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CRP (MD) No.1628 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	14.07.2023
Pronounced on	17.11.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CRP (MD) No.1628 of 2021

and

CMP (MD).No.8862 of 2021

M.D.Poornachare

... Petitioner/defendant

Vs.

S.K.Naganathan

... Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to call for the records in O.S.No.958 of 2021 on the file of the learned II Additional Subordinate Court, Madurai, strike the said O.S.No.958 of 2021.

For Petitioner : Mr.K.N.Thambi

For Respondent : Mr.S.K.Naganathan
Respondent-in-person



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ORDER

The revision petition is preferred to strike off the plaint in O.S.No.958 of 2021 on the file of the learned II Additional Subordinate Court, Madurai.

2. According to the Revision Petitioner, the respondent has filed a complaint before the Bar Council of Tamil Nadu and Pondicherry in complaint No.510 of 2019 against the petitioner. The case of the respondent in the said complaint, in a nut shell is that, the respondent filed a petition in P.O.P.No.10/2006 on the file of the learned Principal District Judge of Madurai against one M.R.Pushpavalli, by stating that the present petitioner in his professional capacity as an advocate appeared for the said M.R.Pushpavalli in the said P.O.P.No.10/2006, and that the documents were exhibited on behalf of the said M.R.Pushpavalli. It is further stated that in the said complaint that the P.O.P No. 10/2006 was dismissed on 3.12.2007 and the revision petitioner on 16.4.2008 got return of the documents filed by his client which was marked as Exhibits R1 and R2, without giving notice to the respondent counsel. However, an endorsement of no objection for returning of the documents was made in the petition for return of documents. The said



endorsement was not made by the learned counsel for the revision petitioner.

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3. The Bar Council of Tamil Nadu and Pondicherry issued notice to the present petitioner. The Petitioner also filed his comments for the said petition. Finally, the Bar council, by Resolution No.488/2020 dated 19.12.2020, dropped the above said complaint preferred by the respondent. Against, that, the present respondent filed a writ petition in W.P.(MD) No. 10043 of 2021 before this Court against the Secretary of the Bar council and the present petitioner as respondents 1 and 2 respectively. The present petitioner entered appearance in the said writ petition, and the same is pending.

4. While matters were stated as above, the present petitioner received summons in suit in O.S.No.958 of 2021 on the file of the learned II Additional Subordinate Judge of Madurai, seeking a declaration that the present petitioner has committed fraud before the Court and for a relief of Compensation of Rs. 1,10,000/- with interest against the petitioner. In the plaint filed in O.S.No.958 of 2021, it is stated that the petitioner in his reply to the Bar Council has stated that the respondent had sent threatening letters to several persons and made threatening phone calls to several persons.



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5. Aggrieved by the above, the revision petitioner preferred the present civil revision petition to strike off the plaint in O.S.No.958 of 2021 on the file of the learned II Additional Subordinate Judge, Madurai.

6. According to the learned Counsel appearing for the revision petitioner, the suit in O.S.No.958 of 2021 is an abuse of process of law and deserves to be struck off. He would submit that the subject matter in the present suit is the very same matter in the complaint filed by the respondent before the Bar Council of Tamil Nadu and Pondicherry and the said complaint before the Bar Council was already dropped and therefore, the present suit is an abuse of process of Court and the same is liable to be struck off. The respondent against the rejection of his complaint, in Complaint No. 510 of 2019 preferred the writ petition in W.P.No.10043 of 2021 and while the same is pending, the parallel suit is an abuse of process of law. It is submitted that the respondent while prosecuting the writ petition, the respondent was only forum shopping by filing the suit and is liable to be struck off. His further contention is that the suit is not civil in nature and the plaintiff is not entitled to get defamatory declaration against the defendant



which is impermissible under Section 34 of the Specific Relief Act and therefore, the suit is liable to be dismissed. He would further contend that the functioning of the revision petitioner/defendant is a statutory one under the Advocates Act, 1961 and Conduct Rules framed there under and the same is statutorily governed by the said Act and Rules which provides for proceedings including disciplinary proceedings for misconduct. Therefore, the present suit for general relief are liable to be struck off. It is further contended that there is no cause of action for the suit and no defamatory statement is made by the petitioner in his reply to the complaint No.510 of 2009 filed before the Bar Council of Tamil Nadu and Pondicherry. The revision petitioner received the Exhibits in P.O.P.No.10 of 2006 on 16.04.2008 and the suit was filed in the year 2020 after lapse of 12 years. Therefore, the suit is barred by limitation. Since the Bar Council which is the Competent Authority has not given any finding against the revision petitioner but has dismissed the complaint of the respondent, there is no basis for filing the suit. He further contended that the only remedy for the respondent lies before the Court where P.O.P.No.10/2006 was filed and therefore, the present suit is liable to be struck off. To support his contention he has relied upon the following decision cases :



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1.AIR 1975 SC 2238

2.AIR 2001 SC 3205

3. 82 LW 342

4.AIR 1975 SC 2238

5.AIR 2001 SC 3205

6. (1998) 3 SCC 573

7.2013 (3) MWN (Civil) 702

8.(2003) 6 SCC 675

9.(1979) 4 SC 686

10.2011(1) SCC 503

7.On the other hand, the respondent counsel would submit that the respondent as plaintiff filed the suit in O.S.No.958 of 2021 on the file of the learned Principal District Judge, Madurai for the following reliefs:

1. பிரதிவாதி மதுரை நீதிமன்ற நடவடிக்கையில் பிராடுத்தனம் செய்துள்ளதால் மதுரை வழக்கிறஞர் M.D.பூர்ணாச்சாரி நீதிமன்ற வழக்கில் பிராடுத்தனம் செய்தவர் என்று விளம்புகை செய்தும்,
2. வாதிக்கு நகர ஈடாக பிரதிவாதி ரூ.1,10,000/- (ஒரு லட்சத்து பத்தாயிரம்) மட்டும் செலுத்தவும.
3. ரூ.1,10,000/- க்கு வழக்கு தாக்கல் செய்தது முதல் தீர்ப்பு தேதி வரை ரூ.100/- க்கு மாதம் 1க்கு ரூ.2/- வீதம் வட்டியை



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பிரதிவாதி வாதிக்கு செலுத்தவும்,

4. வழக்கின் செலவு தொகையை பிரதிவாதி வாதிக்கு செலுத்தவும்.

5. இந்த வழக்கின் தன்மைக்கும். நன்மைக்கும் ஏற்ப சமூகம் நீதிமன்றம் கருதும் இன்னபிற பரிகாரங்கள் வழங்கியும் வாதிக்கு ஆதரவாக தீர்ப்பு செய்ய பிரார்த்திக்கப்படுகிறது.

8.The learned counsel would submit that the respondent/plaintiff preferred the complaint before the Bar Council of Tamil Nadu and Pondicherry. The revision petitioner/defendant submitted his reply in which he has not stated that the respondent/Plaintiff had threatened the revision petitioner/defendant through telephone calls and letters. The respondent/plaintiff never made such threatening calls or written letters to the revision petitioner. The learned counsel for the respondent would submit that the reply given by the Revision petitioner/defendant before the Bar Council of Tamil Nadu and Puducherry with defamatory allegations made in to file the above suit for compensation. The revision petitioner/defendant is liable to pay damages to the respondent/plaintiff. The above conduct of the revision petitioner/defendant was brought to the knowledge of the respondent/plaintiff only on 03.05.2019 and therefore, the suit is not barred by limitation. The suit is not liable to be struck off. The suit filed by the respondent/plaintiff



requires adjudication and therefore, cannot be struck off. The learned counsel would submit that the disputed question of fact can be decided only based on the evidence let in by the parties during trial and further submitted that the plaint averments would reveal that there is cause of action for filing the suit and the suit is not abuse of process of Court. He would further submit that various contentions made by the learned counsel appearing for the revision petitioner can be decided only after trial and the plaint cannot be struck off at the threshold. Hence, the suit filed by the respondent/plaintiff requires adjudication and therefore, it is not liable to be struck off.

9. Heard both sides and perused the records.

10. The petitioner is seeking for striking of the plaint on the facts, which are disputed by the respondent. This Court has ample power under Article 227 of the constitution of India to strike off the plaint and the same shall be exercised with caution and circumspection, that to, in rarest of rare cases, in order to avoid miscarriage of justice. In the present case, the respondent/plaintiff has filed a complaint before the Bar Council of Tamil Nadu and puducherry in complaint No.510 of 2019 against the revision



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petitioner. The contention of the respondent in the said complaint is that the respondent filed a petition in P.O.P.No.10 of 2006 on the file of the learned Principal District Judge, Madurai against one M.R.Pushpavalli and the present petitioner in his professional capacity as an Advocate has appeared for the said M.R.Pushpavalli. Certain documents were exhibited on behalf of the said M.R.Pushpavalli in the said P.O.P.No.10 of 2006. It is further stated in the complaint that the said P.O.P.No.10 of 2006 was dismissed on 03.12.2007 and the present petitioner on 16.04.2008 got return of his clients two documents marked as Ex.R.1 and R.2 in the above said P.O.P.No.10 of 2006 without giving notice to the present respondent's counsel but with an endorsement of no objection for returning the documents. The endorsement was not made by the respondent's counsel. The Bar Council of Tamil Nadu and Pondicherry by resolution No.488 of 2020 dated 19.02.2020 dropped action against the complaint filed by the respondent.

11. Aggrieved by this, the respondent preferred a Writ petition W.P.No. 10043 of 2021 before this Court against the Secretary of the Bar Council and against the revision petitioner as respondents 1 and 2 respectively. The revision petitioner entered appearance in the said writ petition and the same is



pending. While so, the respondent as plaintiff filed a suit in O.S.No.958 of 2021 for damages on the file of the learned II Additional Subordinate Court, Madurai. Since the respondent/plaintiff has preferred the writ petition in W.P.No.10043 of 2021 before this Court against the rejection of his complaint by the Bar Council of Tamil Nadu and Pondicherry, a parallel suit in O.S.No.958 of 2021 is only an abuse of process of law and only a forum shopping.

12.Moreover, the functioning of the revision petitioner/defendant is governed by the Advocates Act 1961, which includes disciplinary proceedings for misconduct. The respondent has no locus standi to file civil suit for the reliefs claimed in the plaint. Moreover, the ingredients for filing a suit for defamation is not averred in the plaint pleadings. The Bar Council of Tamil Nadu and Pondicherry which is the competent authority has not given any finding against the petitioner and has dismissed the complaint. Therefore, there is no basis for the suit and since the respondent/plaintiff has preferred a parallel proceedings by way of filing a writ petition before this Court, the suit filed by the respondent is nothing but only an abuse of process of law.

13.The remedy available for the respondent is not denied and a similar



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relief is already sought by the respondent by way of filing the writ petition against the order passed by the Bar Council of Tamil Nadu and Pondicherry.

The power under Article 227 of the Constitution of India is extra-ordinary, discretionary power which can be exercised to strike off the proceedings which is frivolous or vexatious and fraudulent in the initial stage itself. The power to strike off the plaint can be exercised even if the defendant did not file an application to reject the plaint under Order 7 Rule 11 of C.P.C. The scope of power under Article 227 of the Constitution of India is to prevent waste of time of Court as well as to prevent hardship and harassment to the other side.

14.Considering the above facts, the suit filed by the respondent/plaintiff in O.S.No.958 of 2021 is clearly an abuse of process of law. The judgments relied on by the learned counsel appearing for the revision petitioner are applicable to the facts of the present case. Therefore, the plaint in O.S.No.958 of 2021 is liable to be struck off and it is hereby struck off.



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15. In the result, the Civil Revision Petition is allowed. The learned II Additional Subordinate Court, Madurai, is directed to return the plaint in O.S.No.958 of 2021. No cost. Consequently, connected miscellaneous petition is closed.

17.11.2023

vsn

To

The II Additional Subordinate Court, Madurai,



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K.GOVINDARAJAN THILAKAVADI.J,

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