

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

+ CS(OS) No. 2006/2002

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%13.01.2009

Date of decision: 13.01.2009

SRI CHAND

....Plaintiff

Through: Mr. J. K. Das and Mr. Avijit
Bhujbal, Advocates

Versus

SHRI JAI BHAGWAN SHARMA & ORS.

.... Defendants

Through: Ms. Ruchi Sindhwani, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. The plaintiff has instituted this suit for recovery of Rs. 25 lacs with pendente lite and future interest at 18 % per annum, by way of damages for defamation by the defendants of the plaintiff. The defendant No. 1 is described as an inspector, the defendants No. 2 & 3, Head Constables of Delhi Police. It is inter alia the case of the plaintiff that the plaintiff is a highly respectable person and Pradhan of a Society and is involved in various charitable and philanthropic activities and enjoys a high reputation and status in the society. The plaintiff claims to have earlier instituted a suit in the Court of the Civil Judge, Delhi against some persons who are not parties to the present suit; in the said previous suit an interim order is stated to have been granted in favour of the plaintiff and against the defendants in that suit; the defendants in that suit are stated to have

violated the interim order; the plaintiff claims to have on 13th July, 1999 instituted contempt proceedings against the defendants No. 1 to 3 in this suit as well as certain other persons, before the Court of Civil Judge where the other suit is pending, for breach of the interim order aforesaid; the defendants No. 1 to 3 are stated to have filed a reply on 30th November, 1999 to the contempt proceedings of the plaintiff and in which reply, the defendants No. 1 to 3 are stated to have pleaded as under:-

“..... It is further submitted that the applicant is a professional land grabber and have very bad reputation in police record and tries to take police department's help in carrying out illegal activities.”

2. It is the averment of the plaintiff that the aforesaid averments in the reply filed by the defendants to the contempt petition are not only false, frivolous but defamatory, libelous and derogatory and have lowered the reputation and honour of the plaintiff. The plaintiff has further pleaded that the defendants herein have also circulated the copy of the said reply filed by them amongst friends, neighbours and relatives of the plaintiff, thereby defaming the plaintiff and giving bad name to the plaintiff amongst his friends, neighbours and relations. The plaintiff has in para 9 of the plaint stated that since the defendants have made defamatory, derogatory and libelous allegations against the plaintiff “in the reply filed in the court which is a judicial record and is a public document, as such all the defendants rendered themselves liable to compensate the plaintiff and plaintiff has become entitled to claim damages from them...”. The plaintiff has claimed a sum of Rs. 25 lacs by way of damages from the defendants.

3. The plaintiff further claimed to have sent notices dated 16th September, 2002 and 1st October, 2002 to the defendants. The plaintiff has in the cause of action paragraph in the plaint stated that the cause of action accrued to the plaintiff when the defendants filed their reply on 30th November, 1999 to the application of the plaintiff under Order 39 Rule 2 A of the CPC and the cause of action further arose when the legal notices dated 16th September, 2002 and 1st October, 2002 were served on the defendants.

4. The defendants filed a written statement taking various pleas. The plaintiff filed a replication thereto. The defendants also filed IA No. 9400/2003 under Order 7 Rule 11 of the CPC. On 25th August, 2004, the said application under Order 7 Rule 11 of the CPC was disposed of by framing the following preliminary issue: _

“Whether the suit in the present form is not maintainable and barred by the provisions of Section 52 of the NCT of Delhi Act? OPD”

5. The statement of the counsel for the parties was recorded that no evidence is essential on that issue and the matter listed for arguments. The matter was adjourned from time to time, mostly on the request of the plaintiff. Ultimately on 17th July, 2008, when yet again the plaintiff requested for adjournment, it was ordered that since from the perusal of the plaint the claim also appeared to be barred by limitation, the arguments on the next date will be heard on the limitation aspect also. The counsel for the defendants then stated that the suit was also barred by Section 140 of the Delhi Police Act, 1978 and accordingly, it was ordered that the same also being a question of law, arguments thereon shall also be heard.

6. The counsel for the plaintiff and the counsel for the defendants have been heard on the preliminary issue aforesaid as well as on the aspect of limitation and Section 140 of the Delhi Police Act, 1978 also. The counsel for the plaintiff has also filed synopsis of the submission dated 18th September, 2008.

7. Taking up the aspect of limitation first, the suit is for compensation for libel within the meaning of Article 75 of Schedule 1 of the Limitation Act. The period of limitation prescribed for institution of such a suit is one year commencing from the date when the libel is published.

8. The libel pleaded in the present case is the reply filed by the defendants in judicial proceedings, i.e., to an application of the plaintiff under Order 39 Rule 2A of the CPC. The said reply, as per the averments in the plaint was filed on 30th November, 1999. That would be the date of publication of libel. The suit was instituted on 30th November, 2002. The suit is thus clearly beyond the period of one year from the date of publication of libel. The plaintiff appears to have proceeded on the premise that the limitation was of three years. In fact, the counsel for the plaintiff at the time of hearing did not even make argument on the aspect of limitation. However, in the written synopsis filed subsequently, it is urged that the suit is not for damages on account of defamation only but is also for damages for wrongful deprivation of the shop in question, the interim order in the other suit with respect where to is stated to have been violated. Reliance in this regard is placed on para 5 of the plaint. It is next urged in the synopsis that it is also the averment in para 8 of the

plaint that the defendants apart from filing the reply also circulated copy of the reply and the date on which said circulation was made will have to be established by evidence.

9. Both the pleas taken in the synopsis by the plaintiff are contrary to the plaint. The plaint expressly claims Rs. 25 lacs by way of damages/compensation for defamation and does not claim the same on account of deprivation of any property. This is also evident from the fact that had the claim been for deprivation of property, the suit would not have been confined against the defendants who are police officials and who are alleged to have assisted the defendants in the other suit filed by the plaintiff in violating the interim order.

10. Similarly, the other plea of the plaintiff raised for the first time in the synopsis is also contrary to the plaint. The plaintiff has neither given any date in para 8 when the copy of the reply is alleged to have been circulated by the defendants amongst friends, neighbours and relatives of the plaintiff, nor have in the cause of action paragraph pleaded that any cause of action accrued to the plaintiff on that date. The only two dates pleaded in the cause of action paragraph are of 30th November, 1999 and the date of the service of the legal notices. The plaintiff after taking adjournments for over four years to address on the preliminary issue cannot be permitted to so twist the facts. The claim in suit, from the averments in the plaint is barred by time and no purpose will be served in putting the suit to trial and the suit is liable to be dismissed as barred by time.

11. I may notice that the suit having been found to be barred by time, I am not expressing any opinion on as to whether a suit for defamation at all lies on the basis of the pleadings in a civil suit or till the veracity of the averments is established. On the date of the institution of the present suit, the other suit, in reply to an application under Order 39 Rule 2 (A) CPC wherein the alleged defamatory statements are stated to have been made, was still pending. The defendants have in their written statement pleaded that the plaintiff had been involved in number of criminal cases and at that time was also facing trial in two criminal cases particulars whereof were given. It was also pleaded in the written statement of the defendants that the defendants police officials had on the basis of the entries in their record stated that the applicant is a professional land grabber and had bad reputation in police record; the copies of the said records are stated to have been filed in the other proceedings. It was recently held by this Court in **Ram Singh Batra vs. Smt Sharan Premi** 133 2006 DLT 126 that the cause of action for defamation would arise only when the falsity of the plea is proved. However, as aforesaid it is not deemed necessary to enter into the said questions, the suit being barred by time.

12. The preliminary issue framed and the plea with respect to Section 140 of the Delhi Police Act can be taken up together. Section 52 of the Government of National Capital Territory of Delhi Act, 1991 provides that all suits and proceedings in connection with the administration of the capital shall be instituted by or against the Government of India. Section 140 of the Delhi Police Act, 1978 provides that in any case of alleged offence by a police officer or of a wrong alleged to have been done by such police officer by any act

done under colour of duty or authority or in excess of such duty or authority, such suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of. Sub-section (2) provides for a notice of not less than one month of the intended suit.

13. I may, however, state that the plaintiff has filed before this Court only the reply stated to be containing the libelous allegations and copies of notices stated to have been sent and a trust deed executed by the plaintiff. Neither the plaintiff nor the defendants filed before this Court copy of the application under Order 39 Rule 2A of the CPC filed by the plaintiff and in reply where to against the libelous allegations were made. From the material on record it thus cannot be stated whether the defendants herein were impleaded as parties to the application under Order 39 Rule 2A of the CPC in their personal capacity or in their capacity as police officials of the National Capital Territory of Delhi. All that can be seen from the record is that in the memo of parties the defendants were described as police officials that is in their official capacity. It may also be noticed that the defendants in paras 6 & 7 of their written statement pleaded that they are working under the authority and since the specific authority has not been impleaded the suit was liable to be dismissed. It was further pleaded that they have discharged their duties in accordance with law and on the basis of information and investigation conducted and no claim against them was maintainable. The plaintiff filed a replication in which the plaintiff denied all the said allegations. In the said state of records and particularly since the suit is found to be barred by time, I refrain from returning any finding on as to whether the action of the

defendants necessitating impleadment of the defendants in order 39 Rule 2A of the CPC was in connection with the administration and or in the exercise of or colour of any duty.

14. The suit is, therefore, dismissed as barred by time. However, in the facts and circumstances, the parties are left to bear their own costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

January 13, 2009
PP