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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 3rd September, 2012

+ IA No.3415/2012 in CS(OS) 268/2011

RAJ NATH KHOSLA Plaintiff
Through Mr. Raman Kapur, Sr. Adv. with
Mr. Dhiraj Sachdeva, Adv.

versus

ACHARYA DR JOHN R BISWAS & ORS Defendants
Through Ms. Anjana Masih, Adv.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. The present order will decide the application under Order 7 Rule 11, C.P.C., 1908, presented by the defendants for the rejection of the plaint on the ground that the plaint does not disclose any cause of action for the tort of defamation.

2. The relevant averments made by the plaintiff in his plaint are reproduced as under:

The plaintiff is engaged in the business of financial services and is high income tax paying citizen. The defendants are the office

bearers of a literature society named Masihi Sahitya Sansthan. The Defendant No. 1 is the Chairman, Defendant No. 2, the Secretary and Defendant No. 3, the Manager of the above named Society. The Society is the absolute owner of the properties bearing flat no. 42 and two separate independent shops no. 42A and 42B under it. The Masihi Sahitya Sansthan, as owner of the property, Flat No. 42, Khan Market, New Delhi, entered into an agreement to sell dated 16.3.1988 with the plaintiff to hand over the said flat to the plaintiff in lieu of certain consideration. There is no dispute regarding the ownership of the said flat but dispute arose between the parties with respect to the ownership of the barsati floor i.e. the roof top of the said flat.

In January 2010, when plaintiff was carrying out reparation and renovation work on the barsati floor, some officials of the society tried to interfere by making several calls to the police and as a result a PCR van arrived at the premises. However, on inspection, everything was found in place and police rejected the baseless complaint filed by the society.

In February 2010, the society with malafide intentions, through its Secretary, who was authorized by the Chairman, filed a suit

for permanent and mandatory injunction against the plaintiff and the same is pending trial before the Hon'ble Civil Judge, Patiala House Courts, New Delhi.

The plaintiff also discovered that the defendants had made a false complaint against the plaintiff and also against the ex-officials of the society, to the SHO, Police Station Tughlaq Road, New Delhi alleging connivance and no authority to execute the documents with regard to Flat no. 42 in favour of the plaintiff which was later closed by the Investigation Officer.

3. According to the plaintiff, the defendant's wrongful statement made in the complaint as well as the civil suit against the plaintiff amounted to defamation. Such comments have brought plaintiff into ridicule and very adversely affected his impeccable reputation. Plaintiff was exposed to ridicule before nearly 1500 of his employees being called an accused of a crime which was patently false. That the slanderous and defamatory statements made by the defendants against the plaintiff were published by way of a complaint to the SHO, Police Station and in the pleadings in the Civil Suit No. 28 of 2010 before the Ld. Civil Judge, Patiala House, New Delhi.

4. Seeking rejection of the plaint through an application under Order 7 Rule 11, CPC, the learned counsel for the defendant submitted that on a bare reading of the plaint along with the documents which have been relied & filed by the plaintiff demonstrates that the suit is without cause of action, barred by law and thus liable to be rejected. The counsel submitted that the claim of the plaintiff is based upon the facts stated in the complaints made by the defendants to the lawful authorities regarding their grievances against the plaintiff. The complaints filed by the defendants on behalf of the society are still subjudice and it has not been held by any court that the allegations made by the complainant through its officials were false. The counsel submitted that the defendants had correctly approached authority/court of law for redressal of their grievances and therefore, such suit of the plaintiff is without any cause of action and consequently the plaint is liable to be rejected. The counsel also submitted that the plaintiff has filed the present suit only with the objective of entangling suit property in the litigation and to coerce the defendants to agree to the illegal demands of the plaintiff.

5. Refuting the above arguments for the rejection of the plaint under Order 7 Rule 11, CPC the counsel for the plaintiff submitted that:

Firstly, as the issues in the present case have been settled and trial has already commenced, there is, thus, no question of applicability of provisions of Order 7 Rule 11, CPC and the present application has been filed by the defendants with the sole intention to delay the present suit.

Secondly, the defendant's allegation that the complaints are subjudice before the courts is completely false. In support of this, the counsel for the plaintiff submitted that the said complaints were closed by the police authorities and the application of the defendants under section 156(3) of the Cr PC for the registration of the F.I.R. was dismissed by the learned magistrate vide order dated 5.5.2011 in CC No. 09/1. The defendants then filed a Revision Petition before the Learned Additional Session Judge, Patiala House, New Delhi, in CrI Revision No. 16 of 2011, which was also dismissed by the Learned Additional Session Judge vide order dated 31.10.2011. The civil suit filed by the defendants has also been withdrawn by the defendants. Such dismissal of

complaints by the court and the withdrawal of the civil suit by the defendants clearly establish the fact that the complaints are not subjudice and that they were falsely made to the authorities with a sole intention to tarnish the reputation of the plaintiff.

6. Based on these submissions, the counsel for the plaintiff submitted that there exists a clear cause of action on the part of the plaintiff to file the present suit and the application filed by the defendants under Order 7 Rule 11, CPC cannot be allowed.

7. I have heard Ld. counsels for the parties and given my deep thought to the arguments advanced by them.

8. The first objection raised by the plaintiff that the instant application cannot be considered by the court at such later stage affords outright rejection. The law is clear and well settled that the trial court can consider the application under Order VII Rule 11, CPC at any stage of the suit. This position was explained by the Apex court in ***Saleem Bhai & Others v. State Of Maharashtra & Ors. (2003), 1 SCC 557***, wherein it was observed that

"The trial court can exercise the power under Order VII Rule 11 Code of Civil Procedure at any stage of

the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial."

The above principle has been reiterated in ***Raptakos Brett And Co. Ltd. V. Ganesh Property*** (1998) 7 SCC 184, ***Mayar (H.K.) Ltd. And Others V. Owners And Parties, Vessel M.V. Fortune Express And Others***, (2006) 3 SCC 100 and recently in ***The Church Of Christ Charitable Trust And Educational Charitable Society, Represented By Its Chairman V. Ponniamman Educational Trust Represented By Its Chairperson/ Managing Trustee*** MANU/SC/0515/2012

9. Coming to the second objection raised by the plaintiff that the complaints are not subjudice and they have already been adjudicated in favour of the plaintiff by the court and hence proved to be false and such false statements caused defamation to the plaintiff, the court rejects the same too.

10. It is a settled law that to decide an application under Order 7 Rule 11, CPC, the court has to look into the averments made in the plaint and nothing else. Referring again to one of the above mentioned cases which has given the guidelines for deciding an

application under Order 7 Rule 11,CPC, i.e. **Saleem Bhai's**

Case(supra) wherein it was observed by the Apex Court that:-

"A perusal of order 7 rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. For the purpose of deciding an application under clauses (a) and (d) of Order 7 Rule 11,CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage..."

11. On a bare perusal of the averments in the plaint, it is a clear admission on the part of the plaintiff that the civil suit instituted by the defendants against the plaintiff is pending adjudication. Also, as far as criminal complaints are concerned, according to the plaintiff, the case has been closed by the investigation officer and the complaint filed by the defendant had been rejected. The submission of the plaintiff that the application of the defendant under section 156(3) of the Cr. P.C for the registration of the F.I.R. on the basis of said complaints before the Metropolitan Magistrate , Patiala House, New Delhi, was dismissed by the learned magistrate after considering it vide orders 5.5.2011 in CC No. 09/1 and that the revision petition filed by the defendant before the Learned Additional Session Judge, Patiala House, New Delhi, in Crl. Revision No. 16 of 2011,

was also dismissed by the Learned Additional Session Judge vide order dated 31.10.2011 and that the civil suit instituted by the defendants has also been withdrawn by the defendants cannot be looked into for deciding the present application as these developments took place later during the pendency of the present suit and due to that reason were never asserted in the plaint.

Therefore, with the averments in the plaint not establishing the fact that a competent court had declared that the complaints filed with the police authorities were false, the contention of the plaintiff that the statements made to the lawful authorities were false cannot be accepted.

12. Now, for deciding the present application on the basis of the averments made in the plaint, let us first look into the law on defamation. It would be relevant to reproduce the observations of the Apex Court in the case ***Pandey Surendra Nath Sinha v. Bageshwari Pd. AIR 1961 Pat 164*** which had discussed the law on defamation in full length. The court observed as under:

A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say,

to lower him in the estimation of right-thinking members of society generally and in particular to cause him to be shunned or avoided or regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business. Defamation, therefore, is the wrong done by a person to another's reputation by words, signs, or visible representations.

A wrong of defamation, as such, consists in the publication of a false and defamatory statement concerning another person without lawful justification.

The word 'defamation' is the generic name for the wrong; libel and slander are particular forms of it. Defamation, therefore, is of two kinds, namely, libel and slander. In libel the defamatory statement is made in some permanent and visible form in writing or otherwise recorded, such as, printing, typing, pictures, photographs, caricatures, effigies. In slander the defamatory statement or representation is expressed by speech or its equivalents, that is, in some other transitory form, whether visible or audible, such as, a nod, wink, smile, hissing, the finger-language of the deaf and dumb, gestures or inarticulate but significant sounds.

The actions of libel and slander are thus private legal remedies, the object of which is to make reparation for the private injury done by wrongful publication to a third person or persons of defamatory statements concerning the plaintiff. The defendant in these actions may prove the truth of the defamatory matter and thus show that the plaintiff has received no injury. For though there may be damage accruing from the publication, yet, if the facts published are true, the law gives no remedy by action.

In an action for libel the plaintiff should prove that the statement complained of (1)

refers to him; (2) is in writing, (3) is defamatory, and, (4) was published by the defendant to a third person or persons.

13. Deciding the issue whether statements made to the lawful authorities can be made ground for defamation, in the case of ***Pandey Surendra Nath V. Bageshwari Pd. (supra)***, it was observed that

"If a person who makes the statements has an interest or duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has as corresponding interest or duty to receive it such statement commands a privilege and cannot be made basis of an action for defamation."

14. The above principle was reiterated in the case of ***The Punjabi Bagh Cooperative Housing Society Limited v. K.L. Kishwar And Anr, 95 (2002) DLT 573*** in which the court also placed reliance on various English court judgments which are reproduced as under

In ***Stuart v. Bell (1891) 2 Q.B. 354*** and ***Smythson v. Cramp, 1943 1 All E.R. 326***, it was held that the occasion is privileged where the defendant has an interest in making the communication to the third party, and the third party has a corresponding interest in receiving it. Reciprocity of interest is essential. In ***Hebditch v. MacIlwaine, (1894) 2 Q.B. 54***, it was

observed that the interest must exist in the party to whom the communication is made as well as the party making it. It is sufficient that the defendants honestly and reasonably believe that the person whom he made communication had an interest in the subject matter thereof.

15. It has been held in ***Shri Ram Singh Batra v. Smt. Sharan Premi, 133 (2006) DLT 126***, that

"A complaint to a lawful authority is not actionable if it is not defamatory per-se unless it is established that the complaint is false and defamatory. Thus, till before the court of law it is not established that the FIR in question is based on a false allegation, no action is even maintainable."

16. Same has been held in the case of ***Prof. Imtiaz Ahmad v. Durdana Zamir, 2009 (109) DRJ 357***, wherein it was observed that:-

"Whenever a person makes a complaint against someone to the lawful authorities and in that complaint he makes imputations against the person complained of, it cannot be considered that the person has publicized or publically made defamatory averments against a person. If a prosecution is initiated against the person on the basis of such averments and the person is acquitted holding that the complaint was false, then only a cause of action arises against the complainant for launching a case for false prosecution or for damages on other grounds. Until and unless a competent court holds that complaint was false, no cause of action arises. Approaching a competent authority and praying that the authority should come to the rescue of the complainant

and prevent the interference of the plaintiff (in the family affairs of the defendant) cannot amount to defamatory imputation per-se and even if it is published, it does not tend to show that the defendant had tend to show that the defendant had intended to lower the reputation of the plaintiff."

17. Seeing the facts of the present case in the light of well settled law as enunciated above, the complaints that are filed by the defendants against the plaintiff are made to the lawful authorities. As we have already discussed, what has to be seen in deciding the application under Order 7 Rule 11, CPC, are the averments in the plaint, and no subsequent facts, not even the written statement can be considered in deciding such application. It is clear, on the perusal of the averments made in the plaint, that the present case is not that the court has declared such complaints made by the defendants to be false. Even if we consider the subsequent developments in the case, which are, indeed, not required to decide the present application, it is evident from the order of the Metropolitan Magistrate, Patiala House, New Delhi that the court has disallowed the application of the defendants under 156(3) CrPC for the registration of an F.I.R. but had allowed the complainant/defendants to lead pre - summoning evidence.

Hence, it is not the case that the complaints filed by the defendants have been declared to be false by the court. The complaints are still under adjudication. Same is the position with respect to the civil suit filed by the defendants against the plaintiff which is still to be adjudicated upon and which, as of now, has been withdrawn by the defendants with the permission of the court to re-file it after completion of certain formalities.

18. In the background of the above facts, it is held that the plaint in the present suit does not disclose any cause of action and the same in fact is pre-mature and therefore the same deserves to be rejected under Order 7 Rule 11, CPC, 1908.

19. It is ordered accordingly.

3rd September, 2012

KAILASH GAMBHIR, J