

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment reserved on: 28.09.2011

Judgment delivered on: 14.10.2011

C.S. (OS). No.47 of 2009

Rajeev Aggarwal

.....Plaintiff

Through: Mr. Sanjoy Ghosh, Adv.

Versus

Vijay Kumar Diwakar & Anr.

.....Defendants

Through: The defendants are ex-parte

CORAM:-

HON'BLE MR JUSTICE MANMOHAN SINGH

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 Digest ? Yes

MANMOHAN SINGH, J.

1. The defendants are ex-parte. The instant suit for compensation/damages for defamation and permanent injunction has been filed by the plaintiff seeking damages and compensation for the disrepute caused to the plaintiff on account of publication of two defamatory articles dated 11.09.2008 (Exhibit PW-1/1) and 16.11.2008 (Exhibit PW-1/2).

2. Brief factual matrix of the case is that the Plaintiff has been working in the real estate sector and textile industry for the last several years having a net worth of Rs.700,00,000/-. He owns several properties and is the managing director of M/s Exclusive Overseas Pvt. Ltd. a company engaged in manufacturing and processing of textiles with an annual turnover of Rs.200,00,000/-.

3. It is averred in the plaint that on 25.08.2008 the plaintiff had made a complaint (Ex. PW-1/3) against Mr. Raj Kumar Bhandana and Mr. Anil Arora for unauthorizedly occupying Khasra No.239/1/1, 239/1/2, 239/2/2 and 239/3/1 in village Pul Pehladpur, Tehsil Kalkaji, New Delhi. On 07.09.2008, the plaintiff was summoned by the Police Officials of Chowki Pul Pehladpur, Police Station Sangam Vihar for investigating into a complaint made by Mr. Anil Arora.

4. Thereafter, on 10.09.2008 the plaintiff received a phone call from defendant No.1, who introduced himself as a “reporter” and asked the plaintiff to give him Rs.5,00,00,000/- and threatened the plaintiff that if he didn’t pay the money he would publish a defamatory article against the plaintiff that would damage the credibility and reputation of the plaintiff. The plaintiff refused to pay

him any money and immediately filed a complaint (Ex. PW-1/4) against defendant No.1 in Sanagam Vihar Police Station. On the very next day, i.e. 11.09.2008, the defendant No.1 published article (Ex. PW-1/1) titled "*Kale Karnamo Ke Vyavasai Bana Rajeev Aggarwal*" (Rajeev Aggarwal becomes businessman of black marketing) on the front page of defendant No.2's news paper "Vijay News" which had allegedly been filed by the "Crime Reporter" due to this the police officials summoned the plaintiff once again. The plaintiff issued legal notice dated 10.10.2008 (Ex. PW-1/6) to the defendants asking them to publish an unconditional apology in their news paper "Vijay News".

5. On 21.10.2008 the defendants sent a reply (Ex. PW-1/7) to the plaintiff's legal notice dated 10.10.2008 (Ex. PW-1/6) wherein it was stated that the news was based on "documentary evidence and receipts executed in favour of Shri Anil Arora" and that the plaintiff had committed fraud by dealing with DDA land.

6. Thereafter, on 12.11.2008 the police lodged an F.I.R against the plaintiff under Section 420 and 406 read with Section 34 of I.P.C. thereafter, on 16.11.2008 the defendants published another defamatory article (Ex. PW-1/2) wherein it was stated that the F.I.R

had been lodged against the plaintiff on account of the defendants article dated 11.09.2008 (Ex. PW-1/1).

7. Being aggrieved by the acts of defendants the plaintiff filed the instant suit on 09.01.2009 claiming damages to the tune of Rs.25,00,000/- and demanding that an unconditional apology published by the defendants in their news paper. The defendants were served but, as no one appeared on their behalf therefore, vide order dated 17.07.2009 the defendant Nos. 1, 2, 4, and 5 were proceeded ex-parte and on 11.12.2009 the counsel for the plaintiff made a statement in court that he wants to drop the name of defendant No.3 i.e. Tayal Offset Printing from the array of defendants thus, in view of this statement the name of defendant No. 3 was deleted from the array of defendants. None of the defendants has filed the written statement and contested the matter.

8. The plaintiff filed the ex-parte evidence by way of affidavits of PW-1 the plaintiff himself and the same is Ex. PW-1/A, PW-2 Mr. P.D. Sharma which is Ex. PW-2/A and PW-3 Mr. Bhushan Kumar Narang which is Ex. PW-3/A. Both PW-1 and PW-2 have stated in their respective affidavits that the plaintiff has suffered loss of reputation and business due to the defamatory articles published

by the defendants.

9. It is stated by the plaintiff that in a suit for damages, it is presumed that the defamatory words are false and the burden to prove that they are not false is upon the defendant (*Radheshyam Tiwari v. Eknath Dinaji Bhiwapurkar and Ors. AIR 1985 Bom 285*). However, in the present case, the burden has not discharged by the defendants and therefore, the case of the plaintiff stands proved. In the case of *S.N. M. Abdi v. Prafulla Kr. Mahanta and Ors. AIR 2002 Gauhati 75*, the High Court of Gauhati had upheld the judgment and decree and awarded Rs. 5,00,000/- to the plaintiff holding that in the absence of any written statement filed by the defendants to prove the articles published as true, the case of the plaintiff stands proved.

10. Further, it is stated by the plaintiff, that even the defense taken by the defendants in their reply to legal notice on 21.10.2008 (Exhibit PW-1/7) that the articles (Exhibit PW-1/1 and Exhibit PW-1/2) were based on documents supplied to them by Mr. Anil Arora and that, publications were carried out in public interest would not discharge the burden from the defendants because the publications were malafide and the defendants had consciously made an attempt to

malign the plaintiff without any caveats or clarifications. Therefore, the defense of fair comment in public interest is not available to the defendants. As per the law as reiterated in the case of ***Radheshyam Tiwari v. Eknath Dinaji Bhiwapurkar and Ors. (Supra)***, the defense of fair comment only protects the statement of opinions and not defamatory allegations of facts. It is one thing to comment upon or criticize even with severity the proved facts and another to assert that one is guilty of a particular act.

11. It is further stated by the plaintiff that even if it is assumed, that the defamatory articles were based on the information supplied by Mr. Anil Arora, the defendants would still be liable to pay the damages sought by the plaintiff, as the defendants failed to seek any clarifications from the plaintiff to verify the information the information supplied by Mr. Anil Arora. It is also stated that in the similar case titled as ***Sodhi Gurbachan Singh Koshan v. Babu Ram and Anr., AIR 1969 Punjab 201***, the High Court of Punjab and Haryana while decreeing a suit for damages on account of defamation had held, that it is the duty of an Editor of a newspaper to check up the news or the information that is supplied to him, before publishing

the same in his newspaper, especially when the news might be of a defamatory nature, because ultimately it is the Editor who would be held responsible for publishing any defamatory material in his paper. If he does not do so, then he has to suffer the consequences for his neglect and remissness.

12. Further, the case of the plaintiff that the imputations made in the defamatory articles were baseless and were published maliciously, stands vindicated by the order dated 22.02.2010 passed by the Press Council of India (Exhibit PW-1/9) and order dated 26.02.2010 passed by the Id. MM in criminal proceedings initiated by the plaintiff against defendants for defamation (Exhibit PW-1/10). Therefore, as held in the case titled as ***D.P. Chaudhary v. Manjulata AIR 1997 Raj. 170***, the articles are actionable if false and defamatory even if published inadvertently.

13. The plaintiff is seeking damages for defamation to the tune of Rs. 25,00,000/- along with costs of legal proceedings etc. The plaintiff has adduced evidence by way of his affidavit which has gone un rebutted. No written statement was filed by any of the defendants. Thus, the allegation made by the plaintiff stand proved.

The plaintiff has referred to the case of *S.N. M. Abdi v. Prafulla Kr. Mahanta (Supra)* wherein the High Court of Gauhati had held that while deciding the compensation the court must take into consideration (a.) the conduct of the plaintiff, (b.) his position and standing, (c.) the nature of the libel, (d.) the refusal of retraction or apology and (e.) the whole conduct of the defendant from the date of the libel to the date of the decree.

14. In the present case, the plaintiff is a man of repute and the defendants on the other hand are undeterred and have repeatedly defamed the plaintiff therefore, according to the plaintiff, the damages must be exemplary and punitive and in this regard, the plaintiff has also referred to case titled as *Rook v. Fairrie (1941) 1KB 507(CA)* wherein the case was held one of punitive damages as the cables in question therein were written and published maliciously.

15. The Court was of the view that while dealing with the damages in a libel case one is endeavouring to express in terms of money several different things which are not really susceptible of money valuation. It is further stated that in case of libel, damages can be awarded under four heads:- (1) injury to reputation (2) Injury to

feelings- the natural grief and distress which he may have felt at having being spoken of in defamatory terms, and if there has been any kind of high handed, oppressive, insulting or contumelious behaviour by the defendant which increases the mental pain and suffering caused by the defamation and may constitute injury to the plaintiff's pride and self confidence. (3) Injury to health and (4) Pecuniary loss.

16. According to the plaintiff, he is entitled to compensation under all the four heads as the news reports did not only defamed the plaintiff hurting his pride and self confidence and affected his business potentials, but the plaintiff was also put in a stressful situation injurious for his health. Therefore it is submitted that the plaintiff may be damages as claimed by him.

17. I have heard the learned counsel for the plaintiff at great length and also perused the various judgments referred by him as well as documents placed on record. The evidence produced by the plaintiff has gone unrebutted as the defendants did not chose to appear in the court nor any written statement was filed by the defendants. Therefore, the plaintiff is entitled for the relief claimed against defendants No.1 and 2 to the extent that the plaintiff would

be entitled to a sum of Rs.5 lac as compensation/damages for the defamation caused to the plaintiff on account of the publication of a news items in its edition of “Vijay News” published on 11.09.2008 as well as on 16.11.2008. The plaintiff is also entitled for cost.

18. The decree be drawn accordingly. The suit stands disposed of accordingly.

MANMOHAN SINGH, J.

OCTOBER 14, 2011