



2023:DHC:9104



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CM(M)-IPD 11/2023****STAR INDIA PRIVATE LIMITED**

..... Petitioner

Through: Mr. Yatindu Garg, Mr. Akshay
Malloo and Ms. R. Ramya, Advs.

versus

TIMES INTERNET LIMITED & ORS

..... Respondents

Through: Mr. C.M. Lall, Ms. Parul Panthi
and Mr. Amit Panigrali, Advs. for
Respondents 1 and 2**CORAM:****HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT (ORAL)**

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14.12.2023**CM(M)-IPD 11/2023**

1. This is a petition under Article 227 of the Constitution of India, assailing the order dated 3 October 2017 passed by the learned Additional District Judge (“the learned ADJ”), rejecting an application filed by the petitioner, as the plaintiff in CS 58859/2016 (*Star India Private Limited v. M/s Akuate Internet Services Private Limited & Anr.*) under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC), to amend the plaint by enhancing the damages sought. The plaint initially claimed damages of ₹ 50 lakhs. Thereafter, the plaintiff sought to enhance the damages claimed to ₹ 2,01,00,000/-. Paras 1 to 3 of the application filed by the petitioner under Order VI Rule 17 of the CPC read thus:

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“1. That the Plaintiffs have filed the present suit praying inter alia for permanent injunction Against the Defendant No.1, rendition of accounts of profits, damages, etc. and the same is pending before this Hon'ble Court. The contents of the plaint are not repeated herein for the sake of brevity. The Plaintiffs, however, crave leave to treat the contents of the plaint as part of the present application. The matter is coming up on 07.04.2016 for framing of issues.

2. That the Defendant No.1 is in the business of providing unauthorized contemporaneous text commentary, contemporaneous audio commentary, ball-by-ball score updates, match updates, etc. of information arising out of various cricket matches, including the Asia Cup 2014 Cricket Series (Asia Cup) vide its website www.cricbuzz.com and its mobile application CRICBUZZ available on various platforms such as Android, Windows phone, Apple IOS, Blackberry etc. By means of an agreement with the organizer of the Asia Cup i.e. Asian Cricket Council, the Plaintiffs have been granted certain Exclusive Rights with respect to the Asia Cup matches detailed in paragraph 9 of the Plaint. The Hon'ble High Court vide order dated 28.02.2014 restrained Defendant No. 1 from in any manner making available, through any medium whatsoever including but not limited to the Internet or Mobile, live/contemporaneous audio and/or text match commentary of the Asia Cup 2014 Cricket Series. The Hon'ble Court also provided Defendant No. 1 with the option, purely as an interim measure, to continue its business by either depositing INR 10 lacs per match of the Asia Cup, 2014 with the Registrar General of this Hon'ble Court or keep a gap of 15 minutes between the happening of the match and the score updates.

3. The commercial value of the property which forms the subject matter of the suit is considerable as is detailed in paragraphs 12 to 16 of the Plaint. Consequently, the damages suffered by the Plaintiffs in light of the unauthorized and illegal activities of the Defendant No.1 are substantial and significant and the exact value of the damages suffered cannot be estimated at this point of time. However, as a conservative estimate, without prejudice to the Plaintiffs' right to increase the amount of damages claimed, if and when the extent of the Defendant No. 1's illegal activities are discovered, it is humbly submitted that for the proper adjudication of the dispute the damages claimed in the present suit are being claimed at Rs. 2,01,00,000 (Two Crore One Lakh only).”

2.

In the circumstances, the plaintiff sought to amend para 36

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which dealt with valuation of the suit and the prayer clause in the suit only to the extent of revising the damages sought from ₹ 50 lakhs to ₹ 2,01,00,000/-.

3. Paras 9 and 10 of the impugned order read thus:

“9. I have heard the argument, of Id. Counsel for the parties on the above application and perused proposed amendments. Bare perusal of the proposed amendments shows that plaintiff wants to amend the valuation paragraph and the prayer clause of the main plaint. Plaintiff also wants to enhance the damages from INR 50,00,000 to INR 2,01,00,000 by way of the proposed amendments.

10. No reasons assigned as to what prevented the plaintiff from calculating the quantum of damages at the time of filing of the suit which was filed in the year 2014 and present application is being filed at a very belated stage. This act of the plaintiff shall further delay the disposal of the case whereas it is a well known fact that the pendency of the cases in the courts is already too much. Moreover, what criteria has been adopted and 'applied to enhance the quantum of damages at this stage. The stage for calculating the damages is not over as the case is still at the stage of disposal of miscellaneous application and thereafter, case will proceed further to its next stage of recording evidence. The plaintiff shall have every opportunity to prove its right for enhancement of quantum of damages through evidence. The proper method of assessment of damages is evidence on the basis of documents and other legally admissible mode of evidence.

Let the case proceed further. The application under order 6 rule 17 CPC is hereby dismissed, however, the present order shall not have any bearing on the right of the plaintiff for claiming the damages at enhanced rate at its proper stage of the suit.”

4. The reasons advanced by the learned ADJ in para 10 of the impugned order for rejecting the petitioner's application for amendment of the plaint are obviously unsustainable in law. The law relating to the right to amend a plaint now stands crystallized by the judgment of the Supreme Court in *Life Insurance Corporation of*



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India v. Sanjeev Builders Private Limited¹. Prior to commencement of trial, the Court is required to adopt an expansive attitude in dealing with amendments, and ordinarily amendments which seek to incorporate changes in the plaint which can be met by the defendants by advancing appropriate pleadings, are required to be allowed.

5. Para 10 of the impugned order advances, as grounds to justify rejection of the petitioner's application, (i) the absence of reasons, in the application, explaining what prevented the plaintiff from calculating the quantum of damages at the time of filing of the suit in 2014, (ii) the fact that the application was filed at a very belated stage, (iii) delay in disposal of the case which would be entailed if the amendments were allowed, (iv) the fact that pendency of cases in Court "already too much" and (v) failure of the plaintiff to disclose the criteria which had been adopted and applied to enhance the quantum of damages.

6. These considerations cannot justify rejection of the petitioner's application. It is open for the plaintiff to claim damages as it deems appropriate in a suit. It would be for the plaintiff to justify the damages that it has claimed, both with respect to right to claim damages as well as the quantum thereof. The plaintiff cannot be required to explain, in detail, in a plaint, the exact manner in which the damages are quantified by it.

7. Besides, what is to be pleaded in a plaint is the prerogative of

¹ 2022 SCC OnLine SC 1128



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the plaintiff. If the pleadings are insufficient for the relief sought, the relief would fail. That is the only consequence. The Court cannot refuse to allow amendments of a plaint on the ground that the pleadings are insufficient to sustain the amended claim. It would always open to the plaintiff to lead evidence, during trial, to justify the relief, claimed by it.

8. Nor can it be sought to be contended that, by amendment, the plaintiff cannot enhance the damages claimed in the suit. Whether a case for claiming such enhanced damages does, or does not, exist, is a matter of trial.

9. Inasmuch as the learned ADJ has proceeded on considerations which are completely irrelevant to the prayer for amendments of the plaint, the impugned order suffers from perversity. A case for interference with the order within the parameter of Article 227 of the Constitution of India is, therefore, made out.

10. Mr. Lall fairly leaves the matter to the Court but prays that the right of the respondents to question the justification of the enhanced damages, and raise all defenses in that regard, may be left open.

11. Granting liberty as sought, the impugned order is quashed and set aside.

12. The amended plaint is taken on record. The petitioner undertakes to file additional court fee as per the revised damages



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claimed by it within a period of two weeks from today.

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

CM APPL. 629/2018 (stay)

14. This application does not survive for consideration and stands disposed of.

C.HARI SHANKAR, J

DECEMBER 14, 2023

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