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

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Date of Decision: 29.04.2016

+ **CS(OS) 3457/2015**

MR ARUN JAITLEY

..... Plaintiff

Through: Mr. Rajiv Nayar, Mr. Sandeep Sethi
& Ms. Prathibha M. Singh, Senior
Advocates along with Mr. Manik
Dogra & Ms. Radha Chawla,
Advocates.

versus

MR ARVIND KEJRIWAL & ORS

..... Defendants

Through: Mr. Anupam Srivastava &
Mr. Rishikesh Kumar, Advocates for
defendant No.1.

Mr. H.S. Phoolka, Senior Advocate
along with Mr. Peeyoosh Kalra &
Ms. Shilpa Dewan, Advocates for
defendants No.2 & 3.

Mr. Anupam Srivastava,
Ms. Sharmistha Ghosh and
Mr. Abhishek Yadav for defendants
No.4 & 6.

Mr. Trideep Pais & Ms. Dhariwi
Ravi, Advocates for defendant No.5.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

VIPIN SANGHI, J. (OPEN COURT)

I.A. Nos. 4868/2016 (by defendant No.5), 4869/2016 (by defendant No.4), 4870/2016 (by defendant No.6), 4871/2016 (by defendant No.3), 5160/2016 (by defendant No.1) & 2206/2016 (by defendant no.2)

1. All the aforesaid applications have been filed by the respective defendants as mentioned hereinabove under Order VI Rule 16 CPC with the prayer that the several pleadings made by the plaintiff in his respective replication to the individual written statement of the applicant/ defendant be struck of.

2. Since the nature of the reliefs sought in all these applications is the same, and they are premised on, more or less, the same submissions, I have heard common submissions of learned counsel for the applicants and the learned counsel for the plaintiff, and proceed to dispose of these applications by this common order.

3. The plaintiff has filed the present suit to seek damages with the allegation that the defendants have made libellous, scandalous and false allegations against him, by which he has been defamed and suffered damages. The plaintiff sets out in paragraph 3 of the plaint that all defendants individually and collectively have undertaken a false/ malicious and defamatory campaign/ propaganda against him and his family members, which has reached everyone within and outside India. He states that “*this is clearly calculated, engineered and designed by all defendants between them*”

for gaining political mileage and other unwarranted benefits at the cost of causing irreversible damage to the plaintiff”. The plaintiff states in paragraph 4 that the said false/ malicious and defamatory campaign/ propaganda against him and his family members is a counterblast to a CBI search of a bureaucrat in the Secretariat of Govt. of NCT of Delhi on 15.12.2015. He states that “*Apparently, this malicious propaganda of false and baseless allegations is not only with a view to deflect the incident of CBI search of a bureaucrat but is also an orchestrated malafide design for ulterior political motives of the defendants against the plaintiff*”.

4. In paragraph 5 of the plaint, the plaintiff has set out some of the statements made to, and carried by the print and electronic media, by the defendants individually and collectively allegedly in the course of the malicious campaign. In paragraph 11 of the plaint, the plaintiff, *inter alia*, states that:

“That defendants individually and collectively – moving further with their ulterior political malafide designs further created an impression”.

5. In paragraph 16 of the plaint, the plaintiff states that:

“By all acts of omission and commission by the defendants including making false, baseless, scandalous, malicious statements/allegations against the plaintiff-they have made themselves liable individually and collectively for the irreversible and unquantifiable damage caused to the plaintiff. All defendants, individually and collectively have made themselves liable to compensate the plaintiff by a sum of Rs. 10 crores.”

6. The plaintiff has claimed damages of Rs. 10 Crores from the

defendants. There are six defendants in the suit. Each of the defendants has filed his own individual written statements. It is not in dispute, and is a matter of record that all the written statements are on the same lines.

7. The plaintiff was permitted to file replication upon filing of written statement by the defendants vide order dated 22.12.2015 passed by the learned Joint Registrar. Individual replications were filed to each of the written statements, and it is also not in dispute that, in substance, each of the replications is the same, with minor differences.

8. The submission of the defendants/ applicants in each of the present applications is that while filing replications, in para 4 under the heading, 'Preliminary Submission', the plaintiff has sought to introduce fresh pleas for the first time, so as to allege the making of libellous/ slanderous statements and allegations by the defendants, which did not form part of the plaint, as originally filed. The submission is that in the plaint, there is no averment that the defendants have acted in collusion with one another, or that they have acted under a conspiracy. However, collusion and conspiracy have been alleged against the defendants in the replications filed by the plaintiff for the first time. The submission is that in a suit for damages arising out of defamation, it is essential for the plaintiff to specifically state in the plaint itself as to which statement(s) of the defendant(s) the plaintiff considers libellous/ defamatory, so that the concerned defendant has adequate opportunity to deal with the plea in his written statement. It is argued that it is not sufficient that the plaintiff makes a general allegation to the effect that the defendant(s) has/ have made libellous/slanderous statement(s), and simply relies upon document(s) which may contain several

statements, including the one which is considered libellous/ slanderous by the plaintiff, unbeknown to the defendant(s). It is argued that the plaintiff is obliged to specifically set out in his plaint the statement(s) of the defendant(s) which he claims to be libellous/ slanderous and defamatory. Thus, the defendants have not had the occasion to deal with the specific statements attributed to the defendants, which have now been set out in the replication as libellous/ slanderous.

9. The defendants further submit that the plaintiff has also, admittedly, placed on record two additional documents along with replication, which also purportedly contain libellous/ slanderous allegation against the plaintiff, and in the replication, the said statements have been set out. The defendants have had no occasion to deal with the same as well.

10. Learned counsels for the defendants, therefore, submit that the correct procedure that should be followed would be to strike out all such allegations which are made in the replications for the first time, and are not found in the plaint, and if the plaintiff so desires, he may amend the plaint so that the defendants have adequate opportunity to deal with the same. In support of the said pleas, learned counsel for the defendants have placed reliance on several decisions.

11. Firstly, reliance is placed on the decision of this Court in *Anant Construction Pvt. Ltd. Vs. Ram Niwas*, 1994 (31) DRJ 205. In this case, the defendant had moved an application under Order VI Rule 17 CPC to amend the written statement. The Court allowed the application for amendment and the amended written statement was taken on record. In

routine, the case was adjourned for filing of replication, if any, to the amended written statement, which too was filed. Since the replication was filed belatedly, the taking of it on record was opposed by the defendants. It was also argued that the replication should have been confined to the amendments made in the written statement, and that the plaintiff could not exploit the opportunity granted to file the replication, to file the replication twice over to the same written statement.

12. While dealing with this situation, as aforesaid, the Court observed that “*the present case provides a just opportunity for examining the law in practice relating to replication and rejoinder especially in Delhi High Court (Original Side)*”. The Court while generally disagreeing with the practice of filing replications as a matter of routine, inter alia, observed:

“More often than not distinction between introducing a plea by way of amendment of pleading and introducing plea by rejoinder/replication is being lost sight of. Opportunity of filing rejoinder/replication is being exploited to avoid the necessity of amending the plaint, even if necessary. This deprives the defendant of an opportunity of filing his counter to the plea raised by the plaintiff. If the plaint is amended, the defendant would have a right of incorporating pleas by way of consequential amendment in his written statement or by filing additional written statement to the plea introduced in the plaint by way of amendment. The defendant does not have any opportunity of joining additional pleadings to the pleas introduced for the first time by the plaintiff in his replication.” (Emphasis supplied)

13. The Court then proceeded to take note of the provisions contained in the CPC and observed:

*“Order 8 Rule 9 provides that no pleadings subsequent to the written statement of a defendant other than by way of defense to a set off or counter claim shall be presented **except by leave of the court** and upon such terms as the court thinks fit. The Court may any time require a written statement or additional written statement from any of the parties and fix a time for presenting the time. 8.3 Pleadings by way of rejoinder/replication are not to be found statutorily contemplated by the Code of Civil Procedure.*

(9) It is basic concept of pleadings that a defendant has to deny specifically every averment made in the plaint if he chooses to dispute the same. As already stated, a non specific or evasive denial in written statement may be taken as an admission of plaint facts. A failure to file WS would enable the Court pronouncing judgment against the defaulting defendant. However, a plaintiff is not to be treated similarly. Every material averment made in the written statement is presumed to be denied by the plaintiff and for that purpose he need not file a replication”. (Emphasis supplied)

14. In paragraph 15, the Court observed:

*“(15) A replication is not to be permitted to be filed ordinarily, much less in routine. A replication is permissible only in three situations: (1) when required by law; (2) when a counter claim is raised by the defendant; (3) when the Court directs' or permits a replication being filed. **The Court may direct filing of a replication when the court having scrutinised the plaint and the written statement feels the necessity of asking the plaintiff to join specific pleadings to a case specifically and newly raised by the defendant in the written statement. The plaintiff may also feel the necessity of joining additional pleading to put forth his positive case in reply to the defendant's case but he shall have to seek the leave of the court by presenting the proposed replication along with an application seeking leave to file the same. The court having applied its mind to the leave sought for, may grant or refuse the leave. Ordinarily the necessity of doing so would arise only for***

'confession and avoidance'. (Emphasis supplied)

15. The Court observed that replication is always a defensive pleading by its nature. In paragraph 20, the Court further observed:

“A plea inconsistent with the case set out by the plaintiff in the plaint can never be permitted to be raised in replication. So also a plea in rejoinder cannot be inconsistent with the case set out by the defendant in his written statement. Any subsequent pleading inconsistent with the original pleading shall be refused to be taken on record and if taken shall be liable to be struck off and taken off the file”.

16. The Court summed up its analysis in paragraph 26 of the judgment, wherein, it was, *inter alia*, held:

“ (8) Subsequent pleadings are not substitute for amendment in original pleadings. (9) A plea inconsistent with the pleas taken in original pleadings cannot be permitted to be taken in subsequent pleadings. (10) A plea which is foundation of plaintiff's case or essentially a part of causes of action of plaintiff, in absence whereof the suit will be liable to be dismissed or the plaint liable to be rejected cannot be introduced for the first time by way of replication”.

17. Reliance has also been placed on the decision of this Court in ***Harvest Securities Pvt. Ltd. & Anr. Vs. BP Singapore Pvt. Ltd. & Anr.***, 2014 (4) AD (Delhi) 97. In this case, the plaintiff had filed the suit for compensation for slander. The plaintiff had averred that the defendant had published slanderous and/or libellous statements with regard to the plaintiff No.2, which had tarnished the reputation and goodwill of plaintiff No.2 and caused economic loss to the plaintiffs. However, in the plaint, the plaintiff did not set out as to what was the slanderous/ libellous statement(s). When confronted, the plaintiff drew attention of the Court to the documents placed

on record, which were said to contain the slanderous statement(s). In this background, the Court, *inter alia*, observed as follows:

“As far as my understanding goes, without the plaintiffs in the plaint pleading the slanderous/libellous statement for which compensation is claimed, the defendants have no opportunity to respond thereto. The defendants are required to file the written statement to the pleas in the plaint and not qua the documents even if served on the defendants along with the plaint. I am also of the prima facie view that such pleas would be a material fact within the meaning of Order 6 Rule 2 of the CPC and which are necessarily required to be as per Rule 4 of Order 6 of the CPC. The same would also be a fact constituting a cause of action within the meaning of Order 7 Rule 1 of the CPC”.

18. Reliance has also been placed on the decision in ***Sahib Singh Vs. Harvinder Kaur & Others***, 2013 (134) DRJ 445, to submit that the decision in ***Anant Construction*** (supra) has been affirmed by the Division Bench of this Court. The Division Bench, *inter alia*, observed that while amending pleadings, there cannot be additional pleadings at variance or inconsistent with the original pleadings. Learned counsel for the defendants have also placed reliance on ***Sumitra Sahay Vs. Arya Orphanage***, 68 (1997) DLT 92. In this decision, the Court held that the plaintiff cannot introduce a fresh plea in the replication, unless it is by way of reply to the new additions made in the written statements.

19. The applications are opposed by the plaintiff. Mr. Nayar submits that Order 6 Rule 16 CPC can be invoked only in three situations, namely, when the pleading is found to be unnecessary, scandalous, frivolous or vexatious; which may tend to prejudice or embarrass or delay the fair trial of the suit, or; which is otherwise an abuse of process of the court. Mr. Nayar submits

that neither of these conditions is satisfied in the present case. Mr. Nayar submits that the plaintiff has explicitly set out in the plaint itself several of the malicious, libellous and scandalous statements made by one or more of the defendants. In this regard, reference is made to para 5 of the plaint. He further submits it is the positive case of the plaintiff that in the last few days (i.e. before the filing of the plaint), all defendants – individually and collectively, have undertaken a false/ malicious, defamatory campaign/ propaganda against the plaintiff and his family members. He submits that while narrating the specific instances, the plaintiff has not claimed that those statements are the only statements made by one or the other defendant(s). In fact, the plaintiff has clearly stated that “*some of these statements made to and carried out by the print and electronic media are extracted below:*”. Moreover, in para 6 of the plaint, the plaintiff has referred to and relied upon the documents “*which have become available to the plaintiff*” and filed with the plaint containing the allegedly false and baseless allegations made by the defendants, and while stating so, the plaintiff has also stated “*further documents/ reports shall also be placed before this court*”.

20. He submits that in para 7 of the plaint, the plaintiff has set out the substance of the baseless and false allegations made by the defendants. Similarly, in para 11 of the plaint, the substance of the further false and malicious allegations made by the defendants, individually and collectively, have also been set out. Thus, the defendants have had sufficient opportunity to deal with the specific averments made in the plaint and the documents filed along with the plaint while filing the written statements.

21. He submits that in paragraph 4 of the “Preliminary submissions”

contained the replications, the plaintiff has merely extracted the specific statements made by the respective defendants on their twitter handles, and on the facebook page of Aam Aadmi Party (AAP), and to the media in general. He submits that the printouts, wherefrom the extracts have been set out in paragraph 4 of the “Preliminary Submissions” in the replications, were already placed on record along with the plaint and, therefore, no grievance can be made by the defendants that they have not had the opportunity to deal with the said allegations, and materials relied upon by the plaintiffs against them. He submits that the specific statements attributed to the respective defendant(s) are set out in paragraph 4 of the preliminary submissions in the replications, and no fresh pleadings have been made. They are merely instances culled out from the already existing record.

22. Mr. Nayar also draws the attention of the Court to Order VI Rule 2 CPC, which mandates that every pleading shall contain, and contain only, a statement in concise form of the material facts on which a party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. By reference to the pleadings made in the plaint, Mr. Nayar submits that there are sufficient pleadings, as noticed above, in the plaint in relation to the documents filed along with the plaint, which is the evidence in the suit. The plaintiff was not obliged to plead the evidence by making reference to each and every news item published in the media/ press, or each and every statement made by one or the other defendant(s) on their respective twitter handle, or on the facebook page of AAP.

23. At the same time, Mr. Nayar does not dispute the fact that the plaintiff has, indeed, filed two documents subsequently which did not form part of the list of documents filed along with the plaint, and about which there are no specific pleadings in the plaint – though, there are general pleadings made by the plaintiff in respect of the same aspects, namely the conduct of the defendants in issuing libellous and slanderous statements which are defamatory to the plaintiff. These two documents were filed as additional documents at page 1 vide a list of documents dated 13.03.2016 and at page 278 vide list of documents dated 04.02.2016.

24. Having heard learned counsel and perused the replications filed by the plaintiff to the several written statements on record which, as noticed above, are more or less the same, I am of the view that the ingredients of Order VI Rule 16 CPC are certainly not satisfied in the facts of the present case.

25. The grievance of the defendants is primarily two-fold. Firstly, that procedurally, the plaintiff cannot be permitted to set up a new case in the replication for the first time, as that can and should be undertaken only by way of amendment of the plaint, and not otherwise. Secondly, that permitting the plaintiff to raise new pleas in the replications would prejudice the defendants, as they have been denied the opportunity to meet the said new pleas in their respective written statements.

26. The submission of the defendants that the plaintiff is, for the first time, seeking to set up a new plea of conspiracy and collusion between the defendants, has no force. The plaintiff has, firstly, repeatedly averred that the defendants have individually and collectively undertaken a false,

malicious and defamatory campaign/ propaganda against him and his family members. No doubt, the mere use of the expression ‘collectively’ would not be sufficient to conclude that the plaintiff has laid the foundation of his plea of collusion and conspiracy between the defendants. But the plaintiff does not stop at merely claiming that the defendants have collectively undertaken a false malicious, defamatory campaign/ propaganda against him and his family members. He states that the said defamatory campaign/ propaganda “*is clearly calculated, engineered and designed by all defendants between them*” for gaining political mileage, etc.

27. The plaintiff has also termed the malicious propaganda of false and baseless allegations against him and his family members as “**orchestrated mala fide design for ulterior political motive of the defendants against the plaintiff**”. Similar averments are contained in paragraph 11 of the plaint, wherein the plaintiffs, *inter alia*, states that “*the defendants individually and collectively – moving further with their ulterior political mileage designs further created an impression*”.

28. Thus, the plaintiff has pleaded necessary ingredients of collusion and conspiracy, namely the common intention of all the defendants to defame the plaintiff with the object of gaining political mileage and other unwarranted benefits at the cost of causing irreversible damage to the plaintiff.

29. Thus, the submission of the defendants that the plaintiff has sought to raise a fresh plea or an inconsistent plea with the pleas taken in the original pleadings, or that he has sought to introduce, for the first time in the

replications, pleas which could be said to be the foundation of his case, or an essential part of cause of action of the plaintiff is incorrect and therefore, rejected. On a bare reading of the plaint, it cannot be said that the plaint is liable to be dismissed or rejected in the absence of the pleas taken in the replication. In fact, an earlier attempt on behalf of the defendant No.6 for rejection of the plaint under Order VII Rule 11 CPC has already failed.

30. Before proceeding further, I consider it appropriate to set out paragraphs 4 & 5 of the "Preliminary Submissions" made by the plaintiff in each of the replications, which are the same in all the replications. The said paragraphs read as follows:

"4. Some of the specific statements (readily available in public domain) stated and broadcasted by the Defendants between 15.12.2015 and 20.12.2015, on their twitter handles, on the Facebook page of Aam Aadmi Party (www.facebook.com/AamAadmiParty) and to the media in general - inter alia, are as follows:

Defendant No. 1:

On 15.12.2015, the Defendant No.1 on his twitter handle (@ArvindKejriwal) tweeted as follows:

"Which file was CBI looking for in my office? DDCA files in which Arun Jaitley is in dock. I was about to order a commission of enquiry.

"Why Jaitley Ji so scared of DDCA probe? what is his role in the DDCA scam?"

"FM lied in the Parliament yesterday.

On 17.12.2015, the Defendant No.1 on his twitter handle (@ArvindKejriwal) tweeted as follows:

"Is this true? Why is BJP trying to cover up Jaitley ji's corruption"

"The allegations against Shri Jaitley are v v serious. Amounts involved r huge. He shud either resign or be removed to enable independent probe.--"

"Can Jaitley ji's denial in press be taken as gospel truth? V serious allegations against him. Why is he running away from investigation?"

"..if Jaitley was let off without investigation, on the same basis 2G accused should also be let off. Can Jaitley 's denial in press be taken as gospel truth? These are very serious allegations against him. Why is he running from investigations? -"

On 17.12.2015, the Defendant No.1 on his twitter handle (@ArvindKejriwal) retweeted as follows:

"Jaitley's wife & daughter allegedly linked to farzi companies which siphoned off money from DDCA"

Defendant No. 2:

In a press conference on 18.12.2015, the Defendant No.2 stated:

"Whose company is 21st century? What is Lokesh Sharma's relation with Jaitley?"

On 20.12.2015, the Defendant No.2 on his twitter handle (@ashutosh83B) tweeted as follows:

"Let me repeat Mr. Jaitley — you are the KALMA DI of BJP"

On 15.12.2015, the Defendant No.2 on his twitter handle (~~@ashutosh83B~~) tweeted as follows:

"What is there in DDCA file that Mr. Jaitley wants to hide FROM the world for which he sent CBI to CM office to grab that file."

"Mr. Jaitley come clean on DDCA ! Whole world knows it's a den of corruption and you have been presiding for too long !!"

In a press conference on 18.12.2015, the Defendant Nos. 2, 3, 4, 5, & 6 have been reported to have stated as follows:

"The AAP leaders levelled a string of charges against Jaitley, who they alleged "had been siphoning off funds" for years as the DDCA chairman"

Defendant No. 3:

On 17.12.2015, the Defendant No.3 on his twitter handle (@SaurabhAzadSin) tweeted as follows:

"youtu.be/nhQfx4HSSM Jaitley ji kya aap bataenge ki aap kaun si kheti karte hain jisse aapki sampatti 2006 se 2012 tak 24 Crore se 158 crores ho gayee"

On 20.12.2015, the Defendant No.3 on his twitter handle (@SaurabhAzadSin) tweeted as follows:

"Cricket Commonwealth ke Aaropi Arun Jaitley Ji aap BJP ke Kalmadi hai, chori our seenajori nahi chalegi, bhrashtachari ko bhrastachari hi kahoonga suna aapne"

On 20.12.2015, the Defendant No.3 on his twitter handle (@SaurabhAzadSin) retweeted as follows:

"(Bhakto ka naya naara) apna Arun kamaoo nikla, Kalmadi ka tau nikla"

On 21.12.2015 (at 3.04 am), the Defendant No.3 tweeted as follows:

"Arun Jaitley is a 'Maha Bhrashtachari' & we will _fight against him: AAP's Sanjay Singh to CNN-IBN #KejriwalVsJaitley"

Defendant No. 4:

On 20.12.2015, the Defendant No.4 on his twitter account (@DrKumarVishwas) tweeted as follows:

(Bhakto ka naya naara) apna Arun Kamaoo nikla, Kalmadi ka tau nikla”

”OK-OK Sorry to Arun Kalmadi Ji n Suresh Jaitley Ji both.... #JaitleyKalamdihai nahi hai..Ab theek..

”Loji maan khud loot diya our keh rake hai ki haani hum ne kar di? Bahut nainsafi hal.. #JaitleyKalmadihai”

Defendant No. 5:

In Press Conference on 17.12.2015, the Defendant No.5 stated:

”The DDCA was a den of corruption under Jaitley..”

On 15.12.2015 Defendant No.5 on his twitter account (@raghav_chadha) retweeted as follows:

”Which file was CBI looking for in my office? DDCA files in which Arun Jaitley is in the dock. I was about to order a commission of enquiry”

Defendant No. 6:

On 20.12.2015, the Defendant No.6 on his twitter account (@BajpaiDeepak) tweeted as follows:

”Now BJP) has its own Kalmadi. No reason to envy now.”

On 20.12.2015, the Defendant No.6 on his twitter account (@BajpaiDeepak) retweeted:

”Bjp ka kalmadi

@arunjaitley

Congratulations Sir”

5. The Plaintiff humbly submits that each of these aforesaid and other false allegations made by all the Defendants (including Defendant No.2) and put by them in

the public domain through the print and electronic media for dissemination to general public are not only baseless and malicious, but are also per se defamatory and false to their own knowledge.”

31. I find force in submission of Mr. Nayar that the aforesaid pleas of the plaintiff can certainly not be characterised as new or fresh pleas. As noticed hereinabove, the plaintiff in his pleadings has set out in paragraph 5 of the plaint only some of the statements attributed to the defendant(s) made and carried out by the print and electronic media, which are claimed to be malicious, libellous, slanderous and defamatory. He also consciously referred to and relied upon documents, which were available with him and which have been filed with the plaint and he also reserved his right to place further documents/ reports on the record of the Court. Thus, the defendants, when served with the plaint and documents filed with the plaint, upon perusal thereof, would have known the gravamen of the plaintiffs grievance in the plaint, and the allegations made by him against each of the defendants as found in the plaint itself and the documents filed along with it. The plaintiff is not required to spoon feed the defendant about his case. All that is required is that he should clearly set out his case in the plaint, so that the defendant has a fair opportunity to meet the same in his written statement. It is the responsibility of the defendant to peruse, understand and deal with the pleadings and documents he is confronted with. He cannot be heard to say that since the evidence has not been elaborated in the plaint, he can ignore the documents filed and relied upon by the plaintiff. Reliance placed by the defendants on the decision in *Harvest Securities Pvt. Ltd. & Anr.*(supra) is not apposite in the facts of the present case. This is so, because, unlike in *Harvest Securities Pvt. Ltd. & Anr.* (supra)-wherein the plaint was

apparently completely silent about the libellous/scandalous statements attributed to the defendants, in the present case the plaintiff has clearly set out not only several specific statements attributed to one or more of the defendants, in Para 5 of the plaint, but it also discloses the substance of the allegations in paras 7, 8, 11 and 13 of the plaint. Thus, the defendants would have been well aware-on a plain reading of the plaint and the documents filed therewith, as to what is the material on which the plaintiff's cause of action against each of them is premised. The defendants, in my view, have been given sufficient opportunity-on a plain reading of the plaint and the documents filed herewith to meet the allegations against each of them which are discernible on a reading of the plaint and the documents filed therewith.

32. As noticed hereinabove, Order VI Rule 2 CPC mandates that every pleading shall contain, and contain only, a statement in concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. The plaintiff has, with sufficient particularity, set out in the plaint what he claims to be the malicious, libellous and slanderous statements made by the defendants individually and collectively. The substance of those allegations has also been disclosed in the plaint. Merely because there may be numerous instances when those statements were allegedly made by one or the other defendant at different forum/ platforms from time to time, or multiple reporting in the media and press of the said statements, the plaintiff is not obliged to set out each and every such instance or statement in the plaint, to be able to rely upon them. The defendant cannot object to the plaintiff relying on the statements/ reports on the ground that they are not

specifically reproduced in the plaint itself, but are contained in the documents filed along with the plaint. Pertinently, it is not the defendants' case that the statements attributed to each of them by the plaintiff are not theirs. The defendants are not disowning their respective statements, or any of them. The defence of the defendants is that few others had already made accusations against the plaintiff in public, of similar nature, before they were made by the defendants. The defence of the defendants is of "reasonable belief".

33. In the light of the aforesaid facts, in my view, the present is not a case where it could be said that the plaintiff has sought to introduce fresh/new plea in the replications, which does not find mention in the plaint as originally filed. As noticed hereinabove, the plaintiff has made exhaustive averments and raised pleas with regard to the alleged libellous/scandalous statements made by the defendant(s). Merely because the plaintiff in his replications as extracted/quoted from the said statements which are contained in documents filed along with the plaint, in his replications, it does not tantamount to his raising a fresh plea which could be introduced only by way of amendment of the plaint. For this reason, I cannot agree with the submission of the learned counsels for the defendants that the plaintiff should be directed to amend the plaint so as to incorporate the averments made in para 4 under the heading, 'Preliminary Submissions' in the plaint itself. For the same reason, in my view, the plaintiff need not amend the plaint so as to specifically refer to the two additional documents filed by the plaintiff at the stage of filing the replications. The decision in *Sumitra Sahay (supra)*, in my view, has no relevance in the facts of this

case. The decision of this Court in *Anant Construction Pvt. Ltd.*(supra) itself shows that it is not necessary in every case that the plaint be amended, merely because the replication contains reference to documents which may not have originally been referred to in the plaint. This decision also shows that the right of the defendant to deal with the averments made in the replication could be addressed by granting an opportunity to the defendants to file an additional written statement. The concern of the Court, in such like situations, should be, firstly, to ensure that all parties are given adequate opportunity to have their say, and no party should be deprived of the opportunity to meet the case of the opposite party. Secondly, it would also be the concern of the Court to ensure that whatever procedure it adopts, the same does not lead to avoidable delay in the progress of the case and inconvenience to the parties.

34. Even though, in my view, it cannot be said that the defendants have not had the opportunity to deal with the contents of para 4 of the replications under the heading, 'Preliminary Submissions', considering the fact that the defendants have sought to join issues on the said aspect, and also considering the fact that two additional documents have been filed later and referred to in the replications, each of the defendants are permitted to file additional written statements within three weeks to specifically deal with the averments contained in para 4 of the replications and the two additional documents filed by the plaintiff and referred to in the replications which are placed on record at page 1 of the plaintiff's list of documents dated 13.03.2016, and at page 278 of the list of documents of the plaintiff, dated 04.02.2016. The defendants shall, however, restrict themselves while filing

their additional written statements, only to the aforesaid aspects.

35. The applications stand disposed of in the aforesaid terms.

CS(OS) 3457/2015

36. List on 12.07.2016.

APRIL 29, 2016

VIPIN SANGHI, J