

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 614 of 2024

IN

SUIT NO. 56 of 2024

GlaxoSmithKline PLC

...Applicant

In the matter between.

Ms. Neha Jain

...Plaintiff

Vs.

GlaxoSmithKline Pharmaceuticals Limited & Ors.

...Defendants

Mr. Zal Andhyarujina, Senior Advocate, Ms. Serena Jethmalani, Mr. Siddharth Ranade, Mr. Prakshal Jain and Mr. Pushkar Deo i/b Trilegal for Applicant.

Ms. Ankita Singhania, Mr. Prateek Katewa, MS. Vidhi Sharma, Mr. Shailesh Korpe i/b Cygnus Legal for Respondent.

CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 25TH MARCH, 2025

PRONOUNCED ON : 23RD APRIL, 2025

ORDER:-

1. The applicant, who is Defendant No. 2 to the captioned suit, has filed the present interim application under the provisions of Order I Rule 10(2)¹, read with Section 151² of the Code of Civil Procedure, 1908 (“CPC”), seeking deletion of its name from the cause title of the suit.

2. Before advertent to the rival contentions, it is necessary for context to set out the following facts, viz.

i. Defendant No. 1 (*‘Glaxo India’*) is a public limited company, incorporated in India under the provisions of the Companies Act, 1956, *inter alia*, engaged in the business of developing, marketing and selling pharmaceutical products, including medicines and vaccines. Defendant No. 2 (*‘Glaxio PLC’*) is described in the plaint as “*the parent company of Glaxo India and a company resident of the United Kingdom*”, and “*owns 74% of the share capital of Glaxo India and therefore exercises control over Glaxo India*”. Defendant No. 3 is the Chief Human Resources Officer (CHRO) of

¹ **10(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 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 name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence

² **151. Saving of inherent powers of Court.**—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Glaxo India, who has been in the employment of Glaxo India since December 2020.

ii. On 28th June 2019, Glaxo India and the Plaintiff entered into an Employment Agreement, by and under which the Plaintiff was employed with Glaxo India as a senior manager. Since Defendant No. 3 was the CHRO, the Plaintiff was required to report to Defendant No. 3. It is the Plaintiff's case that the conduct of Defendant No. 3 towards the Plaintiff was discriminatory, as a result of which the role and duties of the Plaintiff were scaled down from time to time, and the Plaintiff was even removed from some important portfolios.

iii. The Plaintiff vide an email dated 9th July, 2022 ("*the first complaint*") addressed to one Ms. Diana Conrad, Chief People Officer of Glaxo PLC, invoked the "Speak Up Policy" which is an confidential internal grievance mechanism available to all Glaxo Companies worldwide. The first complaint was then investigated by one Kevin Matuma (investigator), who, vide an email dated 20th September 2022, found that there was no discrimination against the Plaintiff and suggested mediation between the Plaintiff and Defendant No. 3.

iv. It is the Plaintiff's case that the mediation proceedings further exacerbated things between the Plaintiff and Defendant No. 3, and resulted in the Plaintiff having to face further hostility from Defendant No. 3. The

Plaintiff thereafter addressed an email dated September 23, 2022, to the CEO of Glaxo PLC, informing her of the hostility that the Plaintiff had to face at the hands of Defendant No. 3. The Plaintiff also addressed similar emails to other officials of Glaxo PLC including the Chief People Officer and the Global Ethics Head.

v. The Plaintiff thereafter, on 9th November 2022, went on sick leave and resumed work in February 2023. It is the Plaintiff's case that Glaxo India had wrongfully withheld the Plaintiff's salary for the months of December 2022 and January 2023, and the Plaintiff therefore addressed an email dated 1st January 2023 ("*the second complaint*") to the CEO of Glaxo PLC, *inter alia* informing this fact and requested her to investigate into the matter. The withheld salary of the Plaintiff was then paid by Glaxo India, which the Plaintiff has pleaded was on account of a presumable intervention by Glaxo PLC on behalf of the Plaintiff with Glaxo India.

vi. Glaxo India issued a Show Cause Notice to the Plaintiff on 18th January 2023, calling upon the Plaintiff to provide an explanation for not meeting her performance expectations. The Plaintiff responded to the show cause notice vide a letter dated 20th January 2023, *inter alia*, stating that since she was recovering from surgery, she had sought four weeks time to reply. Glaxo India, vide its letter dated 24th January 2023, extended the time till 30th January 2023 and thereafter, vide a letter dated 3rd February

2023, terminated the Plaintiff's employment in terms of clause 18³ of the Employment Agreement. The Plaintiff on 1st April 2024, filed the captioned suit, seeking the following reliefs, viz.

"a. this Hon'ble Court be pleased to declare that the termination of the Plaintiff's employment with Defendant No.1 dated 3rd February 2023 was illegal and void;

b. direct the Defendant Nos. 1 and 2 submit with this Hon'ble court the outcome of inquiry against the Defendant No.3 to ascertain the violation of internal policies of the Defendant Nos.1 and 2 by Defendant No.3;

c. This Hon'ble Court be pleased to declare that amount of INR 4 Crore be paid jointly and severally by the Defendants to the Plaintiff as per header A of Exhibit T;

d. This Hon'ble Court be pleased to declare that an amount INR 4 Crore be paid jointly and severally by the Defendants to the Plaintiff under head B of Exhibit T;

e. This Hon'ble Court be pleased to declare that an amount INR 20 Crore be paid jointly and severally by the Defendants to the Plaintiff under the head C of Exhibit T;

f. This Hon'ble Court be pleased to declare that an amount INR 1 Crore be paid jointly and severally to the Plaintiff under the head D of Exhibit T;

³ "18. The Company may, at any time and without assigning any reason, terminate this appointment by giving not less than three months' notice or salary in lieu thereof."

g. In alternate to prayer (f) above, the Defendants be directed to avail at its cost and expense a similar insurance policy for benefit to the Plaintiff;

h. This Hon'ble Court be pleased to declare that an amount INR 1.73 Crore be paid jointly and severally by the Defendants to the Plaintiff under the head E of Exhibit T;

i. This Hon'ble Court be pleased to pass as decree of mandatory injunction directing the Defendant No.1 to amend its records to mention that Plaintiff's employment was ended due to voluntary resignation

j. This Hon'ble Court be pleased to pass a decree of mandatory injunction restraining the Defendants from advertising, disclosing or sharing with any third party the records of the Plaintiff's employment."

Submissions of Mr. Andhyarujina on behalf of Glaxo PLC

3. Mr. Andhyarujina learned senior counsel appearing on behalf of Glaxo PLC, at the outset pointed out that the cause of action in the Suit stemmed from the termination of the Plaintiff's Employment Agreement with Glaxo India. He thus submitted that the dispute was between the Plaintiff and Glaxo India and arose purely out of contract. He pointed out that Glaxo PLC was neither party nor privy to the Employment Agreement and thus was in no manner concerned with the disputes that had arisen therefrom. He pointed out that Glaxo PLC was a separate and distinct legal

entity from Glaxo India. He submitted that the mere fact that Glaxo PLC was a substantial shareholder in Glaxo India and the parent company of Glaxo India would not *ipso facto* make Glaxo PLC a party to and/or liable under a contract entered into by Glaxo India and the Plaintiff. It was thus he submitted that Glaxo PLC had been improperly joined as a party to the Suit. In support of his contention that Glaxo PLC would not be liable for termination of an employment contract by Glaxo India, since Glaxo PLC was only a shareholder in Glaxo India, he placed reliance upon the judgement of the Delhi High Court in ***Ms. Anita Kaur vs. Universal Weather and Aviation India Private Limited and Anr.***⁴, which he pointed out had held as follows :

“7. The argument of the counsel for the appellant / plaintiff is twofold. Firstly it is contended that because 100% of the shares of the defendant no.1 Company are held by the defendant no.2, the defendant no.2 is a necessary party and secondly that the termination of the services of the appellant / plaintiff could have been done by the defendant no.1 Company only and not by the defendant no.2.

8. We remain unimpressed. The first of the aforesaid argument is against the very grain of Company Law. A Company is a distinct legal entity from its shareholder, even if all the shares are held by one person only. Thus, merely because the defendant no.2 holds 100% of the shareholding of the defendant no.1 Company, would not

⁴ 2014 SCC OnLine Del 3137

make the defendant no.2 liable for the dues and acts of the defendant no.1. Admittedly both defendant no.1 and defendant no.2 are separate legal entities. No case for piercing of the corporate veil is made out. The Supreme Court in Vodafone International Holding B.V. Vs. Union of India (2012) 6 SCC 613 (para 101) has held that a Company is a separate legal persona and the fact that all its shares are owned by one person or by the parent Company has nothing to do with its separate legal existence.

9. The second argument is equally ambiguous. Even if it is to be presumed that it is the defendant no.2 which has terminated the services of the plaintiff and which the defendant no.2 could not have done, being not the employer of the appellant / plaintiff, that would only make the termination to be illegal but would not make the defendant no.2 Company with whom the appellant / plaintiff had no privity, liable. The claim if any of the appellant / plaintiff for such illegal termination would remain against the defendant no.1 Company only and not against the defendant no.2."

Basis the above he submitted that Glaxo PLC could never have been joined as a party, even if the termination of employment was illegal.

4. Mr. Andhyarujina then took me through the entire plaint and pointed out that the same *ex facie* demonstrated that the Plaintiff did not have any substantive relationship whatsoever with Glaxo PLC. He also

pointed out that the Plaint did not set out any independent cause of action against Glaxo PLC and that merely because the Plaintiff had invoked the “*Speak Up Policy*” or addressed correspondence to various employees of Glaxo PLC and other Glaxo Companies worldwide would not *ipso facto* give the Plaintiff a cause of action against Glaxo PLC in a contractual dispute between the Plaintiff and Glaxo India.

5. Mr. Andhyarujina pointed out that the procedure for invocation of the Speak Up Policy was that, any complaint filed by any Glaxo employee worldwide gets logged on to a common portal, which then manages such complaints. He submitted that such complaints then randomly get assigned to an investigator who could be from any Glaxo Company worldwide without any involvement of Glaxo PLC. He submitted that the investigator assigned to investigate the first complaint in the present case was not even an employee of Glaxo PLC and thus reiterated that Glaxo PLC had absolutely no role to play in the investigation of the first speak-up complaint.

6. Similarly, he pointed out that Defendant No. 3 was not an employee of Glaxo PLC, nor had Defendant No. 3 been jointly appointed by Glaxo PLC along with Glaxo India, as was falsely claimed in the Plaint. He submitted that Glaxo PLC was not in any manner involved in the hiring and firing of the employees of Glaxo India, much less managing the day-to-day

affairs of Glaxo India. He thus submitted that Glaxo PLC was in no manner concerned with the cause of action, if any, which the Plaintiff might have against Glaxo India.

7. Equally, he submitted merely because the Plaintiff had addressed emails to the chief executive officer (CEO) of Glaxo PLC and certain other employees of other Glaxo companies worldwide, in which the Plaintiff had ventilated her grievances against Defendant No. 3, would also not *ipso facto* give rise to the Plaintiff having any cause of action against Glaxo PLC. He submitted that merely sending such emails cannot create a cause of action against Glaxo PLC. He then pointed out that the first complaint was reviewed by one Ms. Tania Zahid, Employee Relations Lead for Asia Pacific and Middle East Africa, who also was not an employee of Glaxo PLC. He thus submitted that the Plaintiff did not have any relationship whatsoever with Glaxo PLC and that the Plaintiff's cause of action, if any, was only against Glaxo India and not Glaxo PLC.

8. Mr. Andhyarujina then also placed reliance upon the judgement of the Delhi High Court in the case of ***TBWA Anthem Private Limited vs. Madhukar Kamath***⁵ to submit that mere allegations against a party of having violated business ethics and being aware of sensitive information would not make it a necessary and proper party. He thus

⁵ 2001 (59) DRJ 772

submitted that mere allegation that Glaxo PLC was ethically liable would not make Glaxo PLC either a necessary or proper party to the Suit. He thus submitted that the Plaintiff had dragged Glaxo PLC into a dispute which was entirely between the Plaintiff and Glaxo India and it was thus that Glaxo PLC had been improperly joined as a party to the Suit.

9. Mr. Andhyarujina then placed reliance upon a judgement of a Learned Single Judge of this Court in the case ***Capgemini India Pvt. Ltd. Vs Kundana Kumar Lal⁶*** to submit that this Court when considering an application under Order I Rule 10 of CPC had held *inter alia*, in a very similar fact scenario, that broad allegations against each defendant would not sustain inclusion of party and that a clear right to sue must be shown against each defendant.

10. Basis the above, he submitted that the Interim Application must be allowed by deleting the name of Glaxo PLC from the cause title of the Suit.

Submissions on behalf of the Plaintiff

11. Ms. Ankita Singhania, learned counsel appearing on behalf of the Plaintiff at the outset, submitted that Glaxo PLC had not satisfied the test

⁶ 2019 SCC OnLine Bom 6771

required to be met under Order I Rule 10(2) of the CPC for deletion as a party to the suit.

12. She then invited my attention to the Interim Application and pointed out that Glaxo PLC had infact sought deletion of its name on the basis that the Plaintiff was not entitled to any relief against Glaxo PLC and that the Plaintiff had falsely attempted to establish a cause of action against Glaxo PLC. She submitted that this very premise was an admission that the Plaintiff infact disclosed a cause of action against Glaxo PLC, albeit “false”. She submitted that such an admission itself would disentitle Glaxo PLC to the relief that had been sought for in the present Interim Application. She further submitted that it was well settled that whether a party is entitled to relief can only be determined after the trial and not at the stage of deciding an application under Order I Rule 10 of the CPC.

13. Ms. Singhania then submitted that the test for determining an application under Order I Rule 10 of the CPC had been conclusively laid down by this Court in the case of *Clarinda D’souza vs MCCAAN Erickson India Ltd.*⁷ which she submitted applied on all fours to the facts of the present case. She then invited my attention to the judgement in the case of *Clarinda D’souza* and pointed out that this Court had *inter alia* held as follows :

⁷ 2003 (2) Mh. LJ. 373

"17. However, a plea that the plaint discloses no cause of action is essentially one on a demurrer. Such a plea ought to be accepted only when the Court comes to a conclusion that even if the averments in the plaint are proved, the plaintiff would not be entitled to the reliefs claimed. The Court must therefore presume that the facts stated in the plaint are correct. In view of the drastic consequences of upholding such a plea, it is axiomatic that it ought to be accepted only in clear cases. Moreover, when considering an application for striking out the name of a defendant on the ground that Plaint discloses no cause of action against him, the court ought to act with great circumspection and even greater restraint.

18. Keeping these principles in mind, I must reject the Chamber Summons insofar as they are sought to be supported on the ground that the plaint discloses no cause of action against the defendant Nos. 5 to 8.

19. The plaint for instance contains a averments that defendant No.2 made unwarranted sexual advances towards the plaintiff; that the plaintiff reported the same to defendant Nos. 5 to 8; that defendant No. 8 exercises administrative control over defendant No. 1; that defendant Nos. 5 to 7 hold a position of authority in defendant No. 8 and had supervisory authority over defendant No.2 in his capacity as C.E.O of defendant No. 1, that defendant Nos. 5 to 8 did not prevent the ongoing harassment although they had the authority and power to do so and that defendant Nos. 5 to 8 deliberately did not set up

any enquiry in respect of her grievance against defendant no.2 or take any corrective measures.

20. If I were to assume, as I must while deciding these applications, that the allegations in the plaint are established, I would dismiss these Chamber Summons on the limited ground that it is then not such a clear case as would entail striking out the names of defendant Nos. 5 to 8 at this stage.

21. I must hasten to clarify that by this I by no means suggest that even if the plaintiff establishes the facts in evidence she will be entitled to the reliefs claimed. I have been unable to find any reported judgment on this aspect and none has been cited at the bar. This is itself therefore a question which must await the trial. I say this despite my reservations about the tenability of the plaintiff's claim.

22. Mr. J.D. Dwarkadas submitted that the plaintiff, only in order to create a cause of action and build a nexus in the alleged case of sexual harassment, has made an attempt to build up a case of command hierarchy and vicarious liability. They invited my attention to the correspondence between the plaintiff and defendant Nos. 5 to 7 in this regard.

23. The correspondence between defendant No. 5 and the plaintiff I agree, does not indicate any duty, power or authority on the part of defendant No. 5 to 7 to either investigate or take any disciplinary action against defendant Nos. 2 or any other employee of defendant No. 1. Prima-facie, atleast the

correspondence indicates that the plaintiff merely vented her grievances against Glaxo PLC to defendant Nos. 5, 6, and 2 as they were senior officers in defendant No. 8. Even the letter addressed by defendant No. 5 dated 30th July, 1999 stating that he is concerned with the role and effectiveness of the plaintiff with defendant No. 1 and would undertake some investigation of his own based on the facts prima-facie, does not indicate either that he had or represented that he had, the power of authority to do so.

24. I also agree with Mr. Kadam, that the correspondence between the plaintiff and defendant Nos. 6 and 7 suggests even less that they had either the authority or the obligation to make such an investigation. Indeed, the correspondence does indicate that the plaintiff sought the intervention of defendant No. 5, 6 and 7 not because she thought that they had either an obligation or the authority to take action against defendant Nos. 2, 3 and 4 but merely because of their position in defendant No. 8.

25. I also find considerable force in the submissions on behalf of defendant Nos. 5 to 8 that the record does not substantiate the plaintiff's case of any authority or duty on the part of defendant Nos. 5 to 8 or any of them to hold an enquiry as suggested. It does appear that the plaintiff has dragged defendant Nos. 5 to 8 into a controversy which really concerns only Glaxo PLC and herself. This she has done by making various averments in the Plaint which are not substantiated by the record.

26. *Despite this the Chamber Summons must fail. For these arguments are directed towards the point that the plaintiff has no cause of action and not that the Plaintiff discloses no cause of action. The question therefore that falls for consideration is whether an application under Order 1, Rule 10(2) applies to a case where the defendant's contention is that the plaintiff has no cause of action.*

27. *However strong and well founded, such a view must necessarily at the stage of such an application be only prima-facie, It would therefore be neither fair nor permissible for the Court to presume that the evidence will not establish the case pleaded. It would be setting an extremely dangerous precedent to strike out the name of a defendant under Order 1, Rule 10(2) on the ground that the plaintiff has no cause of action. I am not unmindful of the fact that while under Order 7, Rule 11(a) the power of the Court to reject the plaint is limited to cases where it does not disclose a cause of action the language of Order 1, Rule 10(2) does not expressly contain any such limitation. However, the effect of such an order is really to dismiss the claim against the defendant without permitting the plaintiff an opportunity of leading evidence to prove his case. It is a power which by virtue of its very nature must be carefully circumscribed. I would exclude from its scope the power of a Court to strike out the name of a defendant on the ground that the plaintiff has no cause of action against him.*

28. Thus, however strongly I may feel against the plaintiff's case on merits, I must reject the invitation to allow the Chamber Summons and in effect non-suit the plaintiff without giving her an opportunity to go to trial.

35. I am not concerned in the present proceedings with the disputes between the plaintiff and defendant No. 2 . However, it does appear that defendant Nos. 5 to 8 have been unnecessarily dragged into the litigation. The plaint in this suit appears to be a case of clever drafting. Prima-facie, it does appear that the averments have been introduced without any factual basis, only to try and bring the case within the directions of the Supreme Court in Vishaka's case. But the plaint as amended has averments necessary to entitle the case to go to trial. Thus, though I am of the view that the suit "is a flagrant misuse of the mercies of the law in receiving complaints", the remedy of defendant Nos. 5 to 8 lies in having the suit dismissed, after an adjudication on merits. It is always open to the plaintiffs to invite the Court at the first hearing to exercise power under Order X of the Civil Procedure Code."

Basis the above, Ms. Singhania submitted that this Court had clearly held that in deciding an application under Order I Rule 10(2) of the CPC, the Court was required to proceed on the basis of a demurrer and was only required to see whether the plaint disclosed a cause of action and not whether the Plaintiff had a cause of action. She then pointed out that the

Plaint was replete with averments⁸ that Glaxo PLC had committed a breach of the Speak Up Policy basis which the Plaintiff had joined Glaxo PLC as a party Defendant. She pointed out that as held by this Court in the case of *Clarinda D'souza*, these averments for the purpose of deciding the present Interim Application must be taken as true, and hence, it could by no means be suggested that the Plaintiff did not disclose any cause of action against Glaxo PLC. She thus submitted that the Interim Application must be dismissed on this ground alone. She also pointed out that the decision of this Court in the case of *Clarinda D'souza* had been upheld and reiterated by this Court in the case of *National Spot Exchange Ltd. vs P.D. Agro Process Pvt. Ltd.*⁹ and the same being a judgement of a coordinate bench of this Court would be binding upon this Court.

14. She further pointed out that various prayers had also been sought for by the Plaintiff against Glaxo PLC, including (i) impugning the enquiry conducted by the officers of Glaxo PLC in violation of its policies; (ii) damages being sought against Glaxo PLC for violation of various policies and for conducting an enquiry in violation of its policies; (iii) a mandatory injunction restraining the Defendants from sharing any records of the Plaintiff's employment with any third party. She argued that in view of the specific reliefs sought against Glaxo PLC, there is no question of Glaxo PLC alleging that it is not a proper and necessary party to the present Suit.

⁸ paragraphs 3,5, 24 to 32, 42 to 76 and 89 of the Plaintiff.

⁹ Order dated 23rd September 2015 in Notice of Motion 765 of 2014 in Suit No. 781 of 2014

Placing reliance upon the judgement of the Delhi High Court in *Deepak Ansal vs Ansal Properties and Industries Ltd.*¹⁰ Ms. Singhania submitted that merely because ultimately the relief sought for may not be granted, the same would not be a ground to reject the plaint or delete a party against whom relief is sought for.

15. Ms. Singhania submitted that the judgement in the case of *Capgemini India Pvt. Ltd.*, upon which reliance was placed by learned counsel for Glaxo PLC, would not apply to the facts of the present case since (i) the dispute in the said case was purely a contractual dispute pertaining to wrongful termination, whereas in the present case Glaxo PLC had been joined as a party for breach of policy and not wrongful termination (ii) in the case of *Capgemini India Pvt. Ltd.* the holding company was not made a party, and only its employees were made parties, which is not the case in the present Suit and (iii) in the case of *Capgemini India Pvt. Ltd.*, the Learned Judge allowed the application for deletion after noting that the plaint contained only two paragraphs with vague allegations against the parties who had sought deletion of their names. She reiterated that in the present case, the Plaint was replete with averments of Glaxo PLC being in breach of the Speak Up Policy, and thus, no question of vagueness arose in the present case.

¹⁰ 2006 SCC OnLine Del 1472

16. Equally, she submitted that the judgement in the case of **Anita Kaur** would not apply, since in the present case the cause of action against Glaxo PLC was on account of breach of policy and not because of either breach of contract or because Glaxo PLC was a majority shareholder or the parent company of Glaxo India.

Submissions on behalf of Glaxo PLC in Rejoinder.

17. Mr. Andhyarujina submitted that the decision of this Court in the case of **Clarinda D'Souza** was distinguishable and would not apply to the facts of the present case. He submitted that the observations in **Clarinda D'Souza** must necessarily be understood only in the context of the facts of that case and not as laying down any general proposition of law regarding deletion of parties in all cases under Order I Rule 10 of the CPC. He submitted that to read the decision in the case of **Clarinda D'Souza** in the manner in which the Plaintiff was attempting to would effectively render the provisions of Order 1 Rule 10 of the CPC otiose, since the language used in Order 1 Rule 10 clearly empowered the Court to strike out the name of any party "*improperly joined*". He submitted that there was nothing in Order 1 Rule 10 which restricted the concept "*improperly joined*" only to cases where the Plaintiff did not disclose a cause of action against the party who sought deletion. He submitted that the language of Order I Rule 10 of the CPC itself made clear that the same envisaged deletion of a party who did not have any nexus and/or connection with the cause of action pleaded

against the other party or parties to the Suit. He pointed out that this was made clear by this Court in the judgement of **Clarinda D'Souza** itself by specifically stating as follows:

“14. If a particular defendant has no connection with the cause of action pleaded against the other defendants he is certainly a person improperly joined entitling him to make an application and have his name struck out. One of the grounds on which such an application can be made is that the plaint discloses no cause of action against the defendant. I find nothing in Order 1, Rule 10 (2) of the Civil Procedure Code which limits its scope as suggested by Mr. Grover”.

18. He thus reiterated that the judgement of this Court in the case of **Capgemini India Pvt. Ltd.** would squarely apply since that was also a case of termination of a contract of employment in which context this Court had observed that vague and bald allegations against a party cannot justify adding a party as a Defendant and that the plaint must disclose a clear right to sue against each defendant. He thus submitted that the findings of this Court in the case of **Capgemini India Pvt. Ltd.** were entirely apposite to the facts of the present case, unlike the judgement in the case of **Clarinda D'Souza**, which did not arise out of a breach of contract but was a case of harassment in which personal allegations had been made against each of the defendants who had sought deletion of their respective names.

19. Basis the above, he submitted that non-disclosure of cause of action was not the only test under Order 1 Rule 10 and a party may also

seek deletion on the ground that it has no nexus or connection with the cause of action. He submitted that the plaintiff has merely attempted to portray that non-disclosure of cause of action is the only determinative test for deciding an application under Order 1, Rule 10, which is not a correct ratio in *Clarinda D'Souza*.

20. Mr. Andhyarujina then submitted that it was to be borne in mind that the cause of action is a bundle of facts that gives a party the right to claim relief against another party. He thus submitted that mere grievance against a person does not constitute a cause of action. Similarly, he submitted that mere dissatisfaction about a person also does not constitute a cause of action against such a person as is understood in law. He then pointed out that the relief sought by the Plaintiff for damages for breach of policy was fundamentally anchored to the termination of the Employment Agreement. He therefore submitted that the relief of damages could only be granted as a consequence of the breach of contract having first been established by the Plaintiff and not independently thereof. Similarly, he submitted that the Plaintiff's claim for breach of the Speak Up Policy was, also in essence, a claim that arose from the contractual relationship between the Plaintiff and Glaxo India and that the Speak Up Policy could not be enforced independent of the contract of employment. He submitted that but for the Employment Agreement, the policy would not be binding either on

the Plaintiff or Glaxo India. He pointed out that the Plaintiff had admitted this in paragraph 75 of the Complaint, which reads thus:

“Plaintiff humbly submits that the internal policies of the Defendant form the basic part of the terms of employment of every employee of the Defendants and any violation of these policies goes to the root of the rights enjoyed by the employee under the terms of its deemed contract with the employer. Plaintiff submits that these violations have caused legal injury and harm to the Plaintiff and has betrayed her trust in the Defendant”.

21. Lastly, he reiterated that Glaxo PLC had no role to play in the functioning of the speak-up policy, which was handled by Glaxo India through an external neutral third party, a fact which has also been admitted by the Plaintiff in paragraph 60 of the complaint which states as follows:

“60. On 9 July, 2022, Plaintiff believing the promises made by the Defendant No.1 under its speak up policy entrusted her grievances to the Chief People Officer of the Defendant No. 2. The Plaintiff being an HR professional was aware that any email/communication to the independent third-party vendor of Defendant No.1 would have triggered an automatic notification to Defendant No.3 in his capacity of CHRO of Defendant No.1”.

Basis the above, he submitted that it would be entirely vexatious for Glaxo PLC to be made to suffer a trial when the Complaint had not disclosed any cause

of action against Glaxo PLC and Glaxo PLC had been improperly joined as a party.

Reasons and Conclusions

22. After having heard Learned Counsel, perused the Plaint, and having considered the case law upon which reliance has been placed, I find that I am unable to allow the Interim Application for the following reasons:

A. This Court in the case of *Clarinda D'souza inter alia* held that when considering an application under Order I Rule 10 of the CPC, the Court has to (a) proceed on the basis of a demurrer, (b) act with great circumspection and caution and (c) see whether the Plaint discloses a cause of action against the party seeking deletion and not whether the Plaintiff has any cause of action against the party seeking deletion. A perusal of the Plaint in the present case shows that the Plaintiff has in detail averred that Glaxo PLC had breached the Speak Up Policy, which resultantly led to the Plaintiffs victimisation and ultimate termination. Thus, in the facts of the present case, it cannot be said that the Plaint does not disclose any cause of action against Glaxo PLC. This being the case, the question of the merits of the case pleaded against Glaxo PLC is something which can only be decided at the trial of the Suit after leading evidence. Therefore, the question of deleting the name of Glaxo PLC at this stage does not arise, as held by this Court in the case of

Clarinda D'Souza.

B. The judgements in the cases of ***Anita Kaur*** and ***Capgemini India Pvt. Ltd.*** would be of no assistance to Glaxo PLC since, in both cases, the issue pertained only to the termination of employment in which context the parent/holding company of the company which had terminated the employment had been joined as a party. Hence, the cause of action (of the Plaintiffs in both those cases) pertained entirely to termination of the employment and not breach of policy on the part of the parent/holding company. As noted above, this is not so in the present case, since the Complaint is replete with pleadings of breach of the Speak Up Policy on the part of Glaxo PLC. Additionally, specific prayers have been sought against Glaxo PLC *inter alia*, to restrain Glaxo PLC from advertising, disclosing or sharing records of the Plaintiff's employment with a third party. Hence, the entire premise of the present Suit is materially different from what fell for consideration in the case of ***Anita Kaur*** and ***Capgemini India Pvt. Ltd.*** In the present case, as already noted above, the Plaintiffs cause of action against Glaxo PLC is for breach of policy and not breach of contract.

C. While there is merit in the contention that in an application under Order 1 Rule 10 of the CPC, it is always open for a party who seeks deletion of its name to contend that it has been "*improperly joined*", because it does not have any nexus with the cause of action as maybe disclosed against other Defendants. However, in the facts of the present case, I find that such a

contention would not be available to Glaxo PLC, since it is the specific case of the Plaintiff that Glaxo PLC had breached the Speak Up Policy, which then led to the Plaintiff's victimisation and subsequent termination. Thus, the cause of action disclosed in the Plaint against Glaxo PLC is inextricably linked to the cause of action pleaded against the other Defendant. It is thus that the judgement of the Delhi High Court in the case of ***TBWA Anthem Private Limited*** would be of no assistance to Glaxo PLC in the facts of the present case, since the genesis of the suit in that case was mere breach of agreement, whereas in the present case, the termination of the Plaintiff stems from breach of policy on part of Glaxo PLC.

D. Also, the contention that the Plaintiff's claim for damages and breach of the Speak Up Policy are both fundamentally anchored to the Employment Agreement and that the Speak Up Policy could not be enforced independent of the Employment Agreement and is hence a purely contractual dispute between the Plaintiff and Glaxo India is untenable. *Firstly*, it is to be noted that the prayer for damages for breach of the Employment Agreement is premised on the breach of the Speak Up Policy by Glaxo PLC and not *vice versa*. *Secondly*, and crucially, the contention of Glaxo PLC that the Plaintiff's relief for damages for breach of policy is fundamentally anchored to the breach of contract is, infact an admission that the two are inextricably linked. Hence, Glaxo PLC would be a party whose presence before this Court will be required to effectually and completely adjudicate upon and settle all

the questions involved in the present Suit.

23. The captioned Interim Application is thus dismissed. There shall be no order as to costs. Needless to state that observations made are *prima facie* and only for considering this application under Order I Rule 10 of the Code of Civil Procedure. Contentions of all parties are kept open to be decided in the Suit.

(ARIF S. DOCTOR, J.)