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

+ **Date of Decision: 08.02.2016**

% **I.A. No.1884/2016 in CS(OS) 3457/2015**

MR ARUN JAITLEY

..... Plaintiff

Through: Mr. Rajiv Nayar, Mr. Sandeep Sethi and Mrs. Prathiba M Singh, Senior Advocates along with Mr. Manik Dogra, Mr. Saurabh and Ms. Radha Chawla, Advocates.

versus

ARVIND KEJRIWAL & ORS

..... Defendants

Through: Mr. H.S. Phoolka, Senior Advocate along with Ms. Shilpa Dewan and Mr. Anuj Aggarwal, Advocates.

**CORAM:**

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

**VIPIN SANGHI, J. (OPEN COURT)**

1. This application has been filed under Order VII Rule 11 CPC by defendant no.6/applicant to seek rejection of the plaint qua defendant no.6. Learned senior counsel for defendant no.6/applicant has primarily made two submissions. Learned counsels for the plaintiff have appeared on advance notice and countered those submissions.

2. The first submission of Mr. Phoolka is that, qua defendant no.6, there

are no specific averments made in the plaint alleging the making of any defamatory statement by him against the plaintiff. It is submitted that the present suit has been filed by the plaintiff to seek the relief of damages against all the defendants including defendant no.6/applicant, on the premise that the defendants had made defamatory statements in relation to the plaintiff.

3. Mr. Phoolka points out that in paragraph 5 of the plaint, the plaintiff has set out the several statements attributed to the other defendants made on various dates beginning 15.12.2015. However, qua defendant no.6, there is no such averment to be found in the plaint. Mr. Phoolka submits that since there is no specific averment made qua defendant no.6 in the plaint, the documents relied upon by the plaintiff – in relation to the statements attributed to defendant no.6, can also not be looked into for the purpose of consideration of the present application. It is submitted that apart from the plaint, it is only the documents which are referred to in the plaint which could be looked into, to ascertain whether – on the reading of the plaint and documents referred to, a cause of action is disclosed against a particular defendant. In this regard, he places reliance on the observation made by this Court in *Arunesh Punetha v. Boston Scientific Corporation & Ors.*, 2006 (3) AD (Del) 141. He particularly relies on the following observations made in paragraph 8 of the said decision:

*“8. .... Thus, I have no hesitation in coming to the conclusion that this Court must look into the plaint and the documents filed on record and more particularly the documents, which have been referred in the plaint to determine the merits of the application filed by the defendant-applicant-*

*petitioner under Order 7 Rule 11 of the Code of Civil Procedure”.*

4. Mr. Phoolka further submits that the affidavit filed by the plaintiff in support of the plaint cannot be considered as a good affidavit in the eyes of law. He submits that in the affidavit filed with the plaint, the plaintiff, in paragraph 2, *inter alia*, states:

*“2. .... .... I have perused the contents of the accompanying plaint and state that the statement of fact contained therein are true and correct to the best of my knowledge and information received and believed to be correct and the same may kindly be read as part and parcel of the present affidavit, which are not repeated here for the sake of brevity”.*

5. He submits that this Court has held that such an affidavit is no affidavit in the eyes of law. In this regard, he places reliance on the observation of this Court found in ***Hira Lal v. Amarjit Singh***, 1977 RLR 520. The Court while dealing with the petition under Article 227 of the Constitution of India arising out of eviction proceedings, observed:

*“2. In no affidavit has the petitioner said which part was based on information and which on belief. Nowhere he has divulged the source of his information or the grounds of his belief. Where the matter deposed to is not based on personal knowledge but on information, the sources of information ought to be clearly disclosed. The petitioner's several affidavits infringe the provisions of Order 19, Rule 3, when they should have been strictly observed. Such affidavits being vocative of the requirements of the mandatory provisions of law, deserve to be ignored. The words that the contents of the affidavits "are true and correct to the best of my knowledge and belief" carry no sanctity and such a verification cannot be accepted. It has been held over and over again that affidavits must be either affirmed as true to knowledge or from information received*

*provided the source of information is disclosed, or as to what the deponent believes to be true provided that the grounds for such belief were stated. Such Affidavits where the verification lacks the essential requirements, are valueless.”*

6. The submissions of Mr. Phoolka are countered by Mr. Nayar, learned senior counsel for the plaintiff. He submits that in the plaint, the plaintiff has made several averments qua the role of defendant no.6 in the matter of conspiracy by all the defendants to defame the plaintiff. He points out that in paragraph 3, the plaintiff has specifically stated:

*“3. .... In the last few days, **all defendants – individually and collectively**, have undertaken a false/malicious and defamatory campaign/propaganda against the plaintiff and his family members reaching to everyone within and outside India. This clearly is 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”.*

(Emphasis supplied)

7. It is further pointed out that in paragraph 5(iv), the plaintiff has specifically stated:

*“(iv) On 18<sup>th</sup> December, 2015, **all defendants stated that** “Reconstruction of Ferozeshah Kotla Stadium was carried out from 2002 to 2007 for which initial budget was Rs.24 crores and ended up costing Rs.114 crores as per reply furnished on 1<sup>st</sup> December, 2012 by DDCA to the SFIO. Bungling happened with the direct and indirect consent of Arun Jaitley during his tenure as DDCA President.”*

(Emphasis supplied)

8. Similarly, in paragraph 5(ix), it is stated that:

*“(ix) False allegations/innuendos were also made by them on 18.12.2015 by stating that a company close to the plaintiff and his family members viz. 21<sup>st</sup> Century Media Pvt. Ltd. was asked to sublease corporate boxes for Rs.36 crores for which commission was paid.”*

(Emphasis supplied)

It is submitted that the use of the expression “made by them” refers to all the defendants in the context.

9. Mr. Nayar has referred to the documents filed along with the plaint – the first being a report with regard to the Press Conference addressed by five leaders of the Aam Aadmi Party (AAP). The said report while naming the five leaders of the AAP, also names defendant no.6/applicant Deepak Bajpai. In the said press conference, as per the said report, the said leaders:

*“... .. quoted from reports of the Serious Fraud Investigation Office (SFIO), the internal probe committee of the DDCA and a three-member Delhi government-appointed inquiry panel to allege that Jaitley was guilty of giving “direct and indirect consent” to “financial bungling” during his tenure as the cricket body’s chief.”*

(Emphasis supplied)

10. As per the said report of the Indian Express, the said leaders of the AAP also stated in the press conference that:

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

11. Reference has also been made to the print out of the twitter account claimed to be that of defendant no.6/applicant Deepak Bajpai, wherein defendant no.6 is alleged to have stated:

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

12. Paragraph 11 of the plaint has been referred to, wherein allegations have been made against all the defendants by stating:

*“11. That defendants individually and collectively – moving further with their ulterior political malafide designs further created an impression that the marketing company – which got the DDCA sponsorship for signage and for sale and sublease of corporate boxes by 21<sup>st</sup> Century Media Pvt. Ltd., is owned by some relative of the plaintiff and that the plaintiff either himself or through his family members got some pecuniary advantage out of the same.”*

(Emphasis supplied)

13. Similarly, in paragraph 13, the averments made by the plaintiff is:

*“13. It is submitted that the above mentioned statements made by defendants to the effect that – Arun Jaitley is Suresh Kalmadi or that he is suspected of corruption or that he should be dismissed pending enquiry, were all intended to severely and irreversibly damage the credibility, reputation and impeccable integrity of the plaintiff in the eyes of – not only his family members, friends, relatives but also in the eyes of millions of citizens of this country and friends and well wishers all over the globe.”*

(Emphasis supplied)

14. In paragraph 16 of the plaint, the plaintiff, *inter alia*, stated:

*“16. 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.”*

(Emphasis supplied)

15. Mr. Nayar further submits that in ***The Indian Hotels Co. Ltd. v. Binu Anand Khanna & Ors.***, FAO (OS) No.562/2013 decided on 06.01.2016, while dealing with the issue as to whether a party is a necessary party to a proceeding involving allegations of conspiracy *inter se* the defendants, the Division Bench of this Court had observed:

*“In this case, there is no denial that the plaint does contain averments suggesting a concerted action, or conspiracy between the various defendants (including those on whose behalf Indian Hotels has moved for deletion from the array of parties). The court cannot in the absence of a full trial comment on the strength or weakness of those averments; nor can it dismiss the charges as vague or vexatious, with the definiteness that Indian Hotels’ counsel does. If the law as to pleadings is that every averment, which constitutes a step in outlining the cause of action motivating the litigation is to be taken at face value and evaluated on the basis of materials and evidence adduced during the trial, unless either the action itself is barred, or the plea is so prohibited by some law the Court cannot preclude trial. Such being the case, it is inconceivable for a Court to say that the plaintiff should be precluded from leading evidence which any defendant may have to answer during the trial. That such would undeniably be the case, is undisputed by the appellant, because there is no manner a court of law can conclude that a group of individuals or some of them acted in concert or conspired in some manner, without hearing them or taking their account into consideration. That is quite simply, the rationale for rejecting the plea of the appellants.”*

16. Reference has also been made to a decision of this Court in ***Ajay Verma v. M/s. East India Company & Ors.***, ILR (2007) II Delhi 333,

wherein this Court has observed that under Order 7 Rule 11 CPC, what is contemplated is that the plaint as a whole should be open to rejection. Even if one of the reliefs sought by the plaintiff cannot be rejected under the said provision, the plaint as such cannot be rejected. For this proposition, the Court had placed reliance on *D. Ramachandran v. R.V. Janakiraman & Ors.*, AIR 1999 SC 1128 and *ABN-AMRO Bank v. The Punjab Urban Planning and Development Authority*, AIR 2000 Punjab and Haryana 44.

17. So far as the submission premised on the supporting affidavit of the plaintiff is concerned, Mr. Nayar points out that the decision relied upon by the defendant no. 6/applicant stems out of proceedings under Article 227 of the Constitution of India, and the same has no application in the facts of the present case as, under Order VI Rule 15(2) CPC, a person verifying a pleading is obliged to specify, by reference to the numbered paragraphs of the pleading, what he verifies on his own knowledge, and what he verifies upon information received and believed to be true. He points out that the plaint of the plaintiff meets with the said requirement of law inasmuch, as, the plaintiff has verified that contents of paragraphs 1 to 16 of the plaint “*are true to my knowledge and also the information received by me from the print and electronic media*”. Therefore, the source of information in respect of information and knowledge derived from other sources has been clearly disclosed as being the electronic media.

18. It is well-settled that while dealing with an application under Order VII Rule 11 CPC, to examine the issue whether the plaint discloses a cause of action, the Court should read the plaint as a whole in a meaningful way, and apart from the plaint, the documents filed along with the plaint, which

correlate with the averments made in the plaint should also be looked into.

19. In the present case, the defendant No.6/ applicant claims that the plaintiff has not attributed any particular and specific statement to the defendant No.6/ applicant – claiming the same to be defamatory to the plaintiff's reputation. This submission is premised primarily on the basis that in paragraph 5 of the plaint, wherein the plaintiff enlists 14 specific instances of alleged defamation by the other defendants, namely defendants No.1 to 5, the plaintiff does not set out even a single statement attributable to the defendant No.6/ applicant, which is claimed to be defamatory.

20. Having perused the entire plaint and particularly the averments made in the plaint as referred to by Mr. Nayar, I do not find any merit in the said submission of Mr. Phoolka. When the plaint is read as a whole, in a meaningful way, in correlation with the documents filed by and relied upon by the plaintiff, it is evident that the plaintiff has made substantial allegations against the defendant no.6/ applicant as well. As noted above, in paragraph 3 of the plaint, the allegation made by the plaintiff is against *“all the defendants – individually and collectively”* that in the last few days, they *“have undertaken a false/ malicious and defamatory campaign/ propaganda against the plaintiff and his family members reaching to everyone within and outside India”*. The plaintiff has stated that *“this clearly is calculated, engineered and designed by all defendants between them for gaining political mileage and other unwarranted damages at the cost of causing irrecoverable damage to the plaintiff”*. The averments made in paragraph 3 are clearly directed against all the defendants and do not exclude the defendant no.6/ applicant.

21. Similarly, in paragraph 5 (iv), the averment of the plaintiff is that:

*“On 18<sup>th</sup> December, 2015, all defendants stated that “Reconstruction of Ferozeshah Kotla Stadium was carried out from 2002 to 2007 for which initial budget was Rs.24 crores and ended up costing Rs.114 crores as per reply furnished on 1<sup>st</sup> December, 2012 by DDCA to the SFIO. Bungling happened with the direct and indirect consent of Arun Jaitley during his tenure as DDCA President.”*

22. The plaintiff has filed in support of the said averment, the report published in the Indian Express, according to which, several leaders of Aam Aadmi Party including the defendant no.6/ applicant in a Press Conference alleged that the plaintiff was guilty of giving “*direct and indirect consent*” to “*financial bungling*” during his tenure as the cricket body’s chief, i.e. the Chief of the Delhi and District Cricket Association (DDCA). As per this report published in the Indian Express, the team of leaders of Aam Aadmi Party including defendant no.6/ applicant also stated that “*the DDCA was a den of corruption under Jaitley ... ..*”. Similarly, the averments made in paragraph 5 (ix) – that “*false allegations/ innuendoes were also made by them on 18.12.2015*” are also directed against all the defendants, which includes the defendant no.6/ applicant.

23. The averments made in paragraph 11 of the plaint are also qua all the defendants as the plaintiff clearly states:

*“That defendants individually and collectively – moving further with their ulterior political malafide designs further created an impression that the marketing company – which got the DDCA sponsorship for signage and for sale and sublease of corporate boxes by 21<sup>st</sup> Century Media Pvt. Ltd., is owned by some relative of the plaintiff and that the plaintiff either himself or*

*through his family members got some pecuniary advantage out of the same.”*

24. In paragraph 13 of the plaint, the plaintiff avers about the statements *“made by defendants to the effect that – Arun Jaitley is Suresh Kalmadi or that he is suspected of corruption or that he should be dismissed pending enquiry”*. In support of, and in relation to this plea, the plaintiff has placed on record, what is claimed to be a printout from the Twitter account of the defendant no.6/ applicant, where he has claimed to have stated *“now BJP has its own Kalmadi. No reason to envy now”*.

25. It is the case of the plaintiff that the acts of omission and commission of the defendants – including the making of false, baseless, scandalous, malicious statements/ allegations against the plaintiff, has made them liable individually and collectively for the irreversible and unquantifiable damage caused to the plaintiff. Thus, the plaintiff claims that all the defendants, individually and collectively, are liable to compensate the plaintiff by a sum of Rs.10 Crores.

26. The relief sought in the plaint is also directed against all the defendants, as a decree of damages is sought by the plaintiff against all the damagers for a sum of Rs. 10 Crores.

27. When the plaint is read as a whole along with the aforesaid documents, it cannot be said that there are no material averments made by the plaintiff qua the defendant no.6/ applicant. For the purpose of the present application, the said averments are required to be assumed to be true and correct, and it has to be examined whether, if they are so assumed to be

correct, they disclose a cause of action against the defendant no.6/ applicant. If the averments made by the plaintiff against all the defendants, which include defendant no.6, are assumed to be correct, then, certainly, the same would give a cause of action to the plaintiff to sue the defendant no.6/ applicant for damages. It is not even the case of the defendant no.6/ applicant that the said statements, even if accepted to have been made by him, cannot be considered as being defamatory to the name and reputation of the plaintiff. Thus, I do not find any merit in the first submissions of Mr. Phoolka that on a reading of the plaint and the documents filed and relied upon by the plaintiff, no cause of action is disclosed in favour of the plaintiff and against defendant no.6/ applicant.

28. The decision relied upon by Mr. Phoolka in *Arunesh Punetha* (supra) is of no avail to the applicant. The above extract itself shows that the Court must look into the plaint and the documents filed on record. More particularly, it should look into the documents which have been referred to in the plaint to determine the merits of the application filed by the defendant no.6/ applicant under Order VII Rule 11 CPC. The plaintiff is not expected to lead his evidence in his plaint. The pleading has to be in respect of “*a statement in a 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*” (see Order VI Rule 2(1) CPC). Thus, the plaintiff is not even expected to refer to specific pieces of evidence, namely publications which, allegedly, are defamatory to the plaintiff. The plaintiff has, in fact, made a specific allegation in paragraph 5 (iv) that on 18.12.2015 all the defendants made allegations of bungling in the matter of re-

construction of Ferozeshah Kotla Stadium between 2002 and 2007 with the direct and indirect consent of the plaintiff during his tenure as the President of DDCA. This averment is sought to be corroborated by the report published in the Indian Express, which claims that a team of several leaders of Aam Aadmi Party – including the defendant no.6/ applicant, held a Press Conference, wherein the said allegations were made against the plaintiff. Thus, the reliance placed by the defendant no.6/ applicant on *Arunesh Punetha* (supra) is of no avail.

29. The decision of the Division Bench of this Court in *The Indian Hotels Co. Ltd.* (supra) appears to be relevant in the facts of the present case. In the present case as well, like in the case dealt with the Division Bench in *The Indian Hotels Co. Ltd.* (supra), the plaint does contain averments suggesting a concerted action and conspiracy between the various defendants. In these circumstances, as observed by the Division Bench, the Court cannot, in the absence of a full trial, comment on the strength or the weakness of those averments; nor can it dismiss the charge as vague, or vexatious, with the definitiveness that the defendant no.6/ applicant's counsel contends. The plaintiff cannot be precluded from leading evidence in support of his case, which the defendants – including defendant no.6, would have to answer during a trial.

30. Turning to the next issue raised by Mr. Phoolka, once again, I find no merit in the same. As pointed out by Mr. Nayar, the plaint is required to be verified under Order VI Rule 15 (2) CPC by specifying, by reference to the numbered paragraphs of the pleading, what he verifies on his own knowledge, and what he verifies upon information received and believed to

be true. The plaintiff has indeed met with the said procedural requirement inasmuch, as, the verification appended to the plaint reads:

*“... ..that the contents of paragraph 1 to 16 of the above plaint are true to my knowledge and also the information received by me from the print and electronic media. The contents of paragraphs 17 to 19 are based upon legal advice received by me and believed to be true. The last paragraph is the Prayer before this Hon’ble Court.”*

31. The affidavit filed by the plaintiff in support of the plaint is an affidavit to affirm, *inter alia*, that the plaintiff has perused the contents of the accompanying plaint – which includes the verification contained on the plaint, and the plaintiff affirms that the statement of fact contained in the plaint are true and correct to the best of his knowledge and information received and believed to be correct. The decision relied upon by Mr.Phoolka, as noticed above, stems from proceedings under Article 227 of the Constitution of India, which do not require the petition to be verified in terms of Order VI Rule 15 (2) CPC. Consequently, the said decision can be of no avail to the defendant no.6/ applicant in the facts of the present case.

32. For all the aforesaid reasons, I find no merit in the present application, which is dismissed leaving the parties to bear their respective costs.

**VIPIN SANGHI, J**

**FEBRUARY 08, 2016**

*SR / B.S. Rohella*