



\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 56/2017**
BATA INDIA LIMITED

.....Plaintiff

Through: Mr. Neeraj Grover, Mr. Angad
Deep Singh (VC), Advocates

versus

SUBHASH KAPOOR & ORS

.....Defendant

Through: Mr. Kushal Gupta,
Ms. Akanksha Singh (VC),
Advocate for D-1-5 and 8.

Mr. Dhanesh Relan,
Ms. Shambhavi Pandey,
Advocates for D-6 & 7

CORAM:
JOINT REGISTRAR (JUDICIAL) Dr. AJAY GULATI

ORDER
19.12.2025

%

IA no. 5045 of 2017 by defendant no. 5 for its deletion from the array of parties.

1. The present application has been filed for seeking deletion of def. no. 5 from the array on the ground that for effective adjudication of the prayer/s made in the suit, presence of def no. 5 is not required either as a necessary party or as a proper party. Infact, it has been contended that plaintiff has no cause of action against the applicant/def.

2. Brief factual recapitulation would be relevant.

The present suit for seeking damages for defamation has arisen from the use of a particular monologue in a trailer of the movie 'Jolly LLB 2' wherein one of the lead characters in the movie, played by actor Anu Kapoor who has been arrayed as def.



no.4, sarcastically and in an extremely offending tenor, taunts the lead protagonist i.e. applicant-defendant as being a lawyer who has no ability to stand up to him which lack of ability is sought to be inferred from the fact that the lead protagonist is wearing cheap footwear and poor quality apparel. In response to the offending language, the applicant (being the character that he plays), gives a hard slap to the character who spoke the monologue. It needs a highlight that in the monologue which is in Hindi, a specific brand of footwear is named, and in its English translation by way of subtitles, the words used are 'cheap footwear'. The brand spoken of in the monologue is 'BATA' which is the plaintiff herein.

3. Another fact which needs a highlight is that the purportedly defamatory monologue was a part of the trailer of the aforesaid movie. Soon after the trailer was released in theatres but before the theatrical release of the movie, plaintiff issued a legal notice which was not responded to by the defendants. Subsequently, a decree of permanent injunction was passed in favour of the plaintiff in respect of the use of brand BATA even before the movie was released for viewing in the theatres. Pursuant to the decree of permanent injunction, the monologue was changed and in place of the word BATA, some other Hindi word was used i.e. 'phata' (meaning torn) instead of BATA.

4. Applicant has sought his deletion from the array on the following grounds:

- i. The complained monologue was not spoken by him but by another actor portraying a different character.
- ii. The applicant is not the producer of the movie. It has further been highlighted that at the time of passing of the order of permanent injunction, it were the statements of def. no. 2 and 3 which were recorded and not of def. no. 5,



which also confirms that def. no. 5 was in no way concerned with the production of the movie.

- iii. The applicant is neither the content writer nor the creative Director of the movie. It has been specifically averred in *para* 14 of the written statement that screenplay was finalised even before def. no 5/ applicant was signed for the movie.
- iv. The offending monologue was a part of the movie trailer but in the actual movie, the point at which the applicant's character slaps the other character who spoke the monologue, was a response to the continuous barb by the other character against the character played by the applicant in relation to his family lineage and his humble background. To put it succinctly, the follow up reaction by the applicant's character to the purportedly defamatory monologue was not an immediate reaction to the reference to his footwear or apparel but to his family lineage.
- v. The allegation against the applicant that he played an active part in defamation of the plaintiff on the ground that he tweeted the links of the movie trailer, is not tenable as the tweet/re-tweet has not been placed on record.
- vi. One of the other allegations levelled against the applicant is that of conspiring to defame the plaintiff for the reason that the applicant is a brand ambassador of a rival footwear company **i.e.** Relaxo/ Sparx (a popular brand of Relaxo). It has been contended that if the allegation of conspiracy is to be considered to be relevant, the plaintiff also has to answer as to why has it not made the rival footwear company a defendant? It has therefore been argued that the only purpose to implead the applicant is to sensationalise the litigation and hence, is a *mala-fide* act on the part of the plaintiff.
- vii. Presence of applicant is also sought in the suit by alleging that the applicant has a registered TM in the brand name 'KHILADI' and which has been registered in the category of footwear also but no details of the footwear business have been detailed in the plaint.

5. The application has been opposed on the following



grounds:

- i. Specific use of the brand BATA in the movie trailer was a well thought of act and since the whole purpose of the use of a brand in the complained monologue was to convey the association of persons with humble background having no class standing in the society with that brand which purportedly/ allegedly manufactures cheap products, the defamatory intent cannot be more profound. It was argued that anyone who saw the trailer and which number of viewers in the submission of Id. counsel of the plaintiff would be far higher than those who actually saw the movie, would hesitate in buying or be put off from buying a BATA product especially the footwear for the fear of being seen as someone coming from a humble background who can only afford to buy cheap products.
- ii. The applicant, in a television programme interview, admitted that he produces 90% of the movies that he acts in. Further, applicant adopted a profit sharing remuneration deal for the movie Jolly LLB 2 as has been reported in a leading English daily national newspaper. Both these aspects furnish good grounds to contend that applicant is involved in the production of the movie also and hence, becomes a necessary party.
- iii. The applicant is a brand ambassador of a rival footwear company and has allegedly conspired with other defendants so as to defame the plaintiff and boost the sale of the footwear brand which the applicant endorses.
- iv. The applicant has his own trademark registration by the name of 'Khiladi' which registration has been got done in class 25 which pertains to footwear. Referring to the documents filed in relation to the said registration before the TM registry, it has been submitted that applicant admits to using the brand since the year 2010 which in effect means that by conspiring against the plaintiff so as to defame it, applicant stands to gain personally for his footwear TM registration.
- v. The movie trailer which actually gave rise to the cause of action to file the present suit is an established act. The manner in which the trailer was put up is significant to asses the merit of the plaintiff's claim and such act has to



be necessarily detached to the content of the relevant movie scene. The trailer shows the monologue in one frame and the extreme reaction by the applicant's character to it in the very next frame. Given that the whole purpose of a trailer is to entice the prospective viewers, the precise clippings of the view which were put together in the trailer clearly show that the intent was to portray the brand spoken of in the monologue to be a manufacturer of cheap products such that a person wearing the said brand would be driven to social ridicule merely because he happens to wear that particular brand.

- vi. That the applicant was in fact not even wearing the footwear of the plaintiff company in that particular movie frame when the monologue is spoken, as has been contended by the plaintiff's counsel which contention is based upon the purported magnifying technique adopted by the plaintiff in deciphering the brand of the actual footwear worn by the applicant's character. It has been thus argued that conspiracy to defame the plaintiff is even more evident given that the applicant's character was not even wearing the plaintiff's footwear in that particular movie frame. Infact he is seen to be wearing some sport shoe and BATA does not manufacture sport shoes with the brand name BATA.
 - vii. Applicant played a very active part in tweeting the trailer of the movie and hence, willingly disseminated the defamatory content, being consciously aware of the potential outreach of any tweet from his account because of his stature as a megastar in the Indian movie industry. Thus, his individual act of tweeting the objectionable trailer gives rise to a cause of action for the plaintiff to implead the applicant. It was further argued that the applicant's act of tweet is an admitted fact which need not be proved.
6. In rebuttal, the following submissions have been put forth:
- i. In the television interview of the applicant which the plaintiff's counsel has referred to, no question at all was put to the applicant by the programme anchor in regard to the movie Jolly LLB 2. The applicant has already given an affidavit to the effect that he is not in any way involved in the production of the movie Jolly LLB 2.



- ii. Profit sharing remuneration deals can by no stretch be taken to mean that the applicant also has a stake in the production process of the movie. It is simply a mode in which some of the successful actors charge their professional fee.
- iii. The applicant has never produced/manufactured any footwear or footwear related product under the brand 'Khiladi'.
- iv. The allegation of conspiracy is preposterous in as much as the footwear brand which the applicant endorses does not have such brand equity that if the plaintiff's brand was to be defamed as being 'cheap', the consumers will simply shift to the brand being endorsed by the applicant.

7. Plaintiff relies on the following judgment in support of its submission that applicant's act of tweeting the defamatory content amounts to an independent tort of defamation –

Arvind Kejriwal vs. State and Another 2024 SCC OnLine Del 719

Defendant/applicant relies on the following judgments:

In support of its plea of applicant being not a necessary party in the suit –

Kasturi vs. Iyyamperumal and Ors. MANU/SC/0319/2005

Hema Khattar and Ors. Vs. Shiv Khera MANU/SC/0397/2017

Abhijit Mishra vs. Wipro Ltd. CS (OS) 31/2021, Judgment dt. 14 July 2025

In support of the submission that mere allegation of fraud or collusion without disclosing any cause of action is not sufficient –

Anjum Nath vs. British Airways PLC and Ors. MANU/DE/9998/2007

C.S. Ramaswamy vs. V.K. Senthil and Ors. MANU/SC/1268/2022

In support of the submission that intention of the actor while enacting a character has to be inferred from the point of view of the vision of the author -



8. *I have carefully considered the rival submissions.*

9. The factual scenario of absence of any defamatory content having been spoken by the applicant/def. in the movie is undisputed. However, def. No. 5's continued presence in the array is sought to be justified on the grounds of a purported conspiracy by the applicant (with other defendants) to harm the commercial interest of the plaintiff and in the process, to benefit the interests of the footwear brand being endorsed by him as also his own TM registration which has been registered in the footwear class. Further, applicant's liability is also sought to be established on account of his 'independent' act of tweeting the movie trailer which carried the defamatory content. Additionally, liability for defaming the plaintiff is also sought to be imputed to the applicant on the ground that he has admitted to having produced 90% of the movies in which he has acted, in a television talk show/interview, namely *Aap Ki Adalat*. It has been submitted that such an admission gives rise to a reasonable assumption (for the purpose of trial) that the applicant would have been involved in the production of the movie 'Jolly LLB 2' also. The assumption of applicant being a producer of the movie *or* being involved in its production is also sought to be buttressed by relying on a newspaper report which stated that the applicant has taken a significant sum of the movie profits as his professional fee for the movie Jolly LLB 2.

10. The argument that applicant has conspired to defame the



plaintiff stems from the presumption that applicant is a brand ambassador of a rival footwear company and any commercial loss to plaintiff in terms of its brand value is likely to directly or substantially benefit the shoe brand which the applicant endorses or at any rate, is likely to reduce the sales of the competitor i.e. plaintiff company. There is some force in this submission but the weight of which however can finally be tested during the course of trial. In regard to this particular submission on behalf of the plaintiff, what appeals to reason most is the aspect that why was the brand BATA chosen to be spoken of in the defamatory monologue of the trailer and that too, when in the particular movie scene, applicant was not even shown to be wearing BATA shoes. It needs no underline that defamatory impact of the use of the word BATA was the reason that Hon'ble Court has already enjoined use of the plaintiff's Trade Mark / Trade name in the movie and the trailer (though on the basis of the statement of defendant nos. 2 and 3 themselves). Applicant of course argues that he has not been involved in any manner in the content creation of the movie. However, in the light of the above observation regarding deliberate use of the plaintiff's celebrated Trade mark/ Trade name which atleast as of now appears to have been incorporated in the movie trailer without any reason coupled with the twin facts – that the applicant is a brand ambassador of a rival footwear company, and that applicant has admitted to producing 90% of the movies that he acts in, the allegation of conspiracy gains traction. Whether or not the plaintiff shall be able to prove its allegation is an aspect to be looked into at the conclusion of the trial. Further, for the purpose of a triable issue, allegation of conspiracy against the applicant being the brand ambassador of a rival footwear company appears



to be sufficient. The submission on behalf of the applicant to the effect that screenplay of the movie was finalised even before the applicant was signed to act in the movie is a factual assertion which will be required to be proved at the stage of evidence, alongwith proof of whether the defamatory monologue had also been finalised before the applicant was signed.

11. Even keeping aside the allegation of conspiracy, the independent act of applicant tweeting the defamatory content makes him liable to answer the claim for damages. The judgment relied upon by ld. counsel for the plaintiff in regard to the liability of those who re-tweet or share defamatory content on social media is clearly applicable to the facts of the present case, atleast in the context of raising a triable issue.

12. One of the arguments addressed on behalf of the applicant was that applicant's act of slapping the character who spoke the defamatory content was a reaction to the insults being heaped on the family of the character played by the applicant and hence, applicant's role can in no way be associated with the defamatory content which in any case was spoken by a different character. Without going into the merit of this submission at this stage, it would be appropriate to observe (at this stage) that insult to the character played by the applicant on account of his purportedly low social strata by pointing out to his supposedly poor attire and in the process, highlighting the same by naming the plaintiff's trademark is the reason why the plaintiff is aggrieved. This aspect relates back to the allegation of conspiracy levelled against the applicant as to why should have the name of plaintiff co. been dragged into to convey that it is a cheap footwear brand.



13. In the best understanding of this Court, applicant is a necessary party for the fair adjudication of the suit. As a corollary, the application is declined. **IA stands disposed off.**

I.A no. 11595/2017 (filed by defendant no. 6 for its deletion).

14. Defendant/applicant has been arrayed in the suit on the ground that it has contributed to the circulation/publication of defamatory content against the plaintiff company which defamatory content was a part of the trailer of a movie i.e. **Jolly LLB 2**. Briefly put, it is the allegation of the plaintiff that despite defendant/applicant being put to notice by the counsel for the plaintiff for immediate cease of the exhibition of the movie trailer owing to its defamatory content, *applicant* continued to exhibit/publish it in its movie theater till it was restrained by an order of the Hon'ble High Court of Delhi (on a statement given by def. no. 2 & 3 themselves for pulling down the objectionable trailer and exhibiting a new trailer with no defamatory content). It has further been highlighted by the plaintiff that the period between first exhibition/publication of the trailer and the restraint order being passed by the Hon'ble Court was substantial during which period, lacs of cine goers watched the movie trailer, and as a corollary, *applicant's* willful exhibition of the trailer containing defamatory content, despite clear notice from the plaintiff to cease, makes it liable to answer the claim for damages set up by the plaintiff.

15. Defendant/ applicant however seeks its deletion from the array being an unnecessary party and offers 3 submissions in its



defense, and as a basis to seek its deletion. *First*, the trailer was exhibited premised on its legitimate content based on the certificate issued by the Central Board of Film Certification (CBFC). It has been submitted in the application that the certificate of/for viewing issued by the CBFC specifically touches upon the aspect of defamatory content and hence, a certificate issued by the CBFC is a complete answer to the allegation of defamatory content of the movie trailer in question. Consequently, the applicant was in no position to pass a judgment or hold that the trailer of the movie *Jolly LLB 2* was defamatory, merely at the asking of the plaintiff. *Second*, the specific agreement entered into between the producers/distributors of the movie and the applicant ‘obligates’ the applicant to run the movie trailer for the complete agreed upon period. *Third*, the applicant has been arrayed purely with a *malafide* intent since plaintiff wanted to invoke the territorial jurisdiction of the Hon’ble Delhi High Court. In this regard, it was highlighted that the movie trailer in question was exhibited/published all over the country, in numerous multiplex screens and single screen theaters but none of them have been arrayed as defendants. It was further submitted that in the relevant *paras* of the plaint explaining the cause of action and invoking territorial jurisdiction, plaintiff does not mention a word about defs. no 1 to 5 who are infact most intimately concerned with the allegation of defamation i.e. producers and actors of the movie *Jolly LLB 2*.

16. *In response*, it has been argued on behalf of the plaintiff that certificate from the CBFC cannot offer an impenetrable defense to the applicant. Assuming the best in favour of the



applicant (but not admitting). The certificate can help the applicant in setting up a defense which is to be tested at the stage of trial and final arguments. It was further argued that reliance being placed by the *applicant* on the ‘agreement’ between producers/distributors and the applicant/defendant is of no aid as the said agreement has not been placed on record in the absence of which neither the plaintiff nor the Court can gauge the extent to which the agreement can offer a defense to the applicant.

17. *I have carefully considered the rival submissions.*

18. This Court is in agreement with the submission of the plaintiff in regard to first defense of the applicant *i.e.* certificate of CBFC. Just as the applicant contends that in view of the film certification, it cannot go into the question of judging the defamatory content of a certified movie/trailer, the probative value of the certificate cannot be accepted at face value and will be a matter of trial as to how much evidentiary value can be ascribed to it.

19. So far as the plea of agreement between the producers/distributors and defendant/applicant is concerned, even if it is accepted that the confidential nature of the agreement could be a plausible reason for **not** placing it on record, atleast the redacted agreement with only the relevant *paras* could still have been filed, *or else*, there is no way for the Court to determine the merit in this plea. Still further, even if the agreement is not to be placed on record at all, applicant should have atleast communicated with the plaintiff when it received a notice which though was addressed to defs. no. 1 to 5 but was



also sent to def. no. 6/applicant for compliance to cease the exhibition of the movie trailer. It could have also placed on record any communication with the distributor/producer of the movie after it received plaintiff's notice to show its bona-fide in trying work out a solution *e.g.* seeking its opinion on the issue, or asking for permission to stop exhibition of the movie trailer. However, no such communication has been placed on record.

20. This brings us to the final defense/ground of invoking territorial jurisdiction with a mala-fide intent. Even though mala fide has been attributed to the plaintiff, the fact of part cause of action having arisen in Delhi has **not** been controverted. If the defendant/applicant is of the view that territorial jurisdiction of Delhi could not have been invoked or it is not the convenient forum, it should move an application for return of plaint. Further, whether the imputation of mala-fide intent of invoking territorial jurisdiction can offer a defense to the defendant is an aspect which this Court i.e. Court of Joint Registrar cannot go into and can only be adjudicated upon by the Hon'ble Court.

21. In view of the above discussion, the present IA has no merit and is declined. **IA stands disposed off.**

I.A no. 6540/2017 (filed by defendant no. 7 for its deletion).

22. Defendant/applicant has been arrayed in the suit on the ground that it has willfully circulated/published defamatory content against the plaintiff company, said defamatory content being spoken in the trailer of a movie i.e. ***Jolly LLB 2***. Concisely put, plaintiff alleges that despite defendant/applicant being put to notice by the counsel for the plaintiff to immediately discontinue



exhibition of the movie trailer owing to its defamatory content, *applicant* continued to exhibit/publish the trailer in its theater till an order of the Hon'ble High Court of Delhi restrained the exhibition of the movie trailer as also directed the defamatory content to be removed from the movie itself prior to its theatrical release (on a statement given by def. no. 2 & 3 themselves for pulling down the objectionable trailer and exhibiting a new trailer with no defamatory content). It has further been highlighted by the plaintiff that the period between first exhibition/publication of the trailer and the restraint order being passed by the Hon'ble Court was significant during which period, lacs of cine goers watched the movie trailer, and as a corollary, *applicant's* willful and deliberate exhibition of the trailer containing defamatory content, despite clear notice from the plaintiff to stop its exhibition, makes it liable to answer the claim for damages set up by the plaintiff.

23. Defendant/ applicant however seeks its deletion from the array being an unnecessary party and offers the following submissions in its defense, and as a basis to seek its deletion. *First*, the applicant was not involved at any stage of the movie making in its content creation. Applicant merely being an exhibitor, cannot possibly be imputed with any intent to defame the plaintiff company. *Second*, the trailer was exhibited premised on its legitimate content based on the certificate issued by the Central Board of Film Certification (CBFC). It has been submitted in the application that the certificate of/for viewing issued by the CBFC specifically touches upon the aspect of defamatory content and hence, a certificate issued by the CBFC is a complete answer to the allegation of defamatory content of



the movie trailer in question. *Secondly*, the applicant was in no position to pass a judgment or hold that the trailer of the movie *Joly LLB 2* was defamatory, merely at the asking of the plaintiff. It was submitted that the movie trailers are exhibited pursuant to an agreement entered into between the producers/distributors of the movie and the applicant relies on the film certification in this regard. *Third*, the applicant was never asked by the plaintiff to cease exhibition of the trailer and hence, it must be concluded that applicant is not a necessary party. In this regard, it was further highlighted that though the movie trailer in question was exhibited/published all over the country, no other theater owner or cineplex owner has been arrayed as a defendant for which no explanation has come forth. *Fourth*, it was further submitted that the plaintiff appears to be aggrieved by the use of the English subtitle “cheap” when the name of the plaintiff company is spoken in the defamatory trailer. However, as asserted by the applicant, it did not display subtitles while exhibiting the trailer and hence, no cause of action is made out against def. no. 7. *Fifth*, plaintiff did not challenge the film board certification for the trailer which amounts to acquiescence. *Sixth*, plaintiff has not even averred in the plaint that applicant is liable for defamation i.e. relevant *paras* in this regard being paras 14, 18 & 19, as per the applicant. *Seventh*, the claim for damages in the suit is frivolous in as much as at the time of serving legal notice, no action was requisitioned on the part of the applicant nor was any allegation of trademark violation/ defamation was levelled. Further, the legal notice itself, having demanded no action on the part of the applicant, cannot now give rise to a claim for damages.



24. *I have carefully considered the rival submissions.*

25. The submissions raised on behalf of the applicant/defendant are all primarily triable issues. None of them makes out a case for the basic plea sought to be advanced that the applicant is not a necessary party for suit adjudication.

26. Whether the film certification provides a complete defense to the allegation of defamation (by way of exhibition of the movie trailer by the applicant) *or* whether legal notice served on the applicant *does not* provide a valid cause of action for the plaintiff are *issues* to be adjudicated at the end of a trial. The plea raised by the applicant, by referring to 3 specific *paras* of the plaint, that plaintiff has not attributed defamatory acts to the applicant cannot be read in isolation. When the plaint is read as a whole, the necessary averments disclosing cause of action come out clearly. Whether or not a case for seeking damages is made out, is again a matter of trial. It would not be out of place to mention that the acts of the applicant with which plaintiff has a grievance were *post* the serving of legal notice i.e. continued exhibition of the defamatory trailer.

27. The submission that plaintiff did not move to the CBFC for seeking review of the movie trailer and hence, it amounts to acquiescence is without merit. Plaintiff resorted to the most efficacious remedy available which was by way of serving a legal notice and subsequently approaching the Hon'ble Court against the defamatory content. Further, the fact that Hon'ble Court granted the relief against exhibition of the defamatory trailer on the first hearing itself shows that plaintiff adopted the correct

course of action.



28. The assertion of the applicant that in the trailer exhibited by it, no English sub-titles were used and hence, plaintiff's primary grievance is not even made out against the applicant, has been met with a counter assertion that the defamatory monologue spoken in the trailer itself is defamatory *per se*. Both, factual assertion by the applicant and argumentative counter assertion by the plaintiff, can only be proved and judged respectively in the course of trial.

29. In view of the above discussion, the present IA has no merit and is declined. **IA stands disposed off.**

CS(COMM) 56/2017

30. Pleadings are complete except qua defendant no. 6 who has not filed its written statement despite being served way back on 20.02.2017. Since the maximum permissible period to do so has long expired, right to file a written statement stands closed for defendant no. 6.

31. Since the suit has been filed in the year 2016, physical documents on behalf of the parties would be on record. Consequently, put up for admission / denial of documents on 02.04.2026.

Dr. AJAY GULATI
(DHJS),
JOINT REGISTRAR (JUDICIAL)

DECEMBER 19, 2025/sk