

**:- ORDER BELOW APPLICATION AT EXH NO.294 :-**

**IN**

**SPECIAL CIVIL SUIT NOS.3, 4, 5 of 2017 (Consolidated)**

**:-ORDER :-**

1. The learned advocate for defendant No.1 Mr. S. S. Shah has filed this applications (Exh Nos.294 to 296) under Order 1, Rule 10 (2) read with Section 151 of the Code of Civil Procedure, 1908 prayed to strike out defendant No.1 - Mr. Narendra Modi, the then Chief Minister of Govt. of Gujarat from the aforesaid numbered suits.

2. Special Civil Suit Nos.3/2017, 4/2017 & 5/2017 are consolidated vide order passed by my predecessor judge and therefore the said three applications vide Exh. Nos.294 to 296 are identical and therefore, I have passed consolidated order.

3. In the said application, it is, inter alia, stated that the plaintiff has filed suit for damages against all the defendants in respect of the incident that took place on 28.02.2002 at Prantij on National Highway No.8 on account of violence in the State of Gujarat wherein the relatives of the plaintiffs are alleged to have been killed by defendant Nos.9 to 14 and other unknown persons. It is also stated that defendant No.1 was the Chief Minister of the State and defendant No.2 was Home Minister and defendant Nos.3 to 7 were officials of the State Government and the defendant No.8 is the State Government of Gujarat. It is

further stated that if the plaintiff succeeds in proving the alleged facts of negligence or tort even then only the State would be liable and there cannot be any liability of defendant No.1 personally for the same. It is further stated that defendant No.1 is joined without any reason and not required to be continued for the alleged tortuous acts of other officers of the State. It is stated that presence of defendant No.1 in the suit is at all not necessary and legally sustainable considering the provisions of Order I, Rule 10(2) of the Code. It is also stated that defendant No.1 is neither necessary nor proper party and, therefore, this application should be allowed.

4. A copy of above mentioned application is served upon the plaintiff through learned advocate on record.

5. On behalf of the plaintiffs in all the above numbered suits, Mr. Imran Dawood son of Salim Dawood (Plaintiff in Special Suit No.5 of 2017) has sent his written objection heading as "Notice Relating to Jurisdiction and Forum of Non-Convenience" and objected to the present application. I would refer to only relevant submissions in context of the suits from the said affidavit, which are as under:

5.1 It is stated in the affidavit that he made affidavit on his behalf as well as plaintiffs of Special Civil Suit Nos.3 & 4 of 2017 with required authority. It is alleged in paragraph-12 that, as per his understanding, his lawyer Mr. Anwar Malek will no

longer be able to continue as lawyer due to targeted actions against the lawyer. He has also expressed impossibility of securing services of other lawyers. It is stated that joining of defendant No.1 is relevant as made out in the plaint for actions of specific individuals. He has also raised questions of jurisdiction and non-convenience of the forum alleging actions against the lawyers of the plaintiffs.

5.2 Ld. Advocate on record of the plaintiffs, it is pertaining to note that Ld. Advocate for the plaintiffs on record has filed his Vakilatnama withdraw pursis vide Exh.307 and produced documentary list vide Exh.308.

6. Heard Mr. S. S. Shah, learned counsel for defendant No.1 through video conference. None appeared for the plaintiffs in the suits though duly served.

6.1 Ld. Adv. Mr. S. S. Shah has vehemently submitted that if defendant No.1 is strike off then no any damages to the plaintiffs because of the suit is not dismissed and claim of the plaintiffs is continued. Ld. Adv. has further submitted that defendant No.1 was chief minister and facing this litigation since 2004 though he is neither necessary nor proper party to join as defendant No.1 in the suits proceedings and therefore requested to strike off the name of Mr. Narendra Modi at present Prime Minister of India. Ld. Adv. Mr. S. S. Shah has vehemently submitted that looking to the averments and allegations made in

the plaint, it can be said that whether said allegations and averments are political, covered by inquiry by Nanavati Commission or relating to constitutional policies and there is not at all any specific allegations against defendant No.1 and therefore defendant No.1 is required to be strike off from the suit proceedings.

6.2 Ld. Adv. Mr. S. S. Shah has vehemently submitted that the reply of the application Nos.294 to 296 is on record filed by Mr. Imran Dawood S/o. Mohammad Salim Dawood (plaintiff in Special Civil Suit No.5/2017) and therefore looking to the facts and circumstances of the facts and circumstances of this case, his advocate has filed his Vakilatnama withdraw pursis which is also pending for order and therefore, there is no need to heard Ld. Adv. Mr. Malik for this application and requested to allowed this application.

7. I have carefully gone through the contents of the application and the counter affidavit; the averments made in the plaint of the plaintiff and the written statement filed on behalf of the defendant- No.8 the State government,. Before coming to the averments in the plaint, it is necessary to state that defendant No.1 was the Chief Minister of the State of Gujarat on date of the alleged tortuous incident. That, after 'Godhra Carnage', communal riots broke out in the State and one of the incidents in which the plaintiffs of the above suits lost their near relatives

is the cause shown for the present suit.

7.1 That the plaintiff Imran Dawood (plaintiff of Special Civil Suit No.5/2017), who had come to India along with his relatives - two uncles Abdul Dawood and Syed Safik Dawood and his neighbour Mohmmad - all British Citizens and visited Lajpore, Dist.: Surat. That, they hired a Tata Sumo Jeep to visit Jaipur and when they were returning on 28.02.2002, an incident occurred on National Highway No.8 near Prantij where they were stopped by a mob of 20-25 unknown persons with arms and othe weapons. That, there were other mob and bikers. That, they were attaked by the mob wherein the driver of the jeep was killed; the plaintiff was stabbed on leg with a knife and his uncles were not found, who were subsequently found killed. That, he filed an F.I.R. at Prantij Police Station under Sections - 302, 303, 324, 337, 435, 143, 147, 148, 149 & 153 of the Indian Penal Code, 1860 against unknown persons. That, Prantij Police did not bother to look for his uncles and only bones of Safik Dawood were found. That, on the basis of the aforesaid circumstances, by way of these suits, damage compensation running into crores of rupees along with interest was claimed alleging the acts and omissions on the part of defendants including defendant No.1 in his official and personal capacity.

7.2 In the plaint, it is alleged that defendant No.1 was at

all material time the Chief Minister of State of Gujarat and constitutionally, statutorily and personally liable for being in complete command of the State machinery. It is also alleged that defendant No.1 was elected on B.J.P. ticket and Sangh Pracharak of R.S.S. and continued the policy of R.S.S. through defendant No.8 State. The plaint also describes so many things in so many words alleging the same as the activities against Muslims. That, there was alert from I.B. of defendant No.8 for the movement of Karsevak of Ayodhya but there was complete failure of state administration. It is alleged that it was the acts and omissions of defendant No.1, which had resulted into genocidal killings of Muslims. There are also allegations against the alleged administrative policies of defendant No.1 and the State.

7.3 It is asserted that defendant Nos.1 to 7 were in command hierarchy. It is further alleged that defendant No.1 with some Senior cabinet colleague arrived at Godhra on 27.02.2002 and against the advice of local administration took the decision of taking charred bodies of passengers of Sabarmati Express to Ahmedabad. That, defendant No.1 did not oppose '*Bandh Alan*' given by V.H.P. and failed in his constitutional duties to maintain the Rule of Law, which carried out anti Muslim violence on or after 27.02.2002. That, defendant No.1 with other defendants by their acts of commission/omissions acted in furtherance of genocidal killings. That, defendant No.1

deliberately did not take any action against the newspapers fanning communal passions. That, defendant No.1 is, thus, responsible for increasing violence against Muslim community.

8. Upon a careful perusal of the plaint, it appears that the plaintiff has attempted to narrate not only riot incidents following Godhra incident in the State but also criticized the Government and the administrative actions of the Government and, therefore, I do not deem it fit to narrate all such assertion, pre & post the cause of action, i.e. the incident in question. It may also be stated here that the entire plaint contains allegations only general, non specific and vague against defendant No.1. There is not a single averment showing presence of defendant No.1 at the scene of offence at the relevant time or his direct or indirect involvement in the alleged act or any specific role from which reasonable ground for malice or intentional acts or omissions can be found, entitling the plaintiff to claim any legal right or relief against defendant No.1 in his personal or official capacity in the suit. It is nowhere stated as to how defendant No.1 is personally liable for the alleged acts or omissions of officials of defendant No.8. Though the plaint contains special allegations against defendant No.1, the plaintiff has neither shown any source of such information nor produced any material in support thereof. The averments in the plaint are made cleverly to connect defendant No.1 with all pre & post Godhra incidents and thereby to array defendant

No.1 as perpetrator of the crime making him liable for compensation. It may be noted here that outcome of the criminal trial of this incident as well as whether defendant No.1 was made accused or not in the criminal trial, has not been brought on record by the plaintiff till date. In my view, such reckless allegations without any basis, i.e. evidence, can hardly establish any nexus or help in raising cause of action against defendant No.1.

9. At this stage, it would be advantageous to refer to the provisions of Order I Rule 10(2) of the Code, which reads as under :

"10(2) Court may strike out or add parties. - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

9.1 A bare reading of the above provisions makes it clear



that it is open to the Court, at any stage of the proceedings, to add any person as necessary party or strike out a party improperly joined. The improper party means a person who has no connection with the reliefs claimed in the plaint and is, therefore, neither necessary nor proper party. In the decision of **Mumbai International Airport Private Limited Vs. Regency Convention Centre & Hotels Private Limited. A.I.R. 2010 SC 3109**, it is held as under:

"A 'necessary party' is a person who ought to have been joined as party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary or proper party to the suit for specific performance.'

10. I have carefully gone through the entire pleadings of the plaint and found that not a single assertion on the basis of which the plaintiff could sue defendant No.1 as co-defendant, is maintained. It is an established and settled law that it is for the plaintiff to choose his defendant, that is doctrine of *dominus litis*, but for that, there must exist a legal right against such defendant. The question that arises is, whether in the absence of any specific intentional act/omission or malice or connection, a person who merely held an office of the State be made liable for each and every act/omission of the officers of the State? The plaintiff ought to have shown reasonable grounds along with proposed evidence before arraying anyone as defendant.

11. One more thing is to be noted that the present suit is originally of year 2004. The plaintiff is litigating a serious litigation for huge compensation against the State and its officials for alleged tortuous acts in which his relatives are alleged to have been killed by a mob but till date no substantial progress has been made in the suit. The record also indicates that the issues have been framed long back. Not only that, but the plaintiff has now raised issue regarding *forum non-convenience* and again tried to stall the suit proceedings making allegations that raids were carried out against the senior counsel appearing for him. This would be evident from the statement made in the affidavit filed by Mr. Imran Dawood. For

the sake of convenience, the said statements are reproduced as under:

“7. We have also been advised that Police Raids have taken place by the Central Bureau of Investigation (“CBI”) at the homes and offices of our lawyers Anand Grover and Indira Jaising and those of LC Associates. The raids have been carried at the request of Union Home Ministry.

8. Following the action from the Union Home Ministry, we state to you the connection between defendant No.1 Narendra Modi in this case who now the Prime Minister of India and that the action against our legal representatives serves the interest of defendant No.1. The action for all intents and purposes is a co-ordinated strategy especially given the content of the special civil suit and the timing of the action against our lawyers and the timing of the application to remove defendant No.1 from the special civil suit.”

The plaintiff is deliberately dragging the suit which is evidence from the record.

12. At the cost of repetition, it may be noted that there is not a single averment which may suggest that if the name of defendant No.1 is struck out, there will be no proper adjudication of the dispute. In other words, the plaintiff has failed to demonstrate that defendant No.1 is either proper or necessary party to the issue involved in the suit. Moreover, having read the averments made in the plaint and the reliefs claimed in the suit, I am of the view that striking out name of defendant No.1 would not make any adverse effect on the claim

of the plaintiff. A bare reading of the plaint makes it further evident that bald allegations are made against defendant No.1 and none of the averments indicates malice on the part of defendant No.1, which resulted into the incident in question.

13. In view of the foregoing discussion and in my considered view, this application is required to be allowed. Hence, I passed the following order :

**::: O R D E R :::**

- (1) The application below Exh.294 is hereby allowed.
- (2) The name of the defendant No.1 in Special Civil Suit No.3, 4 & 5 of 2017 is strike out.
- (3) It is ordered to the plaintiff that to delete the name of the defendant No.1 from the cause title of the Special Civil Suit Nos.3, 4 & 5 of 2017 and further ordered to office of this court to delete the name of defendant No.1 from record of the Special Civil Suit Nos.3, 4 & 5 of 2017 within seven days from today.
- (4) No order as to costs.

Pronounced through video conference today on 5<sup>th</sup> day September - 2020.

Date: 05/09/2020

Place : Prantij

K\_J\_P

**(Sureshkumar Kaludan Gadhavi)**

**(Judge Code GJ01023)**

Principal Senior Civil Judge

Prantij.