

K.S. Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION NO.2969 OF 2021

IN

SUIT NO.21 of 2018

Ashu Dutt

**...Applicant/
Original Plaintiff**

Versus

Aneesha Dutt & Ors.,

...Defendants

Mr. Rohaan Cama i/b Sapana Rachure, Advocate for
Applicant/Plaintiff.

Mr. Santosh Paul, Senior Advocate a/w Mr. Sriharsh Bundela a/w
Mr. Mahir Bhatt a/w Mr. Maithreya Shetty i/b Mr. Wasim Ansari,
Advocates for Defendant No.1.

CORAM : R.I. CHAGLA J.

DATE : 18TH JANUARY, 2023.

ORDER :

1. By this Interim Application, the Applicant/Plaintiff is seeking amendment of the Plaint as per the Schedule annexed at Exhibit-A to the Interim Application.

2. The amendment which is sought by the Applicant/Plaintiff is in respect of an Article published in the Bar and Bench on 25th June, 2020 which the Plaintiff has claimed constitutes libel against the

Applicant/Plaintiff. The amendment is also in respect of the communication dated 27th April, 2021 addressed by Defendant No.1 herein through her Advocate to the Applicant/Plaintiff and his Advocates with copy marked to the Royal Thai Consulate-General, Mumbai, India and The US Embassy, Mumbai (U.S. Consulate General Mumbai) which the Plaintiff has claimed constitutes libel against Plaintiff.

3. Mr. Rohaan Cama, learned Counsel appearing for the Applicant/Plaintiff has submitted that the present suit has been filed in respect of an Article titled "*Investment Manager and Author Ashu Dutt lands in cop net for dowry harassment*" which had been published on 11th January, 2017 and which the Plaintiff has claimed constitutes libel against him published by the Defendant Nos.2 to 5 who are claimed to be acting at the instance of Defendant No.1. The Plaintiff has claimed damages for the loss suffered by and/or occasioned to him on account of publication of the said Article. The Article has been published by the media houses and that is the reason for joining Defendant No.2 to 5.

4. Mr. Cama has submitted that the amendment which has been sought is the same cause of action as in the suit as the Plaintiff has

claimed that the further article published by Defendant No.1 in the Bar and Bench on 25th June, 2020 and communication addressed on 27th April, 2020 by Defendant No.1 constitutes libel against the Plaintiff. He has submitted that the amendment being a pre-trial amendment, the Court has leaned in favour of granting such amendments by giving an opportunity to the Defendant to raise her objection to the amended plaint by corresponding amendment in the Written Statement. He has relied upon the decision of the Supreme Court in *Usha Devi Vs. Rijwan Ahamd and Others, (2008) 3 SCC 717* and a decision of Delhi High Court in *S.P. Sehgal Vs. Smt. Vidya Kaul, Civil Miscellaneous, ILR (1990) 1 Delhi 201* in this context. In the latter case before the Delhi High Court, the amendments sought to be incorporated were subsequent events and which were considered by the Court to be appropriate to be allowed in the interest of justice lest the other party should be put to surprise or injustice. The Court held that the real test for allowing the amendment i.e. as to whether the amendment is necessary for determining the real question in controversy and the party should not be put to injustice. The Supreme Court in *Usha Devi (supra)* held that merit of an amendment is hardly a relevant consideration.

5. Mr. Cama has submitted that under Order VI Rule 17 of the Code of Civil Procedure, 1908, as also held in the above decisions the Court should necessarily allow pre-trial amendment of the Plaint, particularly where as in this case the amendments sought to be incorporated are subsequent events.

6. Mr. Santosh Paul, the learned Senior Counsel appearing for the Defendant No.1 has vehemently opposed the amendment sought for by the Plaintiff. He has submitted that the Interim Application seeking amendment is clearly barred by the law of limitation. He has submitted that the Interim Application for amendment has been filed beyond one year from the article published in the Bar & Bench which the Plaintiff claims constitutes Libel against the Plaintiff. He has submitted that injustice would be caused to the Defendant No.1 if amendment is allowed considering that it is beyond the period of limitation. Further, the proposed amendment is a new cause of action from the cause of action in the suit as the article is that of the Defendant No.1 whereas the article in the original Plaint is of the journalist-media houses who are joined as Defendant Nos. 2 to 5 and Defendant No.1 has categorically stated that she has nothing to do with the impugned article. The Plaintiff would require to file a fresh

suit for the new cause of action.

7. Mr. Paul has referred to the impugned Article at Exhibit-M of the Plaint and stated that the Defendant No.1 has not even been mentioned in the Article or that she has caused the publishing of the Article.

8. Mr. Paul has submitted that in allowing the amendment, the Court is required to consider two issues – i) as to whether it results in injustice to the Defendant and; ii) as to whether it is necessary for determining the real question in controversy between the parties. He has placed reliance upon the decision of the Supreme Court in *Life Insurance Corporation Vs. Sanjeev Builders (P) Ltd., 2022 SCC OnLine SC 1128*, wherein the Supreme Court had relied upon an earlier decision of the Bombay High Court in *Kisandas Rupchand Vs. Rachappa Vithoba Shilwant reported in ILR (1909) 33 Bom 644*, which laid down the principles of allowing amendments viz. (a) not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. He has submitted that the amendment which has been sought is clearly in contravention of these principles. In the event the proposed amendment is allowed, it would work injustice to the

Defendant No.1 as the cause of action would change.

9. The article in Bar and Bench which is sought to be incorporated is the view of Defendant No.1 herself and not similar to the impugned Article but is generally on unscrupulous litigants and frivolous litigation as well as how women face ordeals in Court. The communication dated 27th April, 2021 expresses the grievance of Defendant No.1 through her Advocate on the current proceedings and the conduct of the Plaintiff in these proceedings. He has submitted that there is no question of either the Article or the communication constituting libel against the Plaintiff. The Defendant No.1 is only expressing her freedom of speech and expression which is permissible under Article 19(a) of the Constitution of India. He has accordingly submitted that the proposed amendment be not allowed.

10. I have considered the rival submissions as well as taken note of the proposed amendment which is sought by the present Interim Application. It is necessary to bear in mind that the amendment sought is a pre-trial amendment. The Defendant No.1 has still to file a Written Statement for which a separate Interim Application has been taken out for condonation of delay in filing the Written

Statement and for taking the Written Statement on record.

11. The issue as to limitation which has been raised by the Mr. Paul, is not acceptable. This upon considering the orders of the Supreme Court which have been issued from time to time during the Covid-19 pandemic and culminating in the order dated 10th January, 2022 which extended the period of limitation from 16th March, 2020 till 28th February, 2022 for filing proceedings in the Court. The Article dated 25th June, 2020 which the Plaintiff claims constitutes libel against the Plaintiff was published on 25th June, 2020 i.e. during the extended period of limitation. This would equally apply to the communication by way of E-mail which was sent by the Advocate of Defendant No.1 on 27th April, 2021. The present Interim Application has also been filed on 2nd August, 2021. All this during the extended period of limitation. Thus, there is no merit in the submission of the learned Counsel for Defendant No.1 that Application for amendment is barred by limitation.

12. I have considered the averments in the Plaint filed in the above Commercial Suit. The cause of action which arises therein is with regard to the defamatory article which according to the Plaintiff constitutes libel against the Plaintiff. The proposed amendment

sought is nothing but a continuation of the cause of action as it arises on account of the subsequent articles dated 25th June, 2020 and communication dated 27th April, 2021 addressed by Defendant No.1. which the Plaintiff claims Constitutes Libel against the Plaintiff.

13. The consideration of merits of an amendment in allowing a prayer to amend fell for consideration in *Usha Devi (supra)*. The Supreme Court held that in allowing the prayer for amendment, the merit of the amendment is hardly a relevant consideration and it will be open to the Defendants to raise their objection in regard to the amended Plaint by making corresponding amendment in the Written Statement. Further, the amendment being a pre-trial amendment, Courts lean towards allowing such amendments while exercising power under Order VI Rule 17 of the Code of Civil Procedure, 1908 and particularly, where the amendment is necessary for the purpose of determining the real question of controversy between the parties. The only exception is in the proviso to Order VI Rule 17 of the Code which provides that no amendment is to be allowed after trial has commenced unless the Court comes to the conclusion that inspite of due diligence, parties could not address the matter prior to commencement of the trial.

14. A contention was raised by Mr. Paul for Defendant No.1 with regard to the proposed amendment not seeking the joinder of Bar or Bench in which impugned Article of Defendant No.1 was published. However, this contention including others for which averments are made in the Affidavit in Reply are contentions on the merits of the amendment which as held by the Supreme Court in *Usha Devi (supra)* are hardly a consideration in allowing the prayer for amendment. It is always open for Defendant No.1 to deal with the amended Plaint by making corresponding amendments in the Written Statement which remains to be filed and for which an Interim Application has been taken out for condonation of delay in filing the Written Statement. Accordingly, in my view, there is no merit in the opposition to the prayer for amendment sought in the Interim Application.

15. The relief sought for in Interim Application is accordingly granted. Hence, the following order is passed :

- i) The Applicant is permitted to amend the Plaint as per Schedule annexed at Exhibit-A to the Interim Application within a period of three weeks from the date of this order.

- ii) The amended Complaint shall be served by the Advocate for the Applicant on the Defendants simultaneously upon carrying out of the amendment.
- iii) It is clarified that the Defendant No.1 shall be at liberty in any Written Statement to be filed to address the amended Complaint.
- iv) Interim Application is accordingly disposed of.

[R.I. CHAGLA J.]