



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.11484 OF 2025
IN
SUIT NO.2332 OF 1985

Ashok Gupta .. Applicant

Versus

Rohini Gupta D/o.Sita Devi & Anr. .. Respondents

Mr.Karan Bhosale i/b M/s.NDB Law, Advocate for the Applicant

Mr.K.G.Munshi, Senior Advocate, Advocate for the Respondent / Original Defendant Nos.2 and 3

CORAM: FIRDOSH P. POONIWALLA, J.
RESERVED ON: OCTOBER 8, 2025
PRONOUNCED ON: JANUARY 28, 2026

JUDGEMENT:-

1. This Interim Application has been filed by the Applicant / Plaintiff seeking amendments to the Plaintiff.
2. The case of the Applicant in the Interim Application is as under:

a. The present Suit was originally instituted by one Shri Om Prakash Gupta and Smt. Savitri Devi, as Plaintiff Nos.1 and 2 ("Original Plaintiffs"), praying *inter alia* for passing of decree of declaration, rendition of accounts, partition and injunction besides making a prayer for appropriate directions to the Defendants regarding details of assets left behind by deceased Shri Kundanlal Gupta.

b. The Original Plaintiffs in the Suit passed away leaving behind their respective Wills duly executed by them during their lifetime, making a bequest of all their rights and claims of inheritance in respect of their share in the leftover Estate of late Shri Kundanlal Gupta to Shri Ashok Gupta (Applicant), who was substituted as a sole legatee / legal representative of the Original Plaintiffs in the Suit. As such, the present suit is now being prosecuted by the Applicant as the sole Plaintiff.

c. In addition to the Estate, which is the subject matter of the present Suit, the deceased Kundanlal Gupta was also a partner in a partnership firm named M/s. Kundan Talkies situated at Bahadurgarh, Haryana, engaged, *inter alia*, in the business of running and conducting a Cinema House. The said partnership firm was constituted vide registered Partnership Deed dated 5th May 1970 to promote the family

business. The deceased Shri K. L. Gupta, Shri Lalchand, Shri Om Parkash and Shri Raj Kumar, minor son of aforesaid Shri Om Parkash, were partners in the said partnership firm. The rights and claims of Kundanlal Gupta, arising from the said partnership business, had not been the subject matter of the present suit since Clause No.4 of the Partnership Deed dated 5th May 1970 provides as follows:

"4. The Parties of the First and Second Parts are the partners for life only i.e. during their life-time only and after their death or retirement, their respective shares including all benefits and other assets including goodwill in the said Partnership Firm shall stand automatically distributed equally between the Parties of the Third and the Fourth Parts. In that event the partnership business shall be the exclusive property of the remaining partners and no compensation or after benefits of any kind shall be due to or claimed by the retiring partners whatsoever."

d. This Partnership Deed dated 5th May 1970 is relevant in the present suit for just and proper adjudication of the present suit since it shows the different names used by the Late Kundanlal Gupta being (i) Shri Kundanlal Gupta s/o Harnam Singh and (ii) Shri. K.L. Gupta, as well as the parentage of all the partners of the said partnership firm.

e. During the pendency of the present Suit, a dispute had arisen between Shri Raj Kumar Gupta, the sole surviving partner of the said partnership firm and the Defendants herein, which led to the institution

of a Suit on 24th September 2010 before the Civil Court at Bahadurgarh, Distt. Jhajjar, Haryana, regarding the rights and entitlement to retain the custody of the original registered Partnership Deed. The said Suit was registered in the Civil Court, Bahadurgarh, as C.S. No.RBT-170 of 2010/ CIS No.CS-2469/2013 titled as Raj Kumar Gupta vs. Rohini D/o Sita Devi and Another (hereinafter referred to as "**the Bahadurgarh Suit**"). The Defendants herein were contesting the Bahadurgarh Suit as Defendants.

f. Before the Civil Court at Bahadurgarh, Haryana, the Defendants filed their joint Written Statement, adopting similar defences as taken up by the Defendants in the present Suit. The Plaintiff in the Bahadurgarh Suit also filed a Rejoinder to the Written Statement of the Defendants.

g. Based on the pleadings of the parties in the Bahadurgarh Suit, the Civil Court at Bahadurgarh was pleased to frame issues by an Order dated 9th July 2014, which were further modified, altered and amended by an Order dated 17th November 2022, and on which the trial was finally conducted and concluded vide Judgement and Decree dated 13th February 2023 passed in the Bahadurgarh Suit. It is the case of the

Applicant that some of the issues raised in the present Suit are similar to the issues framed in the Bahadurgarh Suit. According to the Applicant, this is evident from the two issues framed in the Bahadurgarh Suit which are as follows:

Issue No. 1:

"Whether the deceased "Sh. Kundan Lal Gupta" alias "Kundan Lal" son of late "Shri Harnam Singh" son of Sh. Nanhe Mal and "Sh. Kundanlal Laxmichand Gupta" alias "KL Gupta" son of "Laxmichand Motilal Gupta" are one and the same person and what is his lineage? OPP

Issue No. 6:

Whether Kundanlal Laxmichand Gupta alias KL Gupta son of Laxmichand Motilal Gupta had any original family history and/or pedigree table and if so, then what is his pedigree table? OPD

h. It is the case of the Applicant that a long trial was conducted in the Bahadurgarh Suit. The Plaintiff in the Bahadurgarh Suit summoned the records from various statutory authorities, state bodies and institutions and examined as many as 19 witnesses, including private witnesses, in support of his claims and to discharge the onus put on him to prove the facts pleaded in the said Bahadurgarh Suit. The Defendants examined two witnesses in support of their claims in the Bahadurgarh Suit. After conclusion of the trial in Bahadurgarh Suit, the Civil Court was pleased to pass a decree in favour of the Plaintiff vide Judgement and Decree dated 13th February 2023 and held that the Plaintiff therein

had been able to prove his case under Issue No.1 whereas the Defendants had failed to prove their case under the Issue No.6. Further, one Shri Shiv Kumar, who appeared as the Plaintiff's witness in the Bahadurgarh Suit as PW1, has also passed away.

i. In the Bahadurgarh Suit, in order to establish Issue No.1 before the Bahadurgarh Court, as stated hereinabove, the Plaintiff therein had summoned public and private witnesses besides records maintained by statutory authorities, Government bodies and institutions to establish the lineage of Shri Kundanlal Gupta. After considering the nature of allegations and counter allegations and based on the evidence collected in the course of the trial, the Bahadurgarh Court, vide Judgement and Decree dated 13th February 2023 clearly held that *"the court reached to the conclusion on the basis of preponderance of probabilities of evidence that the plaintiff has been able to prove his case under Issue No.1 whereas the defendants have failed to prove their case under Issue No.6"*. The Court further held that *"the deceased Sh. Kundan Lal Gupta alias Kundan Lal son of late Sh. Harnam Singh son of Sh. Nanhe Mal and Sh. Kundanlal Laxmichand Gupta alias K L Gupta son of Laxmichand Motilal Gupta were the one and the same person whose*

lineage remained to be as claimed by the plaintiff and as depicted in Pedigree table at Para 2 above".

j. It is the case of the Applicant that he learnt about the pendency of the Bahadurgarh Suit, which was instituted by Shri Raj Kumar Gupta, when the Applicant was approached around 1st August 2019 by Shri Raj Kumar Gupta, along with his attorney and counsel prosecuting the Bahadurgarh Suit at the Bahadurgarh Court, persuading the Plaintiff to depose in the Bahadurgarh Suit. On being persuaded, the Applicant was examined as a witness of the Plaintiff in the said Bahadurgarh Suit.

k. Aggrieved by the Judgement and Decree dated 13th February, 2023, the Defendants preferred an Appeal before the learned District Judge, Jhajjar, being Civil Appeal No.77 of 2023 (hereinafter referred to as "**the said Civil Appeal**"). Further, Rajkumar Gupta also filed cross-objections in order to set aside the following findings of the Bahadurgarh Court.

A. "Further since the matter of paternity of parties in relation to said executant of the said partnership deed is not the subject matter of the suit and so, findings on these issue shall have no direct bearings on such matter in dispute if any pending or otherwise between parties" (Para No.57 at Page No.99 of said Judgement dated 13-02-2023) and

B. "Neither marriage of Kundan Lal Laxmi Chand Gupta nor birth of Mohini & Rohini are in dispute or subject matter of determination under the issue." (Para No.67 at Page No.123 of said Judgement dated 13-02-2023)

- l. By a Judgement dated 14th August, 2024 passed in the said Civil Appeal, the District Judge, Jhajjar, upheld the Judgement and Decree dated 13th February, 2023. However, the cross-objections filed by Rajkumar were partly allowed.

- m. It is the case of the Applicant that he came to know about the passing of the Judgement and Decree dated 13th February 2023 in the Bahadurgarh Suit in favour of the Plaintiff therein as well as the Judgement and Decree dated 14th August 2024 passed in the said Civil Appeal by the learned District Judge Jhajjar, from the attorney of the Plaintiff in the Bahadurgarh Suit, when he met with the Applicant on the occasion of Holi on 14th March 2025. Thereafter, the said attorney of the Plaintiff in the Bahadurgarh Suit provided a certified copy of the cross-objections filed in the said Civil Appeal, a certified copy of the Judgement dated 14th August 2024 passed by the District Judge, Jhajjar, in the said Civil Appeal, other documents and proceedings relating to the Bahadurgarh Suit and the said Civil Appeal to the Applicant.

n. Further, it is the case of the Applicant that the Original Plaintiffs and the Applicant had not been aware of the complete details and particulars of the estate / properties left behind by Shri Kundanlal Gupta and had made a prayer before this Court for appropriate directions to the Defendants to furnish the same. However, it is the case of the Applicant that, during the pendency of the present Suit, the Defendants disclosed that they had filed Testamentary Petition bearing No. 481 of 1982 in this Court for obtaining Letters of Administration from this Court, and, along with the said Petition, they also furnished the particulars of Properties, Assets and Credits owned and possessed by the said Kundanlal Laxmichand Gupta and left behind by him at the time of his death. It is the case of the Plaintiff that it is relevant to place on record the aforesaid details by way of amendment to Exhibits G, J and R annexed to the original Plaintiff for just and proper disposal of the present case and to do complete justice to the parties to the present Suit.

o. Further, it is the case of the Applicant that the findings returned and observations made in the Judgement and Decree dated 13th February 2023 in the Bahadurgarh Suit are binding on the parties, unless that are upset, modified or altered by a superior court. It is the case of the Plaintiff that the observations made and findings returned in the said Judgement and Decree would remain binding on the

Defendants herein. As such, to bring the aforesaid facts on record and to raise a plea of *res judicta* and estoppel, it is expeditious and necessary for the Plaintiff to incorporate appropriate pleadings, by way of amendments, in the Plaintiff instituted before this Court, and for this reason also, the Applicant was seeking amendments to the Plaintiff in the present Suit.

p. Further, it is the case of the Applicant that on meticulous examination of the prayers made in the Suit, it was noticed that, although it was intended to make prayer (d) as an alternative prayer to prayer (c) of the Plaintiff, inadvertently, while drafting the alternative prayer (d) of the Plaintiff, the same was made as an alternative prayer to prayers (a), (b) and (c) instead of making it as an alternative prayer to prayer (c) only. For this purpose also, the Applicant seeks to amend the Plaintiff.

3. Further, in the Interim Application, the Applicant has also sought amendment of the verification clause in the Plaintiff.

4. The Defendant No.2, Mohini Gupta, has filed an Affidavit dated 25th June 2025 opposing the Interim Application. The Applicant has also filed a Rejoinder dated 9th July, 2025.

5. The amendments sought by the Applicant are bifurcated into four parts.
6. I will deal with the submissions made by the learned counsel for the parties in respect of each part separately and will also give my findings in respect of each part separately.

7. **FIRST PART**

The first part of the amendment is for the purpose of bringing on records the facts and documents in the Trial and Appeal before the Courts in Haryana as also the Judgements dated 13th February 2023 and 14th August 2024 passed in the Trial and Appeal before the Courts in Haryana. This part also seeks to raise the plea of *res judicta* and estoppel.

Submissions of the Applicant on the First Part.

8. Mr.Karan Bhosale, the learned counsel appearing on behalf of the Applicant, stated that the Bahadurgarh Suit was filed by Raj Kumar Gupta wherein he sought prayers for declaration and mandatory injunction

in respect of the original registered Partnership Deed dated 5th May 1970 of the partnership firm Kundan Talkies.

9. Mr.Bhosale submitted that Issue Nos. 1 and 6 framed in the Bahadurgarh Suit overlap with Issue No. 2 to 8 in the present Suit. He submitted that the same was evident from the comparative chart mentioned in the Affidavit in Rejoinder and from the Transfer Petition in the Supreme Court preferred by the Defendants.

10. Mr.Bhosale submitted that the Defendants to the present Suit filed a Transfer Petition (Civil) No. 1026/2021 in the Hon'ble Supreme Court, wherein they have taken up the following stands:

“(i) The Issues in the Bahadurgarh Suit are substantially covered in the Bombay Suit.

(ii) All the parties in the Bombay Suit and Bahadurgarh Suit are one and the same.

(iii) Any decision in the Bahadurgarh Suit will substantially affect the Bombay Suit including proof towards legitimacy of the claims of the Defendants.

iv) The Defendants in the Transfer Petition stated that "As the subject matter of Bahadurgarh suit is substantially covered by the earlier suit filed in Mumbai and parties in Bahadurgarh suit are parties in Mumbai suit, it will be appropriate and convenient to the parties including defendants (Mohini Gupta and Rohini Gupta) that the second suit filed at Bahadurgarh covering substantially the same issues as the original suit filed in 1985 is transferred to Mumbai"."

11. Mr.Bhosale submitted that the Petitioners to the Transfer Petition, who are also the Defendants in the present Suit, cannot take conflicting stands with respect to the subject matters of the present Suit and the Bahadurgarh Suit and overlapping Issues therein.

12. Mr.Bhosale submitted that the Transfer Petition was disposed of by an Order dated 11th August 2021 passed by the Hon'ble Supreme Court by stating that:

"But the prayer in the suit pending on the file of the Court at Bahadurgarh, Jhajjar District is in respect of partnership deed registered in the office of the Sub-Registrar, Jhajjar, Haryana. Therefore, the same cannot be transferred to Bombay.

There are other remedies open to the petitioners in respect of the suit whose transfer is sought. Therefore, leaving it open to the petitioners to exhaust those remedies, this Transfer petition is dismissed."

13. Mr.Bhosale further submitted that the Bahadurgarh Suit culminated into the Judgement dated 13th February 2023, wherein Issue Nos. 1 and 6, dealing with the different names of Kundanlal Gupta and his original family history/pedigree table and lineage, were decided, wherein lineage of Kundanlal Gupta S/o Harnam Singh alias Kundanlal Laxmichand Gupta son of Laxmichand Motilal Gupta was accepted, as claimed by the Plaintiff and depicted in the Pedigree table at paragraph 2 of the Judgement dated 13th February 2023.

14. Mr.Bhosale submitted that the Bahadurgarh Court concluded that Raj Kumar Gupta was able to prove his case under Issue No. 1, whereas the Defendants therein (the Defendants to this Suit) failed to prove their case under Issue No. 6. This finding in the Judgement dated 13th February 2023 was confirmed in the First Appeal by the Judgement dated 14th August 2024.

15. Mr.Bhosale further submitted that, although by the Judgement dated 13th February 2023, the Court held that the findings with respect to paternity of parties will not have a bearing on such matters in dispute if pending between the parties therein, however, against this portion of the Judgement, cross objections were preferred by the Plaintiff to the Bahadurgarh Suit, which were decided by the Judgement in Appeal dated 14th August 2024. In this Judgement, the Court specifically watered down the aforementioned portion of the Judgement dated 13th February 2023 and stated that the findings with respect to Issue Nos. 1 and 6 can be used in other proceedings.

16. Mr.Bhosale further submitted that the Defendants have preferred a Second Appeal against the Judgement dated 14th August 2024, which is pending admission before the Punjab and Haryana High Court. He also submitted that, for almost a year, the Defendants have been seeking

adjournments in the Second Appeal. Mr.Bhosale submitted that, on one hand, the Defendants have been arguing that reliance cannot be placed on the Judgements dated 13th February 2023 and 14th August 2024 on account of the pending Second Appeal, and on the other hand, they have been seeking repeated adjournments for around a year in the pending Second Appeal, without pressing for any interim relief therein.

17. Mr.Bhosale submitted that, in view of the above, the Schedule to the present Interim Application seeks to bring on record the facts and background which are necessary to set up the plea of *res judicata* and estoppel on account of the passing of the said Judgements dated 13th February 2023 and 14th August 2024, along with the underlying documents leading to these judgements.

18. Mr.Bhosale submitted that, in the Schedule to the Interim Application, the Applicants have specifically pleaded the case of *res judicata*, which, as per settled law, has to be specifically pleaded.

19. In support of his submissions in respect of the First Part of the amendment, Mr.Bhosale relied upon the following judgements:

(i) **Life Insurance Corporation of India v Sanjeev Builders Private Limited (2022) 16 SCC 1.**

(ii) **Omprakash Gupta v Ranbir B. Goyal, (2002) 2 SCC 256**

(iii) **Pulavarthi Venkata Subbarao and Ors. v. Valluri Jagannadha Rao AIR 67 SCC 591.**

(iv) **Pandit Ishwardas v. State of Madhya Pradesh & Ors, (1979) 4 SCC 163**

(v) **Tirumala Tirupati Devasthanam v. K. M. Krisimaiah, (1998) 3 SCC 331**

(vi) **Madhukar D. Shende v. Tarabal Aba Shedage (2002) 2 SCC 85**

(vii) **Chandramohan Ramchandra Patil v. Bapu Koyappa Patil, (2003) 3 SCC 552**

(viii) **Bhanu Kumar Jain v. Archana Kumar & Anr., (2005) 1 SCC 787**

Submissions of the Defendants on the First Part

20. On the other hand, Mr. Kirti Munshi, the learned Senior Counsel appearing on behalf of the Defendants, opposed the granting of any reliefs in the Interim Application.

21. Mr.Munshi first relied upon the Judgement of the Hon'ble Supreme Court in **Revajeetu Builders and Developers v Narayanswamy and Sons and Ors (2009) 10 SCC 84** which sets out the factors to be taken into consideration while dealing with applications for amendment. Mr.Munshi submitted that these include whether the amendment sought is imperative, and whether it is bonafide or malafide. Mr.Munshi further submitted that, additionally, the amendment should not cause prejudice to the other side which cannot be compensated adequately in terms of money. Mr.Munshi submitted that, in the facts and circumstances of the present case, if the trial of the present Suit outlives the Defendants who are 70 and 64 years old respectively, and who are both spinsters with no legal heirs, and, since interim orders are operative, the Defendants would be gravely prejudiced.

22. Mr.Munshi submitted that, if the commencement of the trial in the present Suit is delayed any further, particularly keeping in mind that the Suit is prior to the Bahadurgarh Suit and is filed more than 40 years back, there are decreasing prospects of its disposal during the lifetime of the Defendants, which seems to be an endeavour of the Applicant. Mr.Munshi

submitted that paragraph 64 of the said Judgement in **Revajeetu Builders and Developers (Supra)** mandates that the Court should never permit malafide, worthless and/or dishonest amendments.

23. Mr.Munshi submitted that *res judicata* is a defence available to the Defendant and not a plea which is available to the Plaintiff.

24. Mr.Munshi submitted that if the Plaintiff feels that a particular issue or issues in the present Suit are conclusively determined in the Bahadurgarh Suit, it is always open for the Applicant to refrain from leading evidence in the present Suit to the extent that, according to him, such issue or issues have already been decided in the Bahadurgarh Suit, tender the Judgements passed therein and argue the point on the basis that no evidence is required to be led in the present Suit on such issue or issues.

25. Mr.Munshi submitted that this course of action is something which the Plaintiff herein can always consider at the evidence and argument stage and does not require an amendment to the pleadings, if such Judgement/s satisfy the tests of Sections 40 to 44 of the Indian Evidence Act which are pari materia with Sections 34 to 38 of the Bharatiya Sakhyam, 2023.

26. Mr.Munshi submitted that all such questions would arise only at the evidence stage when the proof of facts in issue/ issues or there being no requirement to prove certain facts in issue/issues is considered.

27. Next, Mr.Munshi submitted that a pleading must state only material facts and not evidence and in this context referred to Order 6 Rule 2 of the Code of Civil Procedure 1908 and the judgement of the Supreme Court in **Mayar (HK) Ltd v Owners and Parties, Vessel MV Fortune Express (2006) 3 SCC 100.**

28. Mr.Munshi submitted that it is trite law that such material facts must relate to the cause of action and not to proof of facts. Whilst the former must be pleaded, there is no requirement for the latter to be pleaded since it constitutes evidence.

29. Mr.Munshi further submitted that any relevant fact which seeks to prove material facts or to argue that the onus to prove such material facts no longer subsists on the Plaintiff, like the records and the orders in the Bahadurgarh Suit in the present case, which are sought to be introduced by this amendment, are not required to be inserted in the pleading.

30. Mr.Munshi submitted that the Partnership Deed, pleadings and orders in the Bahadurgarh Suit can always be tendered in evidence by the Plaintiff at the appropriate time if he so desires.

31. Mr.Munshi further submitted that a perusal of paragraph 9 of the Interim Application demonstrates that the ostensible reason for introducing the record and orders of the Bahadurgarh Suit proceedings is for the purpose of being examined as evidence in the present Suit. Mr.Munshi submitted that this does not warrant an amendment.

32. Mr.Munshi submitted that the doctrine of *res judicata* has no application as a justification for the present amendment. Mr.Munshi submitted that, in the facts and circumstances of the present case, there is no *res judicata* as judicially understood. He submitted that the cause of action, the frame of the two suits, the parties and the capacity in which the Defendants are sued is completely different in the two Suits.

33. Mr.Munshi submitted that the frame of the two Suits is different as the present Suit is filed by an alleged legatee against the heirs of Kundanlal Laxmichand Gupta, whereas, the Bahadurgarh Suit is filed by a partner of the firm 'Kundan Talkies' against the custodian of the Partnership Deed. The Plaintiffs in both the suits are also admittedly different. The capacity in which

the Defendants have been sued in both the suits is also not the same. Hence, there can be no *res judicata* in these circumstances. In support of this submission, Mr.Munshi relied upon the following judgements:

(i) **Sara Rauf and Anr v Durgashankar Ganeshlal Shroff(2007) 4 Mah L.J. 129**

(ii) **Nand Ram v Jagdish Prasad (2020) 9 SCC 393**

(iii) **Sajjadanshin Sayed Md. BE EDR v Musa Dadabhai Ummer and Ors (2000) 3 SCC 350**

(iv) **Asrar Ahmed v Durgah Committee, Ajmer AIR 1947 PC 1**

(v) **Ashok Kumar Jaiswal and Anr v Matru Prosad Show (2024) SCC Online Cal 2409**

34. Next, Mr.Munshi submitted that there can be no *res judicata* since there is no finality to the Bahadurgarh proceedings since an appeal has been filed in the Punjab & Haryana High Court, which is pending. In this regard, Mr.Munshi relied upon the Judgements in **State of Bihar v Ramgarh Farms and Industries Ltd AIR 1961 Pat 302** and **Merla Janikamma v Sri Inuganti Venkata Rajagopala Chinnaro Garu AIR 1945 Mad 62.**

35. Mr.Munshi further submitted that *res judicata* is a species of cause of action estoppel. *Res judicata* normally applies to the whole suit or the whole defence, whilst cause of action estoppel may be pressed into service in respect of some of the issues but not the whole suit or whole defence. Mr.Munshi submitted that, however, the test for determining whether there is cause of action estoppel is the same as the test laid down for determining whether there is *res judicata*, the only difference being that the first does not dispose of the whole suit whilst the second does.

36. Mr.Munshi submitted that the issue estoppel sought to be pleaded in the present case as a justification for the amendment is a cause of action estoppel and not estoppel as understood under Section 115 of the Indian Evidence Act. If the estoppel was of the kind explained in Section 115 of the Indian Evidence Act and those facts were sought to be introduced as a pleading, the matter may have required to be viewed differently if issues had not already been framed, and the facts and circumstances of the estoppel pleaded were not subsequent to the filing of the present Suit, since the cause of action for the present Suit gets frozen on the date of its filing.

37. Mr.Munshi submitted that since the issue estoppel sought to be pleaded arises out of judgements in the Bahadurgarh Suit, such facts and

events are not necessary to be introduced as a part of the pleading and can only be examined as evidence if they satisfy the requirements of Sections 40 to 44 of the Indian Evidence Act which are pari materia with Sections 34 to 38 of the Bharatiya Sakshya Adhiniyam, 2023.

38. Further, Mr.Munshi submitted that the Applicant informed Raj Kumar, who is the Plaintiff in the Bahadurgarh Suit, of the existence of the Partnership Deed in 2008. Mr.Munshi submitted that the Applicant in the present Suit feigns ignorance of the Bahadurgarh Suit till August 2019. Given that Raj Kumar's constituted attorney conducting the Bahadurgarh Suit was the son of the Applicant in the present Suit, and the Applicant in the present Suit was the main witness, the story canvassed in the Interim Application is highly unbelievable and obviously motivated to delay the commencement of trial of the present Suit.

39. Mr.Munshi submitted that all the living persons mentioned in the Pedigree Table in the Plaintiff are one cohesive unit and acting in close concert.

40. Mr.Munshi submitted that the motive for filing the Bahadurgarh Suit was to obtain custody of the original Partnership Deed which is in the

Defendants' custody so that it is not available as evidence for the examination of this Court at the time of trial of the present Suit.

41. Mr.Munshi submitted that, on the one hand, the Applicant has engineered an expeditious hearing and decision in the Bahadurgarh proceedings, whilst, on the other hand, he was adopting every possible delaying tactic to defer commencement of trial in the present Suit.

42. Mr.Munshi also relied upon the judgement of the Hon'ble Supreme Court in **Union of India v Pramod Gupta (2005) 12 SCC 1** which held that delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or disallowing an application for amendment of the pleadings.

Findings on the first part

43. This part of the amendment is sought to bring on record the subsequent facts in terms of the Bahadurgarh Suit. According to the Applicant, it is necessary to bring these facts on record to determine the real questions in controversy in the present Suit and to set up the plea of *res judicata* and estoppel.

44. In its Judgement in **Life Insurance Corporation of India (Supra)**, the Hon'ble Supreme Court has laid down the law regarding amendments. The relevant portion of the Judgement is as follows:

“71. Our final conclusions may be summed up thus:

71.1. Order 2 Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2 CPC is, thus, misconceived and hence negatived.

71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17 CPC.

71.3. The prayer for amendment is to be allowed:

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and

(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. A prayer for amendment is generally required to be allowed unless:

71.4.1. By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.

71.4.2. *The amendment changes the nature of the suit.*

71.4.3. *The prayer for amendment is mala fide, or*

71.4.4. *By the amendment, the other side loses a valid defence.*

71.5. *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

71.6. *Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

71.7. *Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

71.8. *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

71.9. *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

71.10. *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

71.11. *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the*

*court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi.*.)*

45. In **Life Insurance Corporation of India (Supra)**, the Hon'ble Supreme Court has held that all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. Further, it is held that, if the amendment is required for effective and proper adjudication of the controversy between the parties, the same should be allowed. The Hon'ble Supreme Court has further held that, in dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal, especially where the opposite party can be compensated by costs. The Hon'ble Supreme Court has further held that if the amendment is sought before the commencement of the trial, the Court is required to be liberal in its approach. The Court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment.

46. In the present case, the amendment in the first part is sought before the commencement of the trial in the Suit and, therefore, the Court is required to be liberal in its approach. Further, the Court should avoid a hypertechnical approach, and is ordinarily required to be liberal, where the

opposite party can be compensated by costs. Further, the Court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment.

47. In the present case, a perusal of the amendments, which are sought in the first part by the Applicant, shows that the amendment is required for the effective and proper adjudication of the controversy between the parties. Further, the amendment is also required to determine the real questions in controversy between the parties. The amendment is further required to support the pleas of *res judicata* and estoppel sought to be set up by the Applicant. In these circumstances, in the light of the law laid down in **Life Insurance Corporation of India (Supra)**, the amendment in the first part would have to be allowed.

48. Further, paragraph 12 of the Judgement of the Hon'ble Supreme Court in **Omprakash Gupta (Supra)** reads as under:

“12. Such subsequent event may be one purely of law or founded on facts. In the former case, the court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to

amendment of pleadings under Order 6 Rule 17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. In Trojan & Co. v. RM. N.N. Nagappa Chettiar this Court has held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found; without the amendment of the pleadings the Court would not be entitled to modify or alter the relief. In Sri Mahant Govind Rao v. Sita Ram Kesho Their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted.”

49. In **Omprakash Gupta (Supra)**, the Hon’ble Supreme Court has held that, in the case of subsequent events founded on facts, the party relying on the subsequent events, which consist of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order VI Rule 17 of the Code of Civil Procedure, 1908. Further, the Hon’ble Supreme Court has held that such subsequent events the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining the real questions in controversy between the parties.

50. In the present case, the Applicant is seeking to bring on record the subsequent events founded on facts which are not disputed. Such subsequent events are necessary for the purpose of determining the real question in controversy between the parties. For this reason also, in my view, the amendment in the first part must be allowed.

51. Mr.Munshi, the learned counsel appearing on behalf of the Defendants, has opposed the amendment on the ground that, if the amendment is allowed, it would delay the trial of the Suit and the Suit would outlive the Defendants, who are 70 and 64 years old, thereby causing prejudice to the Defendants. Mr.Munshi also submitted that the Applicant is purposely seeking to delay the trial of the Suit so that the Suit outlives the Defendants. In this context, Mr.Munshi has relied upon the judgement of the Hon'ble Supreme Court in **Revajeetu Builders and Developers (Supra)**. Further, Mr.Munshi also submitted that delay and laches would be a relevant factor for allowing or disallowing the application for amendment of pleadings, and, in this context, has relied upon the Judgement of the Hon'ble Supreme Court in **Pramod Gupta (Supra)**.

52. Thus, it is the case of the Defendants that the amendment should not allowed on the ground of delay. In **Life Insurance Corporation of India (Supra)**, the Hon'ble Supreme Court has held that delay in applying for amendment alone is not a ground to disallow the prayer. Further, in **Pramod Gupta (Supra)**, the Hon'ble Supreme Court has held that delay would be a relevant factor and the Court has to apply its mind to the delay. In **Revajeetu Builders and Developers (Supra)**, the Hon'ble Supreme Court has held that

the amendment should not prejudice the other side. In my view, apart from the law laid down by the Hon'ble Supreme Court in **Life Insurance Corporation of India (Supra)**, that delay in applying for amendment alone would not be a ground to disallow the amendment, even if I accept that there is delay on the part of the Applicant, no prejudice would be caused to the Defendants, especially since the amendment is sought prior to the trial and the Defendants can be compensated with costs. Further, the granting of the amendment may delay the trial for a few months but the same cannot be said to be a cause for the Suit outliving the Defendants.

53. The next submission of Mr.Munshi in respect of the amendments sought in the first part is that the amendments are in the form of evidence and not pleadings. In this context, it is important to note that the Applicant is seeking the amendments in the first part in order to raise the pleas of *res judicata* and estoppel. A perusal of the first part of the Schedule to the Interim Application shows that the Applicant has, by way of the proposed amendments, sought to plead facts which would enable him to raise the pleas of *res judicata* and estoppel. It is well settled in law that *res judicata* and estoppel have to be pleaded by a party to the proceedings. The Applicant has sought to do so in the proposed amendments. For these reasons, I reject

the submission of the Defendants that the amendment is in the form of evidence and not pleadings.

54. The next submission of Mr.Munshi for opposing the amendment in the first part is that there is no *res judicata* in the present case. It is the case of the Defendants that, in the facts and circumstances of the present case, there is no *res judicata* or issue estoppel as judicially understood and, therefore, the amendments should not be allowed. In other words, it is the case of the Defendants that, even if the amendments are allowed, the Applicant cannot claim *res judicata* or issue estoppel. The Defendants have referred to various judgements in that regard. In my view, this is an argument regarding the merits of the proposed amendments and cannot be an argument for allowing or rejecting the amendments. Even presuming that the Applicant fails with respect to his pleas of *res judicata* and issue estoppel, the same cannot be a ground for rejecting the proposed amendments. All that this Court has to see is whether the amendments should be allowed keeping in mind the principles laid down in this regard by the judgements of the Hon'ble Supreme Court and especially in **Life Insurance Corporation of India (Supra)**. For all these reasons, I am not dealing with the judgements cited by the Defendants in that regard.

55. For all the aforesaid reasons, the amendments sought in the first part of the Schedule to the Interim Application are required to be allowed subject to payment of costs by the Applicant.

Second Part.

56. The second part of the amendment includes Serial Nos.2 to 4 and 6 of the Schedule to the Interim Application. By these amendments, the Applicant seeks compensation and disclosure of assets of Shri Kundanlal Gupta, which, according to the Applicant, have been transacted wrongly by the Defendants. The Applicant also seeks to better describe some of the suit properties by modifying Exhibits G, J & R to the Plaintiff.

Submissions of the Applicant on the Second Part.

57. Mr.Bhosale submitted that this amendment is an extension of the already existing pleadings and prayers since it relates to properties of Kundanlal Gupta, which, according to the Applicant, have been wrongly transacted by the Defendants during the pendency of the present Suit. Mr.Bhosale submitted that the amendments also seek to introduce a prayer for compensation for wrongful transaction and disclosure of the said

transaction. Mr.Bhosale further submitted that these amendments also seek to better describe some of the properties forming a part of the estate of the deceased Kundanlal Gupta and should not be disallowed on the basis of any alleged delay to bring the same on record, considering the stage of the present Suit which is at a pre-trial stage. In support of these submissions, Mr.Bhosale relied upon the judgements of the Hon'ble Supreme Court in ***Varun Pahwa v Renu Chaudhary (2019) 15 SCC 628*** and ***Punjab National Bank v Indian Bank & Anr. (2003) 6 SCC 79.***

Submission of the Defendants on the second part

58. Mr.Munshi opposed the amendments sought in the second part. He submitted that the same ought not to be permitted to be introduced as an amendment at this stage since the Applicant had knowledge of the properties mentioned in the amended Exhibits G, J and R right from 1986 and as this enquiry was already covered by prayer (e) of the Plaintiff in the present Suit. Mr.Munshi submitted that a comparison of the Schedules annexed to Testamentary Petition No.15 of 1986 filed by the Defendants would demonstrate that there is no new property mentioned in modified Exhibits G, J and R. Mr.Munshi submitted that, hence, on the ground of being belated and unnecessary, this amendment should not be permitted as it will unnecessarily delay the commencement of trial.

59. As regards new para 21A and 21B sought to be introduced by way of the amendment, Mr.Munshi submitted that the same contain only bald averments, without material particulars, and are in the nature of legal submissions. Mr.Munshi submitted that, hence, it was not necessary to introduce them by way of an amendment.

60. As far as Serial No.4 of the Schedule is concerned, Mr.Munshi submitted that the same contained legal submissions and that the last part of the paragraph, which suggests the purported reliefs sought, is not necessary in view of the existing prayers (e) and (g) of the present Suit.

61. Mr.Munshi also submitted that Serial No.6 of the Schedule is covered by prayer (g) of the present Suit and does not warrant any amendment to be made for this purpose.

Findings on second part

62. The second part includes Serial Nos.2 to 4 and 6 of the Schedule to the Interim Application. In these proposed amendments, the Applicant seeks compensation and disclosure of assets of Kundanlal Gupta which, according to the Applicant, have been wrongly transacted by the Defendants. The Applicant further seeks to better describe some of the suit properties by

modifying Exhibits G, J & R to the Plaintiff. Further, the Applicant seeks to carry out consequential amendments by adding prayer clause (g) for disclosure of all particulars of all transactions made by the Defendants in respect of the assets of Kundalal Gupta.

63. The main submission of the Defendants is that these amendments are not necessary. These amendments contains averments and reliefs in respect of the assets of Kundanlal Gupta, in addition to such averments and reliefs which are already in existence in the Plaintiff. Therefore, they do not set up a new case. These amendments are required for determining the real questions in controversy in the Suit and also for effective and proper adjudication of the controversy between the parties in respect of the assets of Kundanlal Gupta. In my view, for all these reasons, the amendments are required to be allowed. This is also laid down by the Hon'ble Supreme Court in **Life Insurance Corporation of India (Supra)**.

Third part

64. The amendments in the third part are found in Serial No.5 of the Schedule to the Interim Application. They seek to amend prayer (d) of the original Plaintiff.

Submissions of the Applicant on the third part

65. Mr.Bhosale submitted that the amendment to prayer clause (d) only seeks to delete the words “in the alternative to prayer clauses (a), (b) ...” since, on reading of prayer clauses (a), (b), (c) and (d) , prayer clause (d) is in the alternative to only prayer clause (c) and not to prayer clauses (a) and (b).

66. Mr.Bhosale submitted that, since this amendment is sought at a pre-trial stage, the same should be allowed.

Submissions of the Defendants on the third part

67. Mr.Munshi submitted that the said amendment is not necessary since the Bahadurgarh proceedings have not attained finality and the Appeal is pending in the Punjab and Haryana High Court.

Findings on the third part

68. The amendment in the third part only seeks to rectify an error which would help in proper adjudication of the controversy between the parties. Since this amendment is sought at a pre-trial stage, and causes no prejudice to the Defendants, the same is required to be allowed in the light of

the law laid down by the Hon'ble Supreme Court in **Life Insurance Corporation of India (Supra)**.

Fourth part

69. In connection with the amendment sought in the fourth part, at Serial No. 8 of the Schedule to the Interim Application, Mr. Bhosale submitted that the same was not being pressed as, if the present Interim Application is allowed, the Court would in any case permit re-verification of the Plaintiff.

70. For all the aforesaid reasons, the amendments sought in the Interim Application, except the amendment sought at Serial No.8 of the Schedule to the Interim Application, are required to be allowed.

71. Hence, the following orders are passed:

a. The Interim Application is allowed in terms of prayer (a) (except in respect of Serial No.8 to the Schedule to the Interim Application) subject to payment of costs of Rs. 50,000/- by the Applicant to the Defendants. Prayer (a) reads as under:

"a. In view of the above conspectus of facts and circumstances, it is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to consider and allow the Plaintiff to amend the plaint of the instant Suit, as proposed in the Schedule-I for just and proper adjudication of the dispute between the parties and in the interest of justice, equity and fair play."

- b. The amendments be carried out within a period of three weeks from the date of uploading of this order and a copy of the amended Plaintiff be served on the Defendants.
- c. The Plaintiff be re-verified accordingly.
- d. In the facts and circumstances of the case, there will be no order as to costs.

[FIRDOSH P. POONIWALLA, J.]