

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 124 OF 2023
IN
LEAVE PETITION (L) NO. 27684 OF 2023
IN
SUIT (L) NO. 20861 OF 2023

Ankiti Bose : Appellant

V/s.

Nikhil Subramaniam & Ors. : Respondents

Mr. Jayprakash Sen, Senior Advocate a/w Amir Arsiwala, Monika Tanna, Ritika P., Dhara Modi, Nandita Dethe i/by Singhania Legal Services for Appellant.

Mr. Mayur Khandeparkar a/w Jay Bhardwaj, Himanshu Gupta, Tanmay Vispute i/by Tanmay Vispute & GDC Legal Consultant LLP for Respondent Nos.1 & 2.

Mr. Hiren Kamod a/w Aliya Khan, Zahra Padamsee and Jay Vyas i/by Vashi and Vashi for Respondent No.3.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 28th NOVEMBER, 2023

P.C. :

1. The present Appeal impugns an order dated 16th October, 2023 by which (i) the Appellant's application for leave

under Clause XII of the Letters Patent has been rejected and (ii) the application filed by the Respondents under Order VII Rule 10 of the Code of Civil Procedure, 1908 (CPC) has been allowed.

2. In order to give a context to the rival contentions, it is useful to set out the following facts;

i. On 31st July, 2023 the Appellant filed the captioned Suit seeking inter alia to declare that remarks made by Respondent No.1 in articles published on the website of Respondent Nos.2 and 3 were defamatory of the Appellant and for damages on account thereof.

ii. In paragraph No.24 of the Plaint the Appellant has averred as follows :-

"24. The Plaintiff is the Citizen of India but is currently residing in Singapore for official purpose and the Defendant No. 1 and Defendant No. 2 both are located in Delhi. The entire cause of action has arisen within jurisdiction of this Hon'ble Court and, therefore, this Hon'ble Court has jurisdiction to entertain, try and adjudicate the present Suit." (emphasis supplied)

iii. The Appellant also filed Interim Application (L) No. 20867 of 2023 in which the Appellant sought various interim reliefs. It is not in dispute that the Interim Application was thereafter pressed by the Appellant for seeking ad interim relief. It is also not in dispute that the Respondents thereafter filed their respective Affidavits in Reply *inter alia* taking the plea of lack of jurisdiction. The Respondents thereafter filed their respective Applications under Order VII Rule 10 of the CPC. The Appellant on 5th October, 2023 before objections could be raised in the Suit, filed its Application for leave under Clause XII of the Letters Patent, in which the Appellant has expressly stated viz.

"5. Since particular harm and damage has been caused to the reputation of the Plaintiff due to the impugned libelous article being read by her family, including her father, within the territorial jurisdiction of this Hon'ble Court, a material part of the cause of action can be said to have arisen within the territorial jurisdiction of this Hon'ble Court. Further, the city of Mumbai is the financial capital of the nation and is home to a vast majority of Indian hedge funds, venture funds, and financial institutions. The impugned libelous article has caused particular damage to the Plaintiff in Mumbai for this very

reason, since it directly impugns her honesty and integrity vis-a-vis venture capitalists and financiers.

6. *The Plaintiff submits that the material part of the cause of action has taken place in Mumbai and thus entitles the Plaintiff to institute present defamation suit in Mumbai. The Plaintiff therefore submits that she is entitled to seek leave of this Hon'ble Court under clause XII of letter patent as part of the cause of action has arisen in Mumbai.* (emphasis supplied)

iv. On 16th October, 2023, i.e. the date on which the Impugned Order was passed, the Appellant tendered a draft amendment seeking to amend the Plaint in the following terms viz.,

"24A. *The plaintiff maintains her permanent domicile in Mumbai and her temporary residence in Singapore is solely for work purposes. Although the Plaintiff is in Singapore for her official purpose presently, the Plaintiff has her permanent address in Mumbai i.e. D 2302, Ekta Meadows, Khatau Mill Compound, Off. WEH, Borivali East. Mumbai - 400 066. The Plaintiff craves the leave of this Hon'ble Court to refer to and rely upon documents evidencing the same as and when produced. Further, the Plaintiff is born in Mumbai, schooling and graduated in Mumbai; due to which her relatives, confidants, friends and colleagues reside within the jurisdiction of this Hon'ble Court. The libel and defamation*

done by the Defendants has had its damaging effect globally, including within the jurisdiction of this Hon'ble Court as the online publications have lowered the esteem of the Plaintiff in the minds of her relatives, well-wishers, and friends in Mumbai. Thus, a part of the cause of action for the present suit certainly arises within the jurisdiction of this Hon'ble Court.

24B. Further, the Plaintiff's father, Mr. Uday Krishna Bose who resides in Mumbai, perused the aforementioned article. Hereto annexed and marked as EXHIBIT "M" the copy of Whatsapp Chat. Further, the websites are globally accessible, which her family, friends and business circle being Mr. Uday Bose, her father, Mr. Anand Singh and Mr. Shailesh Haribhakti, potential investors and business associates, residing within this jurisdiction, has read and they believe that the impugned articles are causing harm to her reputation and hence are defamatory. Therefore, the grounds for legal proceedings are very well rooted in Mumbai. It is submitted that the impugned publication was widely circulated over the internet and was thus "published" throughout the nation including in Mumbai. Further, the city of Mumbai is the financial capital of the nation and is home to a vast majority of Indian hedge funds, venture funds, and financial institutions. The impugned libelous article has caused particular damage to the Plaintiff in Mumbai for this very reason, since it directly impugns her honesty and integrity vis-à-vis venture capitalists and financiers. The impugned publication being accessible in Mumbai, it certainly cannot be said that this Hon'ble Court does not

have the jurisdiction to entertain the present suit."

v. However, the Learned Single Judge disposed off the Appellant's application for leave under Clause XII *inter alia* holding as follows viz.,

"24. However, I agree with the submissions of Defendants Counsel that there is variance in between the averments in the Plaint and the Petition. There is every reason to believe that this pleading in Petition is made after the Defendants have taken an objection to the jurisdiction of this Court. It gains importance. There is no explanation offered by the subsequent averment was not taken when the Suit was filed. Even though it is true that schedule of amendment is tendered for amending the Plaint, I am not accepting it for the reason that the manner of seeking amendment is not proper. It has to be accompanied by Interim Application."

It is thus that the captioned Appeal has been filed.

3. Mr. Sen, Learned Senior Counsel appearing on behalf of the Appellant candidly submitted that the Appellant had in Paragraph 24 of the Plaint made a mistake by stating that the entire cause of action had arisen in Mumbai. He submitted that

the Appellant had therefore to correct/rectify this mistake tendered draft amendments which set out how and why only part of the cause of action had arisen in Mumbai. He then invited our attention to the Impugned Order and pointed out that the Learned Single Judge had gravely erred in failing to allow the amendment in terms of the draft amendment tendered on the sole ground that the manner in seeking amendment was not proper format. He submitted that the Plaint having only been lodged and not registered, it was common practice that any correction/amendment which was required to be made to such Plaint at this stage could be by way of a draft amendment and there was no need to file any formal Interim Application for amendment. To buttress his submission that no formal Interim Application is required when a Plaint is merely lodged he pointed out that on lodging a Plaint the office of the Prothonotary and Senior Master raise objections which are then required to be complied with before the Plaint is registered and finally numbered. He submitted that these objections are never complied with by filing any formal application. He submitted that

in the present case, the situation would not be any different since the Appellant was merely seeking to correct an inadvertent mistake in the Complaint before the Suit was finally numbered.

4. Learned Senior Counsel then pointed out that it was well settled that at the time of granting leave to defend only the averments in the Complaint and the application for leave under Clause XII are to be looked at. He submitted that when applying for Clause XII leave, the Plaintiff is not required to give notice to the Defendants nor are the Defendants entitled to be heard. He submitted that this Hon'ble Court is only required to ascertain from the averments in the Complaint and the Petition under Clause XII as to whether a part of the cause of action can be said to have accrued within the jurisdiction of this Hon'ble Court and nothing more.

5. He then submitted that the cause of action in the present case arose on account of a libelous and defamatory article published on the websites being operated by Respondent

Nos.2 and 3. He submitted that the said publication was accessible throughout the nation and including within the territorial jurisdiction of this Court where the same had infact been accessed and read by the Appellant's father. Basis this he submitted that a material part of the cause of action had arisen within the jurisdiction of this Court, thus entitling the Plaintiff for the grant of leave under Clause XII of the Letters Patent. He submitted that the Appellant had sought to correct the error in paragraph 24 of the Plaint by way of the draft amendment which had been rejected by the Learned Single Judge. He submitted that it was this aspect that had not been considered at all by the Learned Single Judge in the Impugned Order.

6. Mr. Sen then submitted that the Learned Single Judge had expanded the scope of the Leave Petition by effectively treating the same as a counter to the applications filed by the Respondents under Order VII Rule 10 of the CPC. He reiterated that the scope of inquiry in a Leave Petition was very different from that in an application for return of the Plaint. He submitted

that the Learned Single Judge had gravely erred at this stage by entering into an inquiry as to the tenability of the averments set out in the Leave Petition and the Plaint. He thus submitted that the correct course of action would have been to allow the draft amendments and thereafter hear the Clause XII leave petition. He submitted that it was always open for the Defendants to then take out an appropriate application for revocation of leave in the event the same was granted at which stage the Learned Single Judge would hear all objections as to whether the leave had been properly granted or not.

7. Mr. Sen then placed reliance upon a judgment of the Calcutta High Court in the case of ***Kanthlal India Ltd. Vs. Anant Prasad Bhatia and Ors.***¹ to submit that the Court has the power to allow an amendment even when the Plaint did not disclose any cause of action. From the said judgement, he invited our attention to the following paragraphs viz.,

"6. *In Ganesh Trading Co. v. Moji Ram reported in AIR 1978 SC 484 Supreme Court went further and observed:*
"..... *Defective pleadings are generally curable if the*

1 1985 SCC OnLine Cal 43

cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute a cause of action where there was none, provided necessary conditions such as payment of either any additional court-fees, which may be payable, or of costs of the other side. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should ordinarily, refuse prayers for amendment of pleadings."

7. *Mr. Mitter also urged that even if the plaint did not disclose that the Court had jurisdiction the plaintiff was entitled to show other facts that it had jurisdiction. In support of his contention Mr. Mitter cited following decisions viz. Subodh Kumar Chatterjee v. Union of India, AIR 1990 Cal 540. Here the learned Judge observed that in a suit filed in the ordinary or extraordinary original civil jurisdiction of this High Court the amendment of plaint showing the court has jurisdiction may be allowed. In Gagarmal Ramchand v. Hongkong & Shanghai Banking Corporation Ltd., AIR 1950 Bom 645, a Division Bench of the Bombay High Court observed that the power of the Court to allow amendment of pleadings under O.6, R.17 is not in any way restricted or controlled by O.7, R.1 though a Court is bound to reject the plaint under O.7, R.11(a). If the plaint which did not disclose any cause of action still the court has power to allow its amendment so that it could disclose a cause of action.*

8. *In my view the delay is not such which disentitles the plaintiff to make the application for amendment of the plaint. The question, is can an order for amendment be made if this Court had no jurisdiction to entertain or try the suit, so far as defendants 1 and 2 are concerned who are the real defendants in the suit. As already observed could it be said on the basis of the pleadings that the plaintiff has no cause of action at all against the defendants 1 and 2 at all? Damages which the plaintiff claims to have suffered on account of wrongful acts and conduct of the defendants 1 and 2 as alleged by the plaintiff in its pleadings could not be said (to?) have not been suffered by the plaintiff at Calcutta at its registered office where the Books of Account of the plaintiff are kept within the jurisdiction of this Court. Therefore, however, slender it may be this Court may be said to have jurisdiction to entertain the suit. The amendment of the plaint strengthens the case of the plaintiff by introducing certain pleadings to show that certain matters already pleaded took place within the jurisdiction of this Court. If the suit has to be tried then those pleadings would be necessary and would be relevant for the purpose of determination of the real controversy between the parties."*

Basis the above, he submitted that the Impugned Order had incorrectly directed return of the plaint. He submitted that the Plaint could never have at this stage been returned to

the Appellant for presentation before another Court for the simple reason that the Plaint had not yet been registered and numbered by this Court since the same was only on a lodging number.

8. Mr. Khandeparkar learned Counsel appearing on behalf of Respondent Nos.1 and 2 at the very outset submitted that the case now argued by the Appellant in this Appeal was a new case. He pointed out that on the date when the Impugned Order was passed, the learned Counsel appearing on behalf of the Appellant had simply tendered the draft amendments and had not pressed the same. He submitted that when the Learned Single Judge had indicated to the Counsel for the Appellant that the same was not in proper format and/or by way of an interim application, the learned Counsel did not then seek time to file such an application but proceeded with the hearing of Clause XII Leave Petition. He submitted that the learned Counsel also did not make a request to the Learned Single Judge that the application for amendment ought to have been heard and

decided before Application for Leave under Clause XII.

9. Without prejudice to the aforesaid submission, Mr. Khandeparkar submitted that the said Clause XII Leave Petition was filed only after the Respondents had raised an objection to the jurisdiction of this Hon'ble Court. He pointed out that despite this objection raised, the Appellant had in fact pressed for ad interim relief basis the averments in the Plaint as it was filed. He then submitted that the Appellant, having chosen to press for ad interim relief basis the averments made in the Plaint, was now estopped from seeking to amend the Plaint.

10. Mr. Khandeparkar then submitted that even accepting that the Appellant had made a mistake in paragraph 24 of the Plaint by stating that the entire cause of action had arisen within the jurisdiction of this Hon'ble Court, he submitted that as per Section 19 of the CPC, the benefit of such mistake should now enure to the benefit of the Respondents. He submitted that since it was his contention that despite the lack of jurisdiction having

been pointed out to the Appellant, the Appellant had chosen to press its application for interim relief.

11. Mr. Khandeparkar then submitted that in cases of defamation over the internet or a public media platform the Plaintiff has to necessarily contain specific pleas of wrong/damage done to the Plaintiff within the jurisdiction of the Court where the suit is filed. He submitted that the Plaintiff did not contain particulars of the persons in that jurisdiction in whose esteem the Plaintiff claims to have been defamed. He submitted that in the present case admittedly neither the Plaintiff nor the Defendants resided within the jurisdiction of this Court and the Plaintiff did not contain any such averment of defamation/damage caused within the jurisdiction of this Court. He thus submitted that the Plaintiff had correctly been returned to the Plaintiff. In support of his contention he placed reliance upon a judgment of the Delhi High Court in the case of ***Ajay Pal Sharma Vs. Udaiveer Singh***². Paragraph 9 of the said judgments reads thus;

"9. A reading of the afore-extracted paragraphs from the

² Unreported judgment dated 28th July, 2023 in Interim Application No.6102 of 2020

*decision, in **Escorts Limited**, clearly reveals that this Court has, in the said case, held, without any equivocation whatsoever, that, in the case of defamation, over the internet or over a public media platform, where the jurisdiction of a Court, within whose jurisdiction neither the plaintiff nor the defendant resides, is being sought to be invoked, "the plaint has to necessarily contain specific pleas of wrong done within the jurisdiction of that Court, by giving particulars of the persons in that jurisdiction, in whose esteem the plaintiff claims to have fallen and/or the loss or damage suffered."*

Basis the above, he submitted that the Impugned Order did not want any interference with.

12. Mr. Kamod learned counsel appearing on behalf of Respondent No.3 supported the submissions of Mr. Khandeparkar. He tendered a list of dates and events and pointed out therefrom that the Appellant had consciously pursued the application for ad interim reliefs despite the fact that objection as to jurisdiction had been taken as early as 22nd August, 2023. He then placed reliance upon a judgment of Division Bench of this Court in the case of **Quadricon Pvt. Ltd.**

Vs. Shri Bajrang Alloys Ltd.³ to submit that once a Plaint had been presented and accepted without obtaining leave under Clause XII it would not then be open to a Plaintiff to contend an objection of jurisdiction being raised that such suit had not been properly instituted and to then seek leave under Clause XII to correct such defect for presentation of the Plaint. Basis this judgment, he submitted that the Impugned Order had been correctly passed and did not warrant any interference with.

13. We have heard learned counsel, considered the rival contentions advanced and the case laws cited and find that the present Appeal deserves to be allowed for the following reasons;

a. A perusal of the Impugned Order shows that the Learned Judge has not rejected the Clause XII Leave Petition on the ground that a material part of the cause of action did not arise within the jurisdiction of this Court. We find that the Impugned Order is entirely bereft of reasoning on this most crucial aspect. In our view, if the Learned Judge was to reject the leave under Clause XII, it was incumbent upon the Learned Judge to have

³ 2009 SCC OnLine Bom 402

arrived at determination that a material part of the cause of action had not arisen within the jurisdiction of this Court or for some explanation as to how this Court did not have jurisdiction. As already noted, the Impugned Order makes absolutely no determination on this aspect whatsoever.

b. The only ground on which the Clause XII Leave Petition was rejected was on the ground that there was variance between the averments in the Plaint and the Clause XII Leave Petition. However, given that the Appellant had tendered draft amendments and that the Plaint was merely lodged and had not been finally numbered the Learned Judge, in our view, ought to have if not allowed the draft amendments tendered at least granted an opportunity to the Appellant to rectify and/or correct the same by filing an Interim Application for the said purpose and not rejecting the same outright.

c. It is also an accepted practice that leave under Clause XII is in the nature of an *ex-parte* proceeding made by the Plaintiff to the chamber judge. On such leave being granted a

Defendant has the right to approach the Court by taking out an application seeking revocation of leave. Thus, the grant of leave does not prejudice the Defendant who always has a remedy to revoke the same.

d. Additionally, we find that the submissions of learned counsel for the Respondents to sustain the Impugned Order are really arguments on merit which the Respondents are open to take once the application for leave under Clause XII is decided. In the event the Court is so inclined it would be open to the Respondents to raise all the defence available to them for revocation of the said leave. Thus, the mere grant of leave *per se* as already noted above cannot cause any prejudice to the Respondents, in the event this Court is so inclined to grant leave. We find that the judgment of the Delhi High Court in the case of ***Quadricon Pvt. Ltd.*** (supra) will also be of no assistance in the present case since in the facts of that case the Plaintiff had already been registered as oppose to the facts in the present case where Suit was merely on a lodging number. Additionally, we find for the reasons already stated above that the judgment

in the case of ***Ajay Pal Sharma*** (supra) would also not be of any assistance since the Appellant has candidly stated that there was an error in paragraph 24 of the Plaint which error was sought to be corrected by way of the amendments.

14. Hence, for the reasons stated aforesaid, we pass the following order;

- i. The Appeal is allowed.
- ii. It is open to the Appellant to file an Interim Application for amending the Plaint within a period of two weeks from the date that this order is uploaded.
- iii. The Respondents shall no doubt be permitted to file their respective replies to oppose the said Interim Application.
- iv. The Learned Single Judge shall hear and dispose of the said Interim Application on its own merits uninfluenced by this order.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)