473 : 47 LJ Ch 218 (CA)

means of vexation and oppression in the process of litigation.... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.”

33. At the same time, however, it cannot be overlooked that *normally* a court cannot direct parties as to how they should prepare their pleadings. If the parties have not offended the rules of pleadings by making averments or raising arguable issues, the court would not order striking out pleadings. The power to strike out pleadings is extraordinary in nature and must be exercised by the court sparingly and with extreme care, caution and circumspection (vide *Roop Lal Sathi v. Nachhattar Singh Gill*¹⁰; *K.K. Modi v. K.N. Modi*¹¹; *United Bank of India v. Naresh Kumar*¹²).

34. More than a century back, in *Knowles v. Roberts*¹³, Bowen, L.J. said:

“It seems to me that the rule that the Court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law; and if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading which is beyond his right. It is a recognised principle that a defendant may claim *ex debito justitiae* to have the plaintiff's claim presented in an intelligible form, so that he may not be embarrassed in meeting it; and the Court ought to be strict even to severity in taking care to prevent pleadings from degenerating into the old oppressive pleadings of the Court of Chancery.”

Abdul Razak⁸

“Re: (ii)

16. Order 6 Rule 16 CPC which empowers the court to strike out the pleadings reads thus:

¹⁰ (1982) 3 SCC 487 : AIR 1982 SC 1559

¹¹ (1998) 3 SCC 573 : AIR 1998 SC 1297

¹² (1996) 6 SCC 660 : AIR 1997 SC 3

¹³ (1888) 38 Ch D 263 : 58 LT 259 (CA)

“16. *Striking out pleadings*.—The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the court.”

A reading of the plain language of the above reproduced provisions makes it clear that the court's power to strike out any pleading at any stage of the proceedings can be exercised in either of the three eventualities i.e. where the pleadings are considered by the court unnecessary, scandalous, frivolous or vexatious; or where the court is satisfied that the pleadings tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise considered as an abuse of the court.

17. Normally, a court cannot direct or dictate the parties as to what should be their pleading and how they should prepare their pleadings. If the parties do not violate any statutory provision, they have the freedom to make appropriate averments and raise arguable issues. The court can strike off the pleadings only if it is satisfied that the same are unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay the fair trial of the suit or the court is satisfied that suit is an abuse of the process of the court. Since striking off the pleadings has serious adverse impact on the rights of the party concerned, the power to do so has to be exercised with great care and circumspection.

18. In *Knowles*¹³, Bowen, L.J. observed: (Ch D pp. 270-71)

“It seems to me that the rule that the court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law; and if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading which is beyond his right.”

It is a recognised principle that: “... a defendant may claim ex debito justitiae to have the plaintiff's case presented in an intelligible form, so that he may not be embarrassed in meeting it; and the court ought to be strict even to severity in taking care to prevent pleadings from degenerating into the old oppressive

pleadings of the Court of Chancery.” [Ed.: As observed in *Davy v. Garrett*¹⁴]

19. The above reproduced observations have been quoted with approval in *Sathi Vijay Kumar*⁷ (SCC pp. 366-67, para 34). In that case, the order passed by the High Court deleting paras 11, 12 and 13(a) from the election petition filed by the appellant was questioned before this Court on the ground that the case does not fall within the ambit of Order 6 Rule 16. This Court first held that the provisions of Order 6 Rule 16 CPC are applicable to the election petitions. The Court then referred to the earlier judgments in *Roop Lal Sathi v. Nachhattar Singh Gill*¹⁰, *K.K. Modi v. K.N. Modi*¹¹ and *United Bank of India v. Naresh Kumar*¹² and held that the power to strike out a pleading is extraordinary in nature and must be exercised by the court sparingly and with extreme care, caution and circumspection.”

31. Viewed thus, even if the objections of Mr. Gupta to the aforementioned paras no. 4 to 13, 15 and 16 of the written statement filed by the respondent-defendant by way of response to the suit instituted by the plaintiff are accepted as they are urged, they would nonetheless not make out a case for striking out the said paragraphs from the pleadings as being scandalous, unnecessary, frivolous, vexatious or abusive of the process of the court. Needless to say, however, it would be open to the petitioner to contest the said assertions by all means according to law.

32. I cannot, therefore, fault the learned ADJ for rejecting the application of petitioner under Order VI Rule 16 of the CPC.

Petitioner’s Applications Order X read with Section 165 of the Indian Evidence Act and under Section 151 of the CPC and Respondent’s Application under Order VII Rule 14 of the CPC.

¹⁴ (1878) 7 Ch D 473, p. 486.

33. Insofar as the remaining three applications are concerned, the respondent filed one application for taking on record additional documents and the petitioner filed two applications under Order X of the CPC and the other under Section 151 of the CPC.

34. The application of the petitioner under Order X of the CPC sought recording the statement of Suresh Gupta, attorney holder of respondent Saroj Gupta. There are detailed assertions in the application as to why the petitioner desired the statement of Suresh Gupta to be recorded. Brijesh Gupta submits that, inasmuch as he was contesting the very fact of knowledge, by the respondent, of the facts stated in the written statement, and was questioning the authority of Suresh Gupta in that regard, a preliminary recording of statement of Saroj Gupta under Order X of the CPC would considerably clear the air.

35. I do not intend to enter any finding in that regard, as the learned ADJ has not examined any of the contentions contained in the application of the petitioner under Order X of the CPC. Indeed, the passage, in the impugned order which disposes of the said application, is largely unintelligible. It reads thus:

“In this case both the parties, though not admitted by each other, are claiming their title through one common person namely Sh. Rakesh Puri. This is a fact which to be established apart from other facts; So, in these circumstances, no fruitful purpose will be fulfilled to examine the defendant u/o.1 0 CPC. Accordingly, the application “is dismissed.

Frankly, this court finds it difficult to understand the reasoning of the

learned ADJ. In any event, the learned ADJ has not adverted to any of the contentions advanced by the petitioner in his application under Order X of the CPC. The impugned order, to the extent dismisses the said application is unreasoned. It cannot, therefore, sustain.

36. The same infirmity beleaguers the findings in the impugned order with respect to the application of the respondent to place additional documents on record (which ought to have been filed under Order VIII Rule 1A of the CPC rather than under Order VII Rule 14 of the CPC) and the counter application by the petitioner under Section 151 of the CPC, objecting to taking of the said additional documents on record. The findings/observations of the learned ADJ with respect to these two applications may be reproduced thus:

“Third, an application u/sec.151 CPC was filed on behalf of plaintiff for rejection and return of the documents filed by defendant. Another application u/o. 7 rule 14 CPC (wrong provision) filed by the defendant for taking on record those documents, which were objected by the plaintiff in application u/sec.151 CPC.

It is submitted by Ld. Counsel for plaintiff that vide order dated 08.11.2016, parties were directed to file only those original documents, of which copies are already on record. However, from the perusal of order it appears that liberty was granted to "file documents" and not only "original documents". *In these circumstances, I think both these applications are superfluous and thus dismissed.*”

37. As in the case of the application under Order X of the CPC filed by the petitioner, the impugned order is largely unreasoned insofar as it deals with the respondent's application for placing additional documents on record and the petitioner's application objecting thereto. The learned ADJ merely refers to an earlier order dated 8th November

2016 which, for the sake of clarity, may be reproduced thus:

“CS NO. 10738/16
Brijesh Gupta v. Smt. Saroj Gupta

08.11.2016

Present: Plaintiff in person.

Counsel Sh. A.K. Gupta with attorney of the defendant.

Both the parties requests for adjournment on the ground that they have to place on record some original documents.

Put up for filing documents, admission denial of documents and arguments on all the pending applications on 07.03.2017.

Copies of the documents be supplied by the defendant in advance at least 7 days before the NDOH.”

38. The impugned order merely notes that the order dated 8th November 2016 granted the parties liberty to “file documents” and not merely to “file original documents”.

39. The observation is neither here nor there. The learned ADJ has neither considered whether a case for introducing the documents on record at that stage, as sought by the respondent, was made out or, as claimed by the petitioner, was not.

40. The applications, therefore, require a revisit.

Conclusion

41. For the aforesaid reasons, this petition is disposed of by upholding the impugned order dated 19th September 2022 passed by the learned ADJ, insofar as it rejects the application of the petitioner

under Order VI Rule 16 of the CPC. However, the impugned order insofar as it rejects the application of petitioner under Order X of the CPC read with Section 165 of the Indian Evidence Act, and allows the respondent's application to place additional documents on record and dismisses the petitioner's application under Section 151 of the CPC opposing such placement, is quashed and set aside.

42. The learned ADJ is, therefore, directed to consider and decide, *de novo*, (i) the petitioner's application under Order X of the CPC, (ii) the respondent's application for placing additional documents on record and (iii) the petitioner's application opposing the placement of the said additional documents on record.

43. Arguments on these applications would be heard by the learned ADJ on the next date when the matter is listed before her/him which is stated to be 6th December 2022.

44. It is made clear that this Court has not expressed any opinion on any of the applications which have been remanded for *de novo* consideration by the learned ADJ. In deciding the aforesaid applications *de novo*, the court would not be influenced by the opinions and findings contained in the impugned order.

45. The petition is partly allowed in the aforesaid terms with no order as to costs.

C. HARI SHANKAR, J.

NOVEMBER 9, 2022/hk/dsn