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

+ CS(OS) 433/2010

ATUL KUMAR SINGH Plaintiff

Through Ms. Shweta Kr. Singh, Adv.

versus

NITISH KUMAR & OTHERS Defendant

Through Mr. Abhinav Mukherjee & Mr.
Siddharth Garg, Adv. for D-1
Mr. Akhilesh Kr. Pandey, Adv. for
D-2 to 4

CORAM:

**SANJEEV AGGARWAL (DHJS), JOINT REGISTRAR
(JUDICIAL)**

ORDER

% **02.08.2017**

**IA No.1898/2017 u/O 1 R10(2) r/w Section 151 CPC moved by
defendant no.1 for deletion of name from array of parties**

Vide separate order the captioned IA is dismissed and disposed
of.

CS (OS) 433/2010

Re-notify the matter for further evidence of PW1 on
07.11.2017.

**SANJEEV AGGARWAL (DHJS)
JOINT REGISTRAR (JUDICIAL)**

AUGUST 02, 2017/ab

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(JUDICIAL)

ORDER

02.08.2017

IA No.1898/2017 u/O I R10(2) r/w Section 151 CPC moved by defendant no.1 for deletion of name from array of parties

Vide this order, I shall dispose off the present application filed by defendant no.1/applicant u/O I R10(2) CPC for deletion of name of defendant no.1.

The brief facts are that plaintiff has filed the present suit for infringement of copyright, declaration and permanent injunction and for damages against defendant(s) no.1 to 5 on the ground that the plaintiff by compiling his original doctoral research work prepared a paper titled “**Special Category Status: A case of Bihar**”. It is alleged by the plaintiff that he was shell shocked on reading the newspaper reports, wherein it was stated that said original work of the plaintiff was published by the ADRI and the Centre for Economic Policy and Public Finance on 15.05.2009. He has also relied upon the relevant newspaper clippings. He has claimed that the said book was

Contd.....2

endorsed by defendant no.1, who also claimed authoring the said book. Besides that the plaintiff has made other allegations in the plaint and has prayed for reliefs of declaration. Permanent injunction and damages against all the defendants.

The defendant no.1 has filed the present application stating that on the facts as stated in the plaint, no cause of action has been made out for instituting and maintaining the present suit against the applicant/ defendant no.1. It is also stated in the plaint and the documents filed by the plaintiff, it is apparent that defendant no.1 has not committed any act which constitutes an infringement of copyright. It is therefore stated that defendant no.1 neither a necessary nor a proper party to the present suit, as no relief has been claimed against him and he has only been impleaded with mala fide intentions to cause embarrassment. Therefore it is prayed that name of defendant no.1 be deleted from the array of parties.

Reply has been filed by plaintiff to the said application stated that said application is a gross abuse and misuse of the process of law and it has been deliberately filed in order to delay the trial of the suit as the matter was listed for evidence of the plaintiff. It is also stated that defendant no.1 has given no cogent reason for deleting his name from the array of the parties and the application has been moved on vague and baseless grounds. It is also stated that it is apparent from the pleadings that defendant no.1, as the principal actor, whose actions save rise to the structure of the suit of the plaintiff. Plaintiff

Contd.....3

has made considerable and valuable averments against defendant no.1 which justifies the cause of action for instituting the present suit against defendant no.1. It is also stated that defendant no.1 is both proper as well as necessary party. His presence is necessary for complete and final decision of the questions involved in the proceedings.

In any case, the same cannot be decided without trial and evidence. It is also stated that the plaintiff has prayed specific averments in the plaint against the defendant no.1 as detailed in paragraphs 2,3,7-M,7-N,7-O,7-P,7-R/S/U/X/Y, 8-C, 8-D, 8-E, 8-G, 8-H. It is stated that complete composite cause of action against all the defendants has been made out in the present plaint jointly and severally. Therefore, it is stated that the present application is liable to be dismissed with costs.

The leading judgment on Order I R10 CPC is AIR 1958 SC 886 in the matter titled as '*Razia Begum Vs. Sahebzadi Anwar Begum and Others*', in which law was summarized as under:-

“14. As a result of these considerations, we have arrived at the following conclusions:

(1) That the question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one of the initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in

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contradistinction of its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in Section 115 of the Code;

- (2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;*
- (3) Where the subject-matter of a litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy;*
- (4) The cases contemplated in the last proposition, have to be determined in accordance with the statutory provisions of Section 42 and 43 of the Specific Relief Act;*
- (5) In cases covered by those statutory provisions, the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;*
- (6) The result of a declaratory decree on the question of status, such as in controversy in the instant case, affects not only the parties actually before the court, but generations to come, and in view of that consideration, the rule of "present interest", as evolved by case law relating to disputes about property, does not apply with full force; and*

(7) The rule laid down in Section 43 of the Specific Relief Act, is not exactly a rule of res judicata. It is narrower in one sense and wider in another.”

Further it has been held in another judgment titled “*Kasturi v. Iyyamperumal and Others’ in Appeal (Civil) 2831 of 2005 passed by Hon’ble Supreme Court of India on 25th April 2005*, as under:-

“14. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.”

Therefore proper party is one in whose absence an effective order can be passed, but whose presence is necessary for a complete and final decision on the question involved in the suit. For example, a suit is filed by the house owner against a tenant. The tenant is a necessary party. A sub tenant is only a proper party. Necessary party is one whose presence is indispensable to the constitution of the suit, without whom no effective order can be passed. For example in a suit for partition all sharers are necessary parties.

The primary object of Order 1 Rule 10(2) of CPC is to bring before the court at the same time, the persons interested in dispute, so that all the contra versions in the suit may be finally decided once for

all, in presence of the parties without delays, inconvenience and expenses of several actions, trials and adjournments.

Considering the provisions of Order I Rule 10(2) CPC the Hon'ble Supreme Court in '*Anil Kumar Vs. Shivnath*' (1995) 3 SCC 147 held as under:-

“Though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party the condition precedent is that the court must be satisfied the presence of such party would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. The object of the rule is to bring on record all persons, also all parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence, at the same time without any protraction, in convenience, and to avoid multiplicity of proceedings”.

Applying the ratio of law laid down in the aforesaid judgments as discussed above to the facts of the present case.

The plaintiff claims that the Book “**Special Category Status: A case of Bihar**” is infringement of copyright of his original literary work “**Special Category Status: A case of Bihar**” which is result of his labour and skill, after lot of research and data analysis on the main heading page of the Book name of defendant no.1 appears in bold letters. In foreword following para has been written:-

“Ever since Shree Nitish Kumar took over the reigns of the state as its Chief Minister, he has been preoccupied with this agenda of SCS for Bihar. First, he got this agenda debated in the State Legislature, a debate that was followed by a formal

Contd....7

resolution proposing SCS for Bihar. However, his efforts to meet the Prime Minister with this specific agenda went in vain several times, even though he was granted time to discuss other matters.

The book is the outcome of a rigorous academic exercise, under the overall guidance and stewardship of Shree Nitish Kumar, justifying the grant of Special Category Status for Bihar. It not only elaborates the historical neglect of the state, but presents point by point facts and arguments for this case. We are sure that this document will not only be useful advocacy material for the State Government, but also a handbook for the intelligentsia and the public functionaries for putting across a decisive agenda for long term development of this state that is both sustainable and inclusive.”

The plaintiff has also relied upon various newspaper clippings/ interviews allegedly given by defendant no.1 that the said Book had been penned/authored by him. The plaintiff has also pleaded that the original work of plaintiff was released by his research Supervisor Dr. Parveen Jha and Professor Anand Kumar on 14.05.2009, both of whom certified that the same was original work of plaintiff. These facts are cumulatively sufficient to give right to sue to the plaintiff against defendant no.1.

The plaintiff has made detailed set of facts/ averment in his plaint. More specifically in para (s) 2,3,7-M, 7-N,7-O, 7-P,7-R/S/U/ X/Y etc. of his plaint sufficient to justify right to sue or enforcement of a right against defendant no.1. The plaintiff is entitled to choose as defendants against whom he has a cause of action. The defendant

no.1 has direct interest in the subject matter of litigation. The plaintiff has filed the present suit for infringement of copyright, declaration, permanent injunction and damages against defendant no.1 & other claiming that all the defendants have infringed the copyright of his original literally work after making detailed set of facts in his plaint as stated above, sufficient to justify right to sue against defendant no.1. Therefore defendant no.1 is both necessary as well as proper party to the suit, as in his absence no effective decree can be passed in the present suit. Further presence of defendant no.2 is necessary in order to enable the court to effectually and completely adjudicate upon and settle all disputes in the suit.

In view of above discussion, the present IA is sheer abuse of process of law. Same is dismissed with cost of Rs.20,000/-. IA stands disposed of.

**SANJEEV AGGARWAL (DHJS)
JOINT REGISTRAR (JUDICIAL)**

AUGUST 02, 2017/ab