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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 306/2010

ASHWANI KUMAR SARAF

..... Plaintiff

Through Mr. Dinesh Agnani, Sr. Advocate with
Mr. Sanjay Abbot, Adv.

versus

M.P. MANSINGHKA & ANR

..... Defendant

Through Mr. Kewal S. Ahuja for D-1
Mr. Rajendra Singhavi for D-2

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

ORDER

% **06.09.2012**

I.A. No. 15284/2011 (Order 7 Rule 11 of CPC)

By this order I shall dispose of the application filed by the Defendant No.1 under Order 7 Rule 11 of CPC seeking rejection of the Plaintiff.

The rejection of plaintiff has been sought by the defendant no.1 merely on the ground that the plaintiff does not have any locus standi to file the present suit against the defendant no.1, as all the alleged publications attributed to defendant no.1 are against Sudhansu Ji Maharaj and no personal injury or damage has been

caused to the esteem or reputation of the plaintiff. As per the defendant no.1, it would be Sudhanshu Ji Maharaj who alone would have the right to seek his remedy against the defendant no.1; if at all any such remedy is available in such a situation. Arguing the present application, Mr. Anil Sapra, learned Senior Advocate appearing for the defendant no.1 has placed strong reliance on the judgment of this court in *Smt. Harsh Mendiratta Vs. Dr. Maharaj Singh & Ors.*, 95(2002) DLT 78, wherein this court took a firm view that action for defamation can be maintained only by a person defamed and not by his friends, relatives and family members. Drawing strength from the said judgment, counsel for the defendant no.1 submits that the plaintiff claims himself to be a disciple of Shri Sudhanshu Ji Maharaj and has filed the present suit for permanent injunction in order to restrain the defendant no.1 in his individual capacity to publish any kind of defamatory articles, posters etc. The contention raised by the counsel for the defendant no.1 is that if through the articles published by the defendant no.1, any defamation has been caused then the same has been caused either to Sudhanshu Ji Maharaj or to the Mission/defendant no.2 of which he is the Chairman. In the present suit, neither the defendant no.2 Society has come forward to take any action, nor the Chairman Shri

Sudhanshu Ji Maharaj himself, therefore, at the very behest, the plaintiff being an alleged disciple cannot stand in their place and claim any action of injunction against the defendant no.1. Counsel thus submits that the suit filed by the plaintiff is clearly barred by Section 41(j) of the Specific Relief Act, which precludes a person who has no personal interest in the matter to seek any grant of injunction in his favour. Counsel also challenges the jurisdiction of this court to try or entertain the present suit as the alleged defamatory material was not published in Delhi. In support of his arguments, counsel for the defendant places reliance on the judgment of this court reported in *Indian Potash Ltd. (M/s.) Vs. Media Contents & Communication Services (India) Pvt. Ltd. & Anr., 2009 IV AD (Delhi) 28*. The defendant no.1 further takes a stand that the plaintiff has no cause of action to file the present suit, as in the present suit the plaintiff seeks to restrain the defendant no.1 from any future publication of the defamatory material in any newspaper, pamphlets or poster etc., as any restraint order by this court against the defendant no.1 will curtail his fundamental right to express his views freely.

This application filed by the defendant no.1 has been strongly opposed by the plaintiff. In the reply filed by the plaintiff, the stand

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taken by the plaintiff is that, being a true disciple of defendant no.2 and its Chairman, the plaintiff does have a locus standi to file the present suit. The plaintiff further states that the defamatory articles published by the defendant no.1 have walked over the sentiments of the plaintiff and the same have infringed the rights of the plaintiff and disparaged his well-trimmed reputation and goodwill in the society, therefore, it cannot be said that the plaintiff has no personal interest in the matter to maintain the present suit for permanent injunction. On the issue of jurisdiction, the plaintiff contends that the cause of action has arisen at New Delhi as the Camp of the defendant no.2 was being held from 19th to 23th February 2010 at New Delhi. The plaintiff also refers to various averments in the plaint to support the maintainability of the present suit. Counsel for the plaintiff, Mr. Dinesh Agnani, learned Senior Advocate submits that the present application filed by the defendant no.1 is not hit by Order 7 Rule 11 of CPC as the same does not satisfy the ingredients of the said provision. Distinguishing the judgments cited by the counsel for the defendant no.1, counsel for the plaintiff submits, that the legal principles laid down in the said judgments would not be applicable to the facts of the present case as the plaintiff has not filed the suit for damages but he is

merely seeking permanent injunction and the said authorities cited by the counsel for the defendant deal with the case of defamation.

I have heard learned counsel for the parties at considerable length and given my anxious consideration to the arguments advanced by them.

From the above submissions made by the rival parties it is clear that the plaintiff is an ardent follower of the teaching of Shri Sudhanshu Ji Maharaj who happens to be a Chairman of the defendant no.2. The plaintiff while attending the camp at Nagpur, Thane as well as Ujjain came across some of the alleged advertisements and other material which as per the plaintiff are defamatory and malicious, published with an intent to disrepute Shri Sudhanshu Ji Maharaj and the defendant no.2/Society. The plaintiff being a disciple /follower was miffed by such defamatory advertisements and articles and hence approached this court to seek a decree for permanent injunction against the defendant no.1. The defendant no.2 in his written statement has justified his act of publishing such material against Shri Sudhanshu Ji Maharaj and the defendant no.2/Society by highlighting various irregularities committed by Shri Sudhanshu Ji Maharaj so much so even to the extent of issuing bogus and fraudulent 80-G Certificates by the

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defendant no.2/Society. This court is not inclined to discuss the details of allegations and counter allegations leveled by the plaintiff and defendant no.1 in their respective pleadings.

In my opinion, the suit filed by the plaintiff deserves rejection under Section 7 Rule 11 of Code of Civil Procedure as the same is clearly barred by Section 41(j) of the Specific Relief Act.

In *Harish Mendiratta's case (Supra)*, this court took a view that action for defamation is maintainable only by a person who is defamed and not by his friends and family members. It was also held that if the family members and friends were allowed to file suit for defamation then it would open flood gates of litigation. The Hon'ble Supreme Court in paragraph 13 and 14 of the judgment have categorically stated as under:

"13. Moreover the settled position of the law appears to be that an action for defamation is maintainable only by the person who is defamed and not by his friends, relatives and family member. Learned Counsel for the defendants have cited the following case:

- 1. Suubbaiyar V. Krishtnaiyar, ILR Vol.1 Mad 383.*
- 2. Daya V. Param Sukh, ILR Vol.II ALL.104*
- 3. Bramanna V. Rama Krishna, ILR 1895 XVIII Mad. 215.*
- 4. Luckumsey Rowji V. Hurbun Nursery and others, ILR (Vol.5) 1881 page 580.*

14. in all these cases it was held that an action for defamation can be instituted only by a person who is defamed and not by other viz. family members, relatives, an friends etc. if family members, friends were allowed to file a suit for damages for defamation it will open flood gates of litigation. In ILR Vol.I Mad. 383, the Court disallowed plaintiff's claim for damages for defamation of

his sister. In ILR Vol.II ALL. 104, the suit for defamation brought by the father for defamation of his daughter, was dismissed as not maintainable. In ILR 1895 XVIII Mad. 215, the suit brought by the husband for defamation of his wife by the defendant, was held to be non-maintainable."

In the present suit also, the plaintiff has filed the suit for permanent injunction being just a disciple of Sudhanshu Ji Maharaj and in his individual capacity being a part of defendant no.2 Society. Admittedly, neither the defendant no.2 nor Sudhanshu Ji Maharaj have come to contest or have initiated any kind of action against the alleged defamatory advertisement or other material circulated or published by the defendant no.1 and once the concerned person and the body have not shown any concern to the alleged disparaging material, the plaintiff being a disciple cannot file a suit as a proxy on their behalf.

This court also does not subscribe to the arguments put forth by the counsel for the plaintiff that the said principles enunciated by the Counsel for the defendants would apply only to a suit for damages and not to a suit for permanent injunction. For maintaining the suit for permanent injunction the first ingredient to be satisfied by the plaintiff, in approaching this court is, that he has a legal right to file the said suit and this principle of legal right can be tested from the fact whether the plaintiff has any personal

interest in the matter.

In the light of the above, the present suit being barred by Section 41(j) of the Specific Relief Act merits rejection under Order 7 Rule 11 of CPC. This court would not like to deal with other aspects of the case, as the decision on the above issue successfully settles down the entire controversy.

The present application, accordingly, stands disposed of.

I.A. No.3637/2011 (S. 39(2A) of CPC)

So far the application moved by the plaintiff under Order 39 Rule 2A CPC is concerned alleging disobedience on the part of the defendants in violation of the said order dated 23.02 2010 passed by this Court, this Court in view of the fact that the present suit filed by the plaintiff is being rejected under Order 7 Rule 11 CPC is not inclined to take any harsh view on the alleged disobedience on part of the defendants to the said injunction order. However, considering the fact that no reasonable explanation has come forth from the counsel representing defendant No.1, for sending derogatory emails dated 13.09.2010 etc., when the restraint order was already in force, costs of Rs. 20,000/ is imposed upon the defendant no.1 Cost of Rs.20,000/- shall be deposited by defendant No.1 with Delhi High

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Court Lawyers' Social Security and Welfare Fund within a period of
four weeks.



KAILASH GAMBHIR, J

SEPTEMBER 06, 2012
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