ANTHONY

v.

WEERASINGHE

COURT OF APPEAL.
GUNAWARDENA, J.
JAYAWICKREMA, J.
CALA 142/93 (IG).
DC COLOMBO 11969/MR.
17TH SEPTEMBER, 1999.

Libel - Libel not set out verbatim in English - Amendment of Plaint - Is there a cause of action - Appending to the Plaint of the relevant Article - Sufficient compliance - Civil Procedure Code S.40.

The Application to amend the Plaint in an action for libel, for the purpose of setting out the libel which was in English, was refused.

On Appeal

Held :

(i) Forms of the Plaint given in the schedule to the Civil Procedure Code are what one may call a specimen or an example of the outward form as distinct from content or matter. The relevant form requires the Plaintiff to set out the libel in the foreign language.

(ii) Form of the Plaint can never affect the cause of action or have any bearing on it as such, because the cause of action is the fact or facts averred in the plaint which give the Plaintiff the right to judicial relief and in holding that because the form of the Plaint had not been adhered to the Plaint did not disclose a cause of action, the learned District Judge had manifestly erred.

(iii) By appending/annexing the relevant publication to the original plaint, the Plaintiff Appellant had already set out this as he has produced or set out the publication as an exhibit whilst pleading in the body of the Plaint. A translation of this publication alleged to be defamatory is given in the body of the plaint.

APPEAL (leave been granted) from the Order of the District Court of Colombo.

S.L. Gunasekera with *S.J. Mohideen* for the Plaintiff-Appellant.

Romesh de Silva with *Harsha Amerasekera* for the Defendant-Respondent.

Cur. adv. vult.

October 15, 1999.

U.DE Z. GUNAWARDENA, J.

This is an appeal against an order of the learned District Judge dated 22. 06. 1992 whereby he had refused to allow an amendment of the plaint, in an action for libel, for the purpose of "**setting out**" the libel which was in English, which is not now the language of the Court, as it was at the date of the promulgation of the Civil Procedure in the year 1889 - English giving place in the relevant District Court, to the vernacular i. e. Sinhala.

The learned District judge had, in the order complained of, held that as the libel had not been set out verbatim in the foreign language i. e. English in which it had been published, the original plaint did not disclose a cause of action and had refused leave to amend. To quote the relevant excerpt from the order of the learned District judge: "මේ අනුව මුල් පැමිණිල්ලේ එම ප්‍රකාශය කළේ යයි කියන භාෂාවෙන්ම එය සඳහන් කොට නැති බව සංශෝධනය දෙස බැලීමේදී මනාව තහවුරු වේ. එසේ මුල් පැමිණිල්ලේ නොතිබුණේ නම් සැබැවින්ම නඩු නිමිත්තක් නිබිය නොහැකිය" The learned District judge had also expressed the view, albeit circuitously, or in a roundabout way, that the plaint ought not to have been entertained or accepted , in the first instance, as it did not disclose a cause of action because the plaint is not modelled on the form set out in the Civil Procedure Code, in that the libel, according to his view, had not been "**set out**" verbatim in the plaint in the foreign language i. e. English in which it had been published.

It is well to remember that the Civil Procedure Code has set out, in the schedule the "**forms of plaints**" in various actions

and, the heading, in the schedule to the Civil Procedure Code, viz. "**Forms of plaints**", is self-explanatory. The form set out in the schedule to the Civil Procedure Code in respect of an action for libel, as are the forms prescribed for other types of actions, is only a mere matter of form, if not of routine, and has no special significance as such. "**Forms of the plaints**" given in the schedule to the Civil Procedure Code are what one may call a specimen or an example of the outward form as distinct from content or matter. The expression viz. "**Forms of Action**" has been used in the schedule to the Civil Procedure Code in contradistinction to their substance on which alone the cause of action can arise - "**form**" being the antithesis of substance. The Learned District Judge is clearly wrong in mistaking the form for substance as evidenced by the excerpt of his order reproduced above-any form being extensive enough to admit of considerable adaptation to changing circumstances. Needless to say that form being only a model or skeleton ought to be capable of being adapted to the circumstances of any given case. The Court ought not to make a fetish of the form of the plaint but care more about its substance or content on which alone the cause of action can be rested. It is worthy of repetition that the learned District Judge had taken the view that, as the form of the plaint set out in the schedule to the Civil Procedure Code had not been scrupulously adopted, in that, the words of the libel had not been set out verbatim in English, that being the language in which the libel had been published, the plaint does not disclose a cause of action. I am afraid the form of the plaint can never affect the cause of action or have any bearing on it as such, because the cause of action is the fact or facts, averred in the plaint, which give the plaintiff in any action the right to judicial relief and in holding that because the form of the plaint had not been adhered to the plaint did not disclose a cause of action the learned District Judge had manifestly erred. In the case in hand, the fact that grounds the cause of action is alleged unlawful violation of the plaintiff-appellant's right to reputation. It is clearly alleged or averred in the original plaint that the publication of the

statement in question had tended to injure the reputation and diminish the esteem in which the plaintiff-appellant was held by others. It is to be observed that the plaint in this case conforms to all the requirements of section 40 of the Civil Procedure Code which section prescribes the requisites of a valid plaint, and in particular section 40(d) of the Civil Procedure Code which requires that there should be a plain and concise statement of the circumstances constituting the cause of action - the cause of action set out in the original plaint being, broadly speaking, that the plaintiff-appellant was defamed in consequence of a publication made by defendant-respondent the translation of which publication is already embodied in the original plaint. If one were to make a fetish of forms very awkward and intolerable results or consequences are likely to follow as did happen in the Roman times in the case cited below - a case which I read about as a law student but which is indelibly writ on my memory because of the odiously technical nature of the decision that was reached by the Roman Judge who seems to be conspicuous not so much for his lack of knowledge of the law but more so for his lack of common - sense. The Plaintiff in that case suing a defendant for cutting his vines lost his case because he used the word "**vines**" when he should have said "**trees**" for the law of Twelve Tables, which gave or provided for the action, spoke in general terms of "**trees**" (Actio de arboribus succisis). The Judge had failed to appreciate the obvious fact that both trees and vines (creepers) fall under the genus of plants deriving nourishment from the soil - the difference, if any, between the two being that former, with a self - supporting stem, grew vertically to the ground while the later grew along the ground.

In any event, it can even be said that the Plaintiff-appellant in this case had complied with the form of the plaint, relevant to this case, as set out in the schedule to the Civil Procedure Code. The relevant form requires the plaintiff to "**set out**" the libel in the foreign language - if the publication is in that language. The expression "**set out**" is a somewhat elastic one.

which means "**demonstrate**" or "**exhibit**" (vide Oxford Dictionary). By appending or annexing the relevant publication to the original plaint, the plaintiff-appellant had already done just that, that is..he has produced or set out the publication, as an exhibit whilst pleading in the body of the plaint itself that it is produced as part and parcel of the plaint. One cannot overlook or disregard the fact that a translation, of the publication alleged to be defamatory, is given in the body of the plaint - the translation being incorporated into the body of the original plaint itself. I think the Plaintiff-appellant by annexing and producing or tendering the publication (in the foreign language) at the same time as the original plaint has substantially complied with the form of the plaint as given in the Civil Procedure, if, in fact, he has not complied with the relevant form in every particular - or to the very letter.

In any event, if the learned District Judge thought that the appending to the plaint of the relevant article alleged to be defamatory was not sufficient compliance with the form and that the form of the plaint mattered, and had to be reverenced so much, he should certainly have allowed the amendment to incorporate the libel, verbatim in the foreign language into the body of the plaint - because the scope of the action and the media upon which relief was claimed would necessarily remain un-altered-notwithstanding such insertion. It is relevant to note that this application to amend the plaint, if it can be called an amendment, in order to incorporate the libel in the foreign language in which it had been published had been made prior to the action being set down for trial. "**Forms of the plaints**" given in the schedule to the Civil Procedure, or for the matter, any other form are merely intended as guides to the style and arrangement of the plaint and what is expected by the law is not rigorous adherence to them but substantial compliance. In any event, too much subtlety and technicality in law are not be countenanced. Forms are immaterial, without substance,, and cannot affect substantial or substantive rights. Form of the plaint is not a constituent of

the cause of action, as the learned District Judge had erroneously thought, nor an essential part thereof. The fact that none of the points, on which this order is based in favour of the Plaintiff-Appellant, was argued or put forward before us by the learned counsel calls for remark. It is to be observed that it is by guiding the Court to a correct decision, as is their duty, that the learned Counsel can prevent the judges from making "**palpable errors**" in law.

The order of the learned District Judge dated 22. 06. 1992 is hereby set aside and the application to amend the plaint to incorporate the relevant publication in to the body of the plaint is allowed.

D. JAYAWICKRAMA, J. - I agree.

Appeal allowed.

Application to amend plaint allowed.