

IN THE HIGH COURT OF DELHI AT NEW DELHI
ORDINARY ORIGINAL CIVIL JURISDICTION
O.A. NO. ____ OF 2018
IN
CS (OS) 3457/2015

IN THE MATTER OF;

ARVIND KEJRIWAL**APPELLANT**

VERSUS

ARUN JAITLEYRESPONDENT

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This index is filed on 7th February, 2018.

**APPELLANT
THROUGH**

(ANUPAM SRIVASTAVA)

ADVOCATE

D-26 SOUTH EXTENSION-II DELHI- 110049

PLACE: NEW DELHI

DATE: 07.02.2018

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URGENT APPLICATION

To,

The Registrar General

High Court of Delhi

New Delhi.

Respected Sir,

Would you kindly treat the accompanying application as an urgency once in accordance with the High Court Rules and Procedures.

“Appeal Against Order Dated Of Order Dated 2.2.2018 On Behalf Of The Appellant Under Rule 4, Chapter II Of The Delhi High Court (Original Side) Rules, 1967”, hence the urgency.

Yours faithfully

(ANUPAM SRIVASTA)

ADVOCATE,

D-26, SOUTH EXTENTION-II

NEW DELHI-49

New Delhi

Dated: 07.02.2018

**IN THE HIGH COURT OF DELHI AT NEW DELHI
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**APPEAL AGAINST ORDER DATED OF ORDER DATED
2.2.2018 ON BEHALF OF THE APPELLANT UNDER RULE
4, CHAPTER II OF THE DELHI HIGH COURT (ORIGINAL
SIDE) RULES, 1967 ALONG WITH AFFIDAVIT.**

MOST RESPECTFULLY SHOWETH:

1. Aggrieved by the order dated 2.2.2018, whereby this Hon'ble Court was pleased to limit the right of the cross- examination of the Respondent/Plaintiff, by the Appellant/Defendant No.1, in violation of the principles of Natural Justice and fair trial, the Defendant No.1 is humbly seeking impugned the appeal of the said order.
2. That the above-mentioned suit has been filed by the Respondent/Plaintiff, against the Appellant/ Defendant No. 1 and others, alleging therein that the said Defendants including Appellant, have, by their statements caused the Respondent/Plaintiff defamation and hence the Respondent/Plaintiff be awarded damages of Rupees 10 crores. The Defendants including Appellant have denied the allegation of Defamation for the reasons stated in the Written Statement. The Appellant/Defendant No.1 in his capacity as Chief Minister has specifically averred that he had received various complaints demanding an enquiry into the DDCA, on account of the

mismanagement and financial irregularities in DDCA during the period when the Respondent/ Plaintiff was the President and he was duty bound to act on these complaints.

3. It is submitted that the contents of the Complaint, Written Statement of Appellant/Defendant No. 1, Replication and additional written statement may kindly be read as part of the present review application and that the same is not being repeated herein for the sake of brevity and prolixity
4. It is humbly submitted that there are several reports and letters, including those written by the Respondent/Plaintiff which support the case of the Appellant. The Pleadings and documents of the case run into over a thousand pages. Most of the case documents are part of the official records of the DDCA, while the Appellant is in possession of the photocopies, the original record is presumably with the DDCA. This case not only involves the rights of the Respondent & the Appellant but also the rights of the Public, who are vitally interested in the working of the DDCA and ensuring that any wrong doing is brought to book.
5. That briefly, the facts leading to filing of the present review are as under:-
 - i) That Respondent/ Plaintiff herein had filed Civil Suit for Defamation before this Hon'ble Court against the Appellant/ defendant No.1 and other defendants titled as "*Mr. Arun Jaitley vs. Arvind Kejriwal and Others; CS (OS) 3457 of 2015*".

- ii) The relevant extracts of the Complaint with respect to the statements attributed to and allegedly made by the Appellant/Defendant No.1 are as follows;

“5. (i) On 15.12.2015, Defendant No. 1 had alleged that the CBI had raided the office of a bureaucrat working with the govt. of NCT Delhi had come looking for plaintiff’s tax scam files. He also stated that- “CBI raided his office to locate files related to corruption in DDCA. The files name Finance Minister Arun Jaitley.....”
.....”*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...*”

(ii) On 16.12.2015, Defendant No. 1 had stated on his tweet- “*Why Jaitley Ji so scared of DDCA probe? What is his role in the DDCA scam?*”

(iv) On 18th December, 2015, all defendants stated that “*Reconstruction of Ferozshah 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 1st December, 2012 by DDCA to the SFIO. Bungling happened with the direct and indirect consent of Arun Jaitley during his tenure as DDCA president.*”

(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. 21st century Media Pvt. Ltd. Was asked to sublease corporate boxes for Rs. 36 crores for which commission was paid.

(x) Defendants further added “*Whose company is 21st Century Media Pvt. Ltd.*” *What is Lokesh Sharma’s relation with Jaitley?*”

(xi) On 18.12.2015, Defendant No. 1 (Arvind Kejriwal) further tweeted – *The allegations against Shri Jaitley are very very serious. He should either resign or be removed to enable independent enquiry. He has further stated that 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 investigation?*”

- iii) That the Appellant/ Defendant No.1 filed a detailed written statement against the averments made in the Plaint and filed an additional written statement against the fresh averments made by the Respondent/ Plaintiff in the replication. The relevant extract from the Written statement of Appellant/ Defendant No. 1 is as follows;

“8. The plaintiff has been at the helm of the affairs of the DDCA as President/ Patron during which period various reports have made observations about maladministration and irregularities in the functioning of the said association.....

9. Apart from the above referred reports, several complaints made to the plaintiff and other authorities reveal that the plaintiff was privy to the information relating to mismanagement to the affairs of the DDCA. To say the least, without any serious investigation by the plaintiff or by a responsible body expressly investigating the allegations, the plaintiff advised the police to stop making any inquiry.

13. The statement/s attributed to this defendant cannot be taken to have defamed the plaintiff in any manner whatsoever. In any event, this defendant has only attempted to truthfully highlight facts and documents which have formed part of public record, for the past several years and have been voiced by several persons in the public domain.

14. Several persons have raised issue of mismanagement, maladministration, financial irregularities etc., in the functioning of DDCA, over the past decade.....

17. The contemporaneous official records of the DDCA, such as annual reports, minutes of meeting, videos of the Annual General Meeting of 2011-2012 establish that the plaintiff was at the helm of affairs of DDCA from the period of 1999-2013 as president, DDCA.”

- iv) That the Appellant/ Defendant No.1 in his Written Statement has referred to documents/ reports which pertain to observations made in regard to maladministration and irregularities in functioning of DDCA. One such report was a report of the Chetan Chauhan Committee report., which

formed part of the Written Statement filed by the Appellant/
Defendant no. 1.

- v) The Appellant/ Defendant No.1 has also states in his Written Statement that he had received complaints about defalcation of funds and rampant mismanagement of DDCA and Defendant No.1 in his official capacity of being Chief Minister of GNCTD considered it to be appropriate as part of his constitutional, public and moral duty and obligations to process the same in accordance with law.
- vi) Based on the pleadings the issues were framed. Issue No.3 specifically is with regard to the Defense of Truth of the Statements made by the Defendants.
- vii) Based on the framed issues, the counsels for the Appellant/ Defendant No. 1 cross examined Respondent/ Plaintiff/ PW – 1 namely Sh. Arun Jaitley on 06.03.2017, 07.03.2017, 15.05.2017 and 17.05.2017, 28.08.2017, 29.08.2017, 23.11.2017, 30.11.2017 and 02.02.2018 during the cross the Respondent/ Plaintiff witness was confronted with various irregularities and mismanagement in DDCA during the tenure as the President of DDCA. The Witness has consistently chosen to answer evasively and was therefore confronted with documents and official records of the DDCA and with his own letters and correspondence, which he chose to avoid, claiming the said documents to be photocopies, thus necessitating the summoning of the said documents.
- viii) That so far the Appellant/ Defendant no. 1 has partially cross examined the Respondent/ Plaintiff on the fact that DDCA floated a tender for construction of Feroz Shah Kotla ground

for about Rs. 24 Crores only wherein another Rs. 90 Crores was spent, taking the total to Rs. 114 Crores without following the process of tender. The Respondent/ Plaintiff was also cross examined on the aspect that DDCA had the opportunity to get the funds for construction of the stadium from Reliance Industries and Union of India, subject to only naming the Stadium as Dhirubhai Ambani Stadium and Shyama Prasad Mukherjee Stadium respectively, however, the DDCA, under the president ship of Respondent/ Plaintiff rejected such offers, in order to retain complete control over the manner of spending the funds of DDCA. The Respondent/ Plaintiff was confronted with the copies of the minute book of Executive Committee to this effect, which the Respondent/ Plaintiff failed to admit/deny as those were photocopies.

- ix) That the Appellant/ Defendant no. 1 thereafter moved an application under Order 16 Rule 6 of Code of Civil Procedure 1908 seeking the production of records from DDCA. The Ld Joint Registrar dismissed this application. The Appellant/ Defendant no. 1 filed an appeal against the order, which was disposed off with the directions to DDCA to produce the said two minutes within two days from the date of receipt of order vide order dated 05.02.2018.
- x) That the Appellant/ Defendant No. 1 has also moved an application under order VIII Rule 1A of Code of Civil Procedure 1908 seeking liberty to place on record a special audit report dated September 2017 submitted on the directions of this Hon'ble Court. The said report also pertains to period when the Respondent/ Plaintiff was at the helm of affairs of DDCA and has found rampant mismanagement and

irregularity in DDCA. It is relevant to point out that the Respondent/ Plaintiff has twice sought time to file a reply to the said application and has to date not filed reply to the same. The said documents are vital for the cross examination of the Respondent/ Plaintiff and since the Application is being delayed by the Respondent/ Plaintiff, the Appellant/ Defendant No.1 cannot be penalized for the same.

- xi) That the Ld Joint Registrar on 30th November, 2017 fixed three dates for cross examination of the Respondent/ Plaintiff viz. 02.02.2018, 12.02.2018 and 13.02.2018. and at no stage of the suit, indicated that the Appellant/ Defendant No. 1 has to limit the cross examination of the Respondent/ Plaintiff within a particular period or is subject to maximum questions which can be put to the witness.
- xii) Thereafter 17th May, 2017, the Appellant/ Defendant no. 1 has put about 123 questions to the Respondent/ Plaintiff in the cross examination, all of which were relevant and none of which was disallowed by the Court. The Appellant/ Defendant no. 1 in order to establish his bonafide of not asking irrelevant questions, is willing to submit the break up of issues, on which the further cross examination is intended, in a sealed cover before this Hon'ble Court.
- xiii) That on 02.02.2018, during the cross examination by the Ld. Senior counsel of Appellant/ Defendant No.1, the Respondent/ Plaintiff/ PW-1 was asked questions about the fraud, illegality and mismanagement in regard to conversion of an institutional club into a private club, to investigate which the Respondent/ Plaintiff, in his capacity as the President of

DDCA, appointed a three-member committee known as Chetan Chauhan Committee. The Respondent/ Plaintiff during cross examination admitted two of the letters written by him to the senior officials of Delhi Police, content of which clearly indicates that they were an attempt to influence the police.

xiv) That towards the end of the proceedings on 2nd Feb, 2018, the Ld. Joint Registrar, without putting the Appellant/ Defendant No. 1 to notice, cancelled the date of 13th February, 2018 and directed that the right of the Appellant/ Defendant No.1 to cross examine the Respondent/ Plaintiff on the truth of his allegations, to put his defense to the witness, the Respondent/ Plaintiff himself, as well as to impeach his credibility, stand limited only to one further session on 12.02.2018, totally ignoring the following facts and the principles of Natural Justice;

a. The questions put on behalf of the Appellant/ Defendant no. 1 are relevant to the allegations made in the plaint and the defense of the Appellant/ Defendant no. 1 and are an integral part of pleadings;

b. An appeal against the order of the Ld Joint Registrar, rejecting the application for summoning of the record from DDCA was pending before the Court at the time of passing of the impugned order and now stands allowed;

c. An application for placing on record additional document is pending adjudication before this Hon'ble Court;

- d.** The Ld Joint Registrar himself gave three dates of hearing being 2nd Feb, 12th Feb and 13th Feb 2018 for cross examination of Respondent/ Plaintiff, which has been limited to one date i.e 12th February 2018;
- e.** The Appellant/ Defendant no. 1 at no stage was put to notice that it has limited number of hearing for cross examination or limited number of questions which can be put to the witness;
- f.** As a general rule, the Court would not be justified in imposing a time limit upon the cross examination of a witness.
- g.** That the Respondent/ Plaintiff is also responsible for causing about 250 questions and nine hearing in the cross examination (1) as he prefers to give intricately twisted answers to simple questions, (2) prefers to give long answers to questions which can be replied in short answers (3) gives evasive replies and (5). Proceedings are interrupted by Respondent/ Plaintiff's lawyers by raising frivolous objections.
- h.** As evident from the list of issues, as stated above, proposes to be raised in cross examination, numerous issues relevant to the issues before this Hon'ble Court, as well as issues of impeachment of witness are yet to be addressed; and the Appellant/ Defendant No.1's case has not yet been put to the witness, who is the Respondent/ Plaintiff himself. Thus, closing cross examination would

be contrary to the right of cross examine and prejudice the right to fair trial enjoyed by the Defendant.

- i. The Respondent/ Plaintiff has approached this Hon'ble Court claiming defamation on unsubstantiated allegations alleged to have been made by Defendants including Appellant, thus should be ready to subject himself to the cross examination on issues framed by the Court, matters stated by him in his affidavit by way of evidence, defense of the Defendants including Appellant and documents filed by the parties. Cross examination cannot be restricted to the number of questions or number of hearings, instead it should be determined by the relevance of the questions.

GROUND

- A. The Ld. Joint Registrar committed an error which is apparent on the face of record by limiting the right of the Defendant No. 1 to cross examine the Respondent/ Plaintiff / PW-1 and to conclude the cross examination thereof in one day, i.e. on 12.02.2018 for the reason that about 250 questions have been put to the witness and about nine hearings were fixed for cross examination of the Respondent/ Plaintiff. The Ld. Joint Registrar failed to appreciate that the examination of witnesses plays an important role in the presentation of the evidence in a court of law.

- B. **Because the Ld. Registrar** committed an error by ignoring and not appreciating the fact that the case of the Appellant/ Defendant No. 1 is that the Respondent/ Plaintiff was President of DDCA from December 1999

till 2013 and thereafter, was its Chief Patron. The cross examination was limited to the defense taken in the Written Statement and the issues framed by the Court. The subject records definitely form basis of defense set out by the Appellant/ Defendant No. 1 in Written Statement and necessary to prove the defense.

C. **Because the Ld. Joint Registrar** erred in law in not appreciating that the right of Cross-Examination is one of the most powerful instrumentalities of law. One of the most important purposes of Cross-Examination is to attempt to destroy the credibility of the opponent's witnesses. That the search for truth is the ultimate and idealistic end of all litigated matter in a court trial.

D. **Because the Ld. Joint Registrar** erred in law in not appreciating that neither in the Code of Civil Procedure nor in the Indian Evidence Act, any restriction has been placed on the right of the Appellant, to cross examine the witness on the relevant issues, for the purpose of proving the defenses taken by him, at the time of the cross-examination.

E. **Because the Ld. Joint Registrar** erred in law in not appreciating that the right of the Appellant/ Defendant No.1 to cross examine the witness of the Respondent/Plaintiff cannot be limited to certain questions and days.

F. **Because the Ld. Registrar** has failed to appreciate that the Respondent/ Plaintiff in Para 5 of the Plaint has

alleged the statements made by Appellant/ Defendant No. 1 with respect to the mismanagement and irregularities in DDCA under the tenure of Respondent/ Plaintiff/ PW-1 as the President of DDCA. The contents of Para 3 (iii) be read as the part of this para and the same is not reproduced for the sake of brevity.

G. **That the Ld. Registrar** erred in law in not appreciating that at the time of cross-examination of witness, reliance can be placed on the circumstances surrounding the subject matter in order to reach the said subject matter. The subject matter of the present suit is mismanagement and irregularities in DDCA, and in order to prove the same and the defenses taken by the Appellant/ Defendant No. 1 upon the allegations of the Respondent/ Plaintiff, the Appellant/ defendant No. 1 has to rely upon various records, reports and events which took place during the tenure of Respondent/ Plaintiff/ PW-1 as the president and patron-in-chief of DDCA.

H. **Because the Ld. Registrar** further committed an error on the face of record by not appreciating the fact the Appellant/ Defendant No. 1 has filed an appeal against the order of the Ld. Joint Registrar for summoning the record from the Delhi District Cricket Association to produce (i) Minutes of meeting/Minutes book of the General Body meetings between the year 1999 and December 2014; and (ii) Minutes book for the executive committee/Board of Directors between the years 1999 and December 2014 before this Hon'ble

Court, in order to prove mismanagement and irregularity in DDCA.

I. **Because the Ld. Registrar** failed to appreciate the fact that if the above mentioned appeal is allowed by this Hon'ble court, the Appellant/ Defendant No. 1 will have to further cross-examine the Respondent/ Plaintiff/ PW-1 on the said documents.

J. **Because the Ld. Registrar** has erred in holding that the questions put up by the counsel for Appellant/ Defendant No. 1 are different from the contentions taken by the Appellant/ Defendant No. 1 in his written statements. The Appellant/ Defendant No. 1 had mentioned the fact in his Written Statement and additional Written Statement thereafter that reliance is placed on complaints received, reports of committees and other relevant documents/ material on record.

K. **Because the Ld. Joint Registrar** has failed to appreciate that delay if any in the cross examination is attributable to the Respondent/ Plaintiff witness, who has refused to answer even suggestions in the affirmative or negative as is the mandate of law and has been permitted to volunteer long answers, despite the question not being open ended. The Respondent/ Plaintiff has himself contributed to the length of cross examination in choosing to give long replies which evades the question.

L. Because the Ld. Joint Registrar committed an error apparent on the face of the record a general rule, the Court would not be justified in imposing a time limit upon the cross examination of a witness.

M. That the Respondent/ Plaintiff is also responsible for causing about 250 questions and nine hearing in the cross examination (1). as he prefers to give intricately twisted answers to simple questions, (2). prefers to give long answers to questions which can be replied in short answers (3) gives evasive replies (4). Proceedings are interrupted by Respondent/ Plaintiff's lawyers by raising frivolous objections; and (5) often legal submission by the Respondent/ Plaintiff himself who seeks to make objections on the form of the question, thus prolonging and delaying the proceedings.

N. As evident from the list of issues, as stated above, proposes to be raised in cross examination, numerous issues relevant to the issues before this Hon'ble Court, as well as issues of impeachment of witness are yet to be addressed; and the Appellant/ Defendant No.1's case has not yet been put to the witness, who is the Respondent/ Plaintiff himself. Thus, closing cross examination would be contrary to the right of cross examine and prejudice the right to fair trial enjoyed by the Appellant/ Defendant No. 1.

O. The Respondent/ Plaintiff has approached this Hon'ble Court claiming defamation on unsubstantiated allegations alleged to have been made by Defendants

including Appellant, thus should be ready to subject himself to the cross examination on issues framed by the Court, matters stated by him in his affidavit by way of evidence, defense of the Defendants including Appellant and documents filed by the parties. Cross examination cannot be restricted to the number of questions or number of hearings, instead it should be determined by the relevance of the questions.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to:

- a. Set aside the Order dated 02.02.2018 passed by Ld. Joint Registrar in I.A. No. 7371 of 2017 in CS (OS) 3457/2015 limiting the right of the Appellant/ Defendant No. 1 to cross examine to one day;
- b. Pass such other or further orders as may be deemed fair and proper in facts and circumstances of the case.

APPELLANT

THROUGH

(ANUPAM SRIVASTAVA)

ADVOCATE

D-26, SOUTH EXTENSION PART II,

NEW DELHI 1110049

IN THE HIGH COURT OF DELHI AT NEW DELHI
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ARUN JAITLEY

....RESPONDENT

AFFIDAVIT

I, Arvind Kejriwal, S/o Shri G.R Kejriwal, R/o 6 Flag Staff Road, Civil Lines, Delhi and aged about 49 years hereby solemnly affirm and declare as under:

- 1) That I say that I am the Appellant in the above-mentioned appeal and am well conversant with the facts and circumstances of the present case. Hence, I am competent to swear this Affidavit.
- 2) That the accompanying appeal has been drafted under my instructions and the contents thereof except the legal averments contained therein, are true and correct to the best of my knowledge and information received from my counsel and information of court proceedings communicated to me by my counsel, and believed by me to be true. The legal averments contained therein are true and correct on the basis of the legal advice, received by me and believed by me to be true and correct. The contents of the accompanying appeal may kindly be read as part of this Affidavit and the same are not being repeated herein for the sake of brevity and to avoid prolixity.

- 3) That no part of this Affidavit is false and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

I, Arvind Kejriwal, do hereby on solemn affirmation verify that the contents of the present Affidavit have been read by me and I have understood the same and the contents of the same are true and correct to my knowledge and belief and no part of it is false and no material facts have been concealed therefrom.

Verified at New Delhi on this _____ day of February, 2018.

DEPONENT