$~1(Appellate)

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

\+ CM(M) 1189/2022

BRIJESH GUPTA ..... Petitioner

Through: Mr. Brijesh Gupta, Adv.

versus

SMT SAROJ GUPTA ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (ORAL)

% 13.12.2022

REVIEW PET. 337/2022 in CM(M) 1189/2022

1. This petition seeks review of judgment dated 9th November 2022, passed by me in CM(M) 1189/2022.

2. Mr. Brijesh Gupta, who is a practicing Counsel and who appears as the petitioner in the present review petition, has restricted his prayer for review of the impugned judgment to two aspects.

3. The first aspect deals with paras 24 and 25 of the judgment under review which read thus:

> "**24.** Clause (a) of Order VI Rule 16 refers to pleadings which are "unnecessary, scandalous, frivolous or vexatious". The expression "unnecessary", as used in clause (a) of Rule 16, cannot, in my view, be allowed its full etymological play and effect, as, in that event, the provision would empower a court to arrogate, to itself, the authority to decide whether something which is pleaded was "necessary" or not. The prerogative to take a decision on the necessity of the particular plea fundamentally rests with the person pleading it. A court cannot strike out a pleading merely because the court does not consider the fact, or ground, pleaded necessary – as the word is commonly understood – to the case that the party seeks

> to canvas. That would amount to the court "monitoring" the pleadings of the party, which is neither the intent of, or envisaged by, Order VI Rule 16 of the CPC.
>
> 25. The word 'unnecessary' as employed in clause (a) of Rule 16, in my considered opinion, is to be read *ejusdem generis* with the words 'scandalous', 'frivolous' and 'vexatious'. The words 'scandalous', 'frivolous' and 'vexatious' constitute a genus, referring to pleadings which are fundamentally abusive of the process of the court and which pertain to the character of misusing the process of the court. The word 'unnecessary' which precedes these words is required, therefore, to also pertain to the same genus. Alternatively, applying the *noscitur a sociis* principle, which requires a word to be interpreted in line with the words whose company it keeps, the word 'unnecessary' has to be read analogously to the words 'scandalous', 'frivolous' and 'vexatious'."

4. Mr. Gupta submits that the application, by this Court, of the *noscitur a sociis* and *ejusdem generis* principles is incorrect in law, and that the error is apparent on the fact of the record. Apropos the *noscitur a sociis* doctrine, he submits that this court has erred in interpreting the expression "unnecessary" in the phrase "unnecessary, scandalous, frivolous or vexatious", as it figures in Order VI Rule 16(a) of the Code of Civil Procedure, 1908 (CPC), by applying the said doctrine.

5. Mr. Gupta's contention is that the *noscitur a sociis* doctrine would have application only where the meaning of the word is doubtful. The etymological meaning of the word "unnecessary", he submits, does not confess to any manner of doubt. The word "unnecessary", submits Mr. Gupta, means "not necessary".

6. As the meaning of the word "unnecessary" is clear, submits Mr. Gupta, to understand the expression as used in the phrase "unnecessary, scandalous, frivolous or vexatious", there is no scope

for applying the *noscitur a sociis* principle.

7. The argument betrays a fundamental misconception regarding applicability of the *noscitur a sociis* principle. The principle of *noscitur a sociis*, as also the principle of *ejusdem generis*, are intended to be *exceptions* to the applicability, to an expression as used in a statute, of its normal etymological connotation. The principle of *noscitur a sociis* stipulates that a word is to be understood in the light of the company it keeps, whereas the principle of *ejusdum generis*, which is in fact a manifestation of the principle of *noscitur a sociis*, requires a specific word, which is found in the company of other words which constitutes a genus, to be also interpreted as belonging to the same genus.

8. Both these principles, if they apply, are to be accorded precedence, while interpreting the concerned word or explosion, over connotation. There is, therefore, a fundamental want of logic in the contention that the principle of *noscitur a sociis* applies only where the meaning of the word concerned is uncertain. Even where the meaning of the word concerned, etymologically, is certain and well-understood, if the *noscitur a sociis* principle applies, the etymological meaning of the word has to cede place to its understanding as would emerge by application of the principle.

9. The very basis of Mr. Gupta's contention is, therefore, fundamentally legally unsound. The word "unnecessary" is used in company with the words "scandalous", "frivolous" and "vexatious". As these words refer to a particular kind of pleading, the word "unnecessary", understood *noscitur a sociis*, cannot be allowed its full

play and effect and has to take colour from the words "scandalous", "frivolous" and "vexatious".

10. Insofar as the application of the *ejusdum generis* principle is concerned, it is necessary to understand the distinction between the *noscitur a sociis* and *ejusdum generis* principles. Application of both these principles would result in understanding of an expression used in a statute in the light of the expressions in the company of which it is found.

11. The difference is that the *ejusdum generis* principle applies where the specific words accompanying a general word constitute a genus. If they constitute a genus, the word which is general would also have to be restricted to the genus which forms part of the accompanying words. If the accompanying words do not constitute a genus, then the *noscitur a sociis* principle would apply, and the general word would have to be understood in the light of the meaning of the words with which it is associated in the statue.

12. Inasmuch as the words "scandalous", "frivolous" and "vexatious" do constitute a particular genus of pleading, the principle of *ejusdum generis* would also apply.

13. Mr. Gupta had sought to contend that the *ejusdum generis* principle applies where the general word follows the specific word and not where the general word precedes the specific words. It is correct that, in most cases where the *ejusdum generis* principle is applied, the general word follows the specific words. There is, however, no decision, to my knowledge, which holds that if the

specific words follow the general word, the *ejusdum generis* principle would *not* apply.

14. Mr. Brijesh Gupta, despite repeated queries by the court, has also not been able to draw my attention to any decision which says that the *ejusdum generis* principle would not apply where the general word precedes the specific words, and applies only where the general word follows the specific words.

15. In any event, once the principle of *noscitur a sociis* applies, the interpretation accorded by the judgment under review to the expression "unnecessary" would any way be sustained, irrespective of whether the *ejusdum generis* principle would, or would not, apply.

16. No case for review of the decision on that ground, therefore, can be said to exist.

17. The second ground on which Mr. Gupta seeks reconsideration of the judgment under review relates to para 33 of the report in ***Sathi Vijay Kumar v. Tota Singh***[1], which was relied upon, by me, in my decision, and which reads as under:

> "**33.** At the same time, however, it cannot be overlooked that *normally* a court cannot direct parties as to how they should prepare their pleadings. If the parties have not offended the rules of pleadings by making averments or raising arguable issues, the court would not order striking out pleadings. The power to strike out pleadings is extraordinary in nature and must be exercised by the court sparingly and with extreme care, caution and circumspection (vide ***Roop Lal Sathi* v. *Nachhattar Singh Gill***[2];

[1] **(2006) 13 SCC 353**
[2] **(1982) 3 SCC 487 : AIR 1982 SC 1559**

***K.K. Modi* v. *K.N. Modi*[3]**; ***United Bank of India* v. *Naresh Kumar*[4]**."

18. Mr. Gupta submits that the word "pleadings" cannot include the pleadings of Suresh Gupta, as he was not a party to the suit. He has relied, for this purpose, on Mogha's General Rules of Pleadings, particularly the following recital therein:

> "Order VI of the Code deals with the Pleadings. According to Rule 1, Pleading means plaint or written statement. According to P. C. Mogha, pleading are statements in writing draw up and filed by each party to a case stating what his contention will be at trial and giving all such details as his opponents needs to know for his defence."

19. In juxtaposition with this, Mr. Gupta also invites my attention to Order VI Rule 3 of the CPC, read with part 4 of Appendix A thereto, which deals with written statements. He has read out the following part of the said Appendix:

> "**Denial.—**
>
> The defendant denies that *(set out facts).*
> The defendant does not admit that *(set out facts).*
> The defendant admits that……but says that……
> The defendant denies that he is a partner in the defendant firm of……
>
> **Protest.—**
>
> The defendant denies that he made the contract alleged or any contract with the plaintiff.
> The defendant denies that he contracted with the plaintiff's alleged or at all.
> The defendant admits assets but not the plaintiffs claim.
> The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them."

20. The repeated use of the word "defendant", submits Mr. Gupta, read with Mogha's Commentary on Laws of pleadings, indicate that

[3] **(1998) 3 SCC 573 : AIR 1998 SC 1297**
[4] **(1996) 6 SCC 660: AIR 1997 SC 3**

pleadings by a person who is not a party to the suit are not "pleadings" within the meaning of the CPC.

21. This submission, too, is not acceptable for the several reasons. In the first place, Order VI Rule 3 CPC does not restrict pleadings only to the pleadings of the plaintiff or the defendant. Secondly, part 4 of Appendix-A to the CPC merely sets out a format and, therefore, uses the word "the defendant". The use of the word "the defendant" in the said format cannot be read, in any manner of speaking, as a statutory declaration that pleadings would not include pleadings by a third party, or as restricting the scope of Order VI Rule 3.

22. Thirdly, in the facts of the present case, in the affidavit accompanying the written statement, Suresh Gupta clearly stated that he was general attorney of the defendant and was, therefore, filing the affidavit in that capacity. It cannot, therefore, be said that Suresh Gupta was a complete stranger to the dispute, so as to exclude, from the written statement, any part of the written statement filed by him.

23. No case, therefore, on behalf of the defendant is made out, to review the judgment dated 9th November 2022.

24. The review petition is accordingly dismissed.

C. HARI SHANKAR, J.

DECEMBER 13, 2022
dsn