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

+ CS(OS) 236/2017

ARUN JAITLEY

..... Plaintiff

Through: Mr Rajiv Nayar, Senior Advocate
with Mr. Manik Dogra and
Mr. Saurabh Seth, Advocates.

versus

ARVIND KEJRIWAL

..... Defendant

Through: Mr. Anoop George Chaudhari,
Senior Advocate with Mr. Anupam
Srivastava, Ms. Sumeeta
Chaudhari and Mr. Irsad,
Advocates.

Reserved on : 07th November, 2017

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Date of Decision: 12th December, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

I.A. 13011/2017

1. Present application has been filed under Order 6 Rule 16 read with Section 151 CPC for striking off the preliminary submissions in the replication filed by the plaintiff. The preliminary submissions of replication sought to be expunged by the defendant by way of the present application are as under:-

"6...It was only after the notice was issued by this Hon'ble Court on 23.07.2017 and summons were served on the Defendant on 06.06.2017, that the Defendant, in order to

concoct a moonshine defence in the instant proceedings, speciously wrote to his senior Advocate on 20.07.2017 allegedly denying his specific instructions.

7. *It is stated that the aforesaid belated denial of the Defendant has been categorically rejected by the Senior Advocate representing the Defendant in CS (OS) 3457 of 2015. In an interview to The Times of India on 26.07.2017, the said Senior Advocate has stated as under:*

*“.....Jethmalani told TOI,
“Kejriwal has written a letter to me. I have replied to that. I am not going to divulge the details of either of the letters. You ask Kejriwal to make public both the letters. I have promised him not to make it public.”*

*.....
During such conversions, Jethmalani alleged in his letter, Kejriwal had used even more objectionable words against Jaitley. The alleged use of derogatory words by Kejriwal during the conference appeared to have made Jethmalani repeat them during the May 17 proceedings before the HC registrar in the first defamation suit”*

(Emphasis Supplied)

8. *Subsequently, in an interview to Asian News International, posted on their Facebook page and available at <http://www.facebook.com/ANINEWS.IN/videos/1304366586342768>, the said Senior Advocate has reiterated his earlier statements that he had received instructions from the Defendant to use the said ex-facie defamatory words against the Plaintiff. The said Senior Advocate has specifically stated that the Defendant has “spoken a lie... He has given me instructions.... I have recorded it.”*

9. *On 28.07.2017, the said Senior Advocate wrote a letter to the Defendant and copied the same to the Plaintiff. In the*

said letter, the Senior Advocate has stated that he had written a letter to the Defendant on 20.07.2017 and had not received any reply to that letter. He further stated that he published his letter of 20.07.2017 on his blog/ website. This letter is available at <http://ramjethmalanimp.blogspot.in/>. In his letter dated 20.07.2017, the Senior Advocate representing the Defendant in (unnumbered) Page 3, 2nd Paragraph has stated as follows:

.....”

10. It is respectfully submitted that the belated denial of the Defendant has been rubbished by the Senior Advocate representing the Defendant. It is evident that the aforesaid denial by the Defendant is not only concocted but also malafide to the Defendant’s knowledge. The unqualified and definite statements of the said Senior Advocate in the series of statements to press and his letters categorically establishes that it was the Defendant who had given specific instruction to his Senior Advocate to use the ex facie and per se defamatory words against the Plaintiff.....

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13. Further, if the said Senior Advocate had made the said defamatory statement without specific instructions of his Client, i.e. the Defendant herein, the Defendant ought to have registered a complaint against the said Senior Advocate with the Bar Council. The fact that the Defendant has not lodged any complaint or taken any other action against the Senior Advocate, solidifies the fact that he had instructed the said Senior Advocate to use defamatory words against the Plaintiff.

14the Senior Advocate representing the Defendant in CS(OS) 3457 of 2015 has voluntarily waived any lawyer-client Privilege on 17.05.2017 itself during the cross-examination in CS(OS) 3457 of 2015. He further waived any alleged privilege on 26.07.2017 (in his interview to The Times of India); on 27.07.2017 (in his interview to ANI

News); on 28.07.2017 (when he published his letter dated 20.07.2017 addressed to the Defendant on the internet)....

xxxx xxxx xxxx xxxx

16.Only after the summons were served on the Defendant in the instant suit, did the defendant allegedly on 20.07.2017 wrote the first communication to the said Senior Advocate. Importantly, the said senior Advocate on 20.07.2017 itself, rejected the alleged contents of the Defendants letters dated 20.07.2017. This clearly shows that the Defendant's letter dated 20.07.2017 (which has not been placed on record) is clearly an afterthought and a belated attempt to disown his instruction to the said Senior Advocate."

2. Mr. Anoop George Chaudhari, learned senior counsel for the defendant-applicant stated that the plaintiff had exploited the opportunity of filing the replication for the purpose of introducing new allegations of defamation to make out a fresh case that is in addition to the case set out in the plaint.

3. He stated that as the preliminary submissions of the replication contain additional allegations and subsequent pleas against the defendant, which do not form part of the plaint, hence the defendant has not had the chance of rebutting the same through his written statement. He contended that the plaintiff by bringing in the additional / new facts in the replication, intended to 'rob' the defendant of a chance to file a reply to the allegations made.

4. Mr. Chaudhari submitted that the subsequent allegations and pleas are material facts within the meaning of Order 6 Rule 2 CPC, which are necessarily required to be stated in the pleadings in accordance with

Order 6 Rule 4 CPC. He further submitted that the subsequent allegations constitute a cause of action within the meaning of Order 7 Rule 1(e) CPC and hence, the same should have been incorporated by way of amendment of the plaint rather than importing the same 'circuitously' in the replication. He emphasized that plaintiff had attempted to enlarge the scope of the suit by introducing completely new averments and pleadings against the defendant.

5. In support of his submission, Mr. Chaudhari, learned senior counsel for the defendant relied upon the following judgments:-

A) **Anant Construction (P) Ltd. Vs. Ram Niwas, MANU/DE/0407/1994** wherein it has been held as under:-

"(20) 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.'"

B) **Sahib Singh Vs. Arvinder Kaur & Ors., MANU/DE/0256/2013** wherein it has been held as under:-

"43. We may usefully refer to the observations of the learned Single Judge (as he then was) of this Court in Anant Construction (P) Ltd. v. Ram Niwas, MANU/DE/0407/1994 : 1994 IV AD (Delhi) 185 = MANU/DE/0407/1994 : 1994 (31) DRJ 205 relying upon the observations of the Supreme Court in M.S.M. Sharma v. Krishna Sharroa, MANU/SC/0021/1958 : AIR 1959 SC 395, it was observed in para 20 as under:

“20. 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.”

(emphasis supplied)

While acknowledging that if replication is permitted to be filed, it forms part of the pleadings, it has been observed that subsequent pleadings are not substitute for amendment in the original pleadings. In fact, a Full Bench of this Court in Kedar Nath v. Rain Parkash connected matters, MANU/DE/0290/1998 : 1998 VII AD (Delhi) 409 = MANU/DE/0290/1998 : 1999 (48) DRJ 589 has held that even while amending pleadings, there cannot be additional pleadings at variance or inconsistent with original pleadings.”

6. Per contra, Mr. Rajiv Nayar, learned senior counsel for the plaintiff submitted that the pleas in the replication were neither inconsistent nor at variance with the original pleadings.

7. He referred to the following paragraphs of the plaint:-

"6. On 17.05.2017 during the cross-examination of the Plaintiff in the said Prior Suit, the Senior Advocate representing the Defendant herein referred to the Plaintiff as 'crook'. This statement is not only false, baseless, malicious and abusive, but is per se defamatory.

7. On a query from the Ld. Joint Registrar conducting the aforesaid cross examination in the said Prior Suit, the said Senior Advocate for the Defendant categorically stated that he used the

word "crook" on the instructions from his client, i.e., the defendant herein. He further categorically stated that he has received this instruction in his meeting with the Defendant and further stated that this meeting was held in absence of the Advocate-on-record representing the Defendant in the said Prior Suit.

8. *Clearly, the Defendant has brazenly and with a malafide intent to cause further prejudice, damage and loss to the name, reputation and credibility of the Plaintiff has deliberately used the terminology of 'crook' against the Plaintiff.*

9. *During the cross-examination of the Plaintiff in the said Prior Suit, the Defendant through the said Senior Advocate made a further defamatory remark that the Plaintiff is 'guilty of crimes and crookery'. It is evident that even this statement ('guilty of crimes and crookery') has been made on specific and categorical instructions of the Defendant herein.*

10. *All the said per se defamatory statements, i.e., 'crook' and 'guilty of crimes and crookery' were made on 17.05.2017 during the Plaintiff's cross-examination before the Ld. Joint Registrar and were heard inter alia by a number of lawyers, Court Staff and various journalists inside the packed Court room."*

8. Mr. Nayar contended that the impugned averments in the replication did not constitute a fresh cause of action.

9. Having heard learned counsel for the parties, this court is of the view that it is first essential to analyze the scope and ambit of Order 6 Rule 16, CPC. The said provision is reproduced hereinbelow:

“16. Striking out pleadings. – *The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading–*

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or*
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or*
- (c) which is otherwise an abuse of the process of the court.”*

10. This court is of the opinion that the underlying object of Order 6 Rule 16, CPC is to ensure that every party to a suit should state in its pleadings material facts in an intelligible form without causing embarrassment to its adversant. Normally, a court cannot direct parties as to how they should prepare their pleadings. If the parties have not violated the rules of pleadings by making appropriate averments or raising arguable issues, the court should not order the pleadings to be struck off. The power to strike out pleadings is extraordinary in nature and must be exercised by the court with extreme care, caution and circumspection. The Supreme Court in ***Abdul Razak v. Mangesh Rajaram Wagle and Others: (2010) 2 SCC 432***, has held as under:-

"17. Normally, a court cannot direct or dictate the parties as to what should be their pleading and how they should prepare their pleadings. If the parties do not violate any statutory provision, they have the freedom to make appropriate averments and raise arguable issues. The court can strike off the pleadings only if it is satisfied that the same are unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay the fair trial of the suit or the court is satisfied that suit is an abuse of the process of the court. Since striking off the pleadings has serious adverse impact on the rights of the

party concerned, the power to do so has to be exercised with great care and circumspection."

11. Consequently, this court is of the view that the pleadings can be ordered to be struck off under Order 6 Rule 16, CPC only if they are shown to be unnecessary, scandalous, frivolous or vexatious or abuse of the process of law or if they amount to re-litigation or tend to embarrass the defendants in the trial of the suit.

12. From a perusal of the pleadings this Court is of the view that cause of action as disclosed in the present plaint filed on 22nd May, 2017 is that the plaintiff had been subjected to questions, terminologies/ statements during cross examination in CS (OS) 3457/2015 that were ex facie abusive, malicious, offensive, irrelevant and slanderous. It is alleged that the senior advocate representing the defendant therein had referred to the plaintiff as "*crook*" and had further remarked that the plaintiff was "*guilty of crimes and crookery*" on the specific instruction of the defendant herein.

13. In the written statement, the defendant has taken the defence that he had never instructed his senior advocate to use the words "*crook*" and "*guilty of crimes and crookery*" against the plaintiff. In support of the defence, the defendant had referred to a subsequent letter dated 20th July, 2017 written by him to his Senior Advocate wherein he had stated that he had neither instructed the advocate on record nor the senior counsel to use the words "*crook*" and "*guilty of crimes and crookery*" against the plaintiff.

14. The plaintiff in the impugned paragraphs in the replication has stated that the defendant in order to create a moonshine defence has

allegedly written the subsequent letter dated 20th July, 2017 to his senior advocate denying his specific instructions. In support of his contention, the plaintiff has referred to the interview given by the senior advocate representing the defendant in CS (OS) 3457/2015 to Times of India, a national daily, as well as a news portal and his letter to the plaintiff – all subsequent to the filing of the suit. The plaintiff has averred in the impugned paragraphs that the then senior advocate representing the defendant had voluntarily waived the lawyer-client privilege not only during the cross examination on 17th May, 2017 itself, but also subsequently in his interview to the Times of India, news portal as well as his letter addressed to the plaintiff.

15. In the opinion of this Court, the plaintiff in its replication has neither made out a new case nor a fresh cause of action or enlarged the scope of the suit. In fact, the replication in the present instance contains averments and evidence in support of the original cause of action as mentioned in the plaint and is the plaintiff's answer to the defendant's plea in the written statement in accordance with the judgment of this Court in *Anant Construction (P) Ltd. Vs. Ram Niwas, 1994 (31) DRJ*.

16. The pleas in the replication are not inconsistent or at variance with the original pleadings. Accordingly, the judgments cited by the learned senior counsel for the defendant are inapplicable to the facts of the present case. This Court is also of the view that neither Order VI nor Order VII CPC has been violated in the present instance. In fact, the averments in the replication crystallize the plaintiff's stand on an important issue and are relevant to the case at hand. Consequently, the

replication can neither be termed as scandalous nor frivolous or vexatious or unnecessary or abuse of process of law.

17. However, as the defendant states that he has not had the opportunity of rebutting the documents referred to in the replication, this Court permits the defendant to file an additional written statement in accordance with the Order 8 Rule 9 CPC within four weeks.

18. With the aforesaid observations and direction, present application is dismissed.

DECEMBER 12, 2017

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MANMOHAN, J

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