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

\+ CS(OS) 1721/2008

PRASAR BHARATI ..... Plaintiff

Through: Mr. Rajeev Sharma and Ms. Radha Lakshmi R., Advocates

versus

TV TODAY INDIA LTD & ORS. .....Defendants

Through: Ms. Nisha and Ms. Lakshita Sethi, Advocates for defendants No.1, 5 & 12
Mr. Ajay Dutta, Advocate for defendant No.3
Mr. Sudeep Chatterjee and Ms. Sonal, Advocates for defendants No.4 & 10
Ms. Sonali Dhir, Advocate for defendant No.6
Mr. Arijit Mazumdar, Advocate for defendant No.7
Mr. Sumant De, Advocate for defendant No.11

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% 09.08.2017

I.A.15604/2008 (by plaintiff u/O VI R 17)

By way of this application, plaintiff seeks amendment of plaint to enhance claim of damages from ₹25,00,000/- to ₹5,75,00,000/-.

Learned counsel for applicant/plaintiff submits that this suit was filed in hurry to seek permanent injunction and so, quantum of damages sought was not commensurate with the huge expenses incurred on account of acquiring the broadcasting rights, equipment, etc.. In this regard, attention of this Court is drawn to paragraph No.5 of the application.

Learned counsel for applicant/plaintiff further submits that plaintiff has also sought rendition of account and once the evidence is led, it would show that the quantum of damages has to be much more than actually sought in the plaint. It is pointed out that this application seeking amendment was filed within few months of filing of the plaint and much time was consumed in serving the opposite side and due to inadvertence, the application was not pressed when the issues were framed, but the amendment sought is necessary for proper adjudication of the subject matter of this suit.

The opposition to this application by learned counsel for defendants No.1, 5 & 12 is on the ground that amendment sought is barred by Order II, Rule 2 of CPC and since the trial in the matter has commenced, the amendment sought ought not to be granted. Reliance is placed upon Supreme Court's decision in *State of Madhya Pradesh v. Union of India and Another*, (2011) 12 SCC 268 to highlight the principles governing the amendment of pleadings.

Nothing else is urged by either side.

Upon hearing and on perusal of record of this case, I find that the application seeking amendment was filed within few months of filing of the plaint and so, it cannot be said that the amendment sought is barred by Order II, Rule 2 of CPC. Supreme Court in *Chakreshwari Construction Private Limited v. Manohar Lal*, (2017) 5 SCC 212 has reiterated the basic principles which govern the amendment of pleadings. It needs no reiteration that the amendment in pleadings can be granted at any stage with the rider that amendment sought must be *bona fide,* relevant and necessary for deciding the rights of the parties.

The delay has occurred in serving the parties and service in this application and the suit could be completed only in August, 2013. When the issues were framed, this application was not pressed by plaintiff's counsel due to inadvertent omission. I see no reason to doubt *bona fides* of plaintiff because issues framed do not restrict the right of plaintiff to claim damages of ₹25,00,000/-. Not only an open-ended issue regarding the quantum of damages has been framed, but even an issue seeking rendition of accounts has been claimed by plaintiff. In such a peculiar situation, instead of allowing the amendment and to put the clock back, it is deemed appropriate to permit plaintiff to seek damages in the light of evidence led. Such a course is being adopted because the amendment sought does not lack *bona fides* and is not barred by limitation and is necessary for a proper decision in this case.

In view of the aforesaid, this application is disposed of with afore-noted liberty granted to plaintiff while refraining to comment upon merits of this case.

<u>CS(OS) 1721/2008</u>

List before the Joint Registrar on 19th September, 2017 for cross-examination of plaintiff's witness.

SUNIL GAUR, J

AUGUST 09, 2017

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