

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CFA No. 120/2011

Abdul Gani Bhat

...Petitioner(s)

Through: None

Vs.

Dr. Abdul Rashid Sahaf

...Respondent(s)

Through: Mr. Sheikh Mushtaq, Advocate

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

O R D E R

- 1.** The Court of learned First Additional District Judge, Srinagar came to deal with a civil suit on its **File No. 03/2004** instituted on **20.09.2004** preferred by the appellant herein-Abdul Gani Bhat, and dismissed the same by virtue of a judgement and decree dated **10.09.2011**.
- 2.** The respondent herein-Dr. Abdul Rashid Sahaf, was the sole defendant in the suit bearing reference as a retired

caretaker Principal of Islamia College of Science and Commerce, Srinagar.

3. In his suit, the appellant came up with allegations and assertions that during his stint in the faculty of Islamia College of Science and Commerce, Srinagar from April 1968 to 2001 before superannuating on **30.04.2001**, he had served the Institution with the best of his capabilities and abilities and had also brought reputation to the Institution being served by him.
4. The appellant came to aver that the respondent came to serve as a caretaker Principal of the educational institution of Islamia College of Science and Commerce, Srinagar, upon the retirement of Abdul Gaffar Bhat, the Principal of said Institution in April 1998. The respondent, on account of his posting as a caretaker Principal, was alleged to have subjected the appellant to harassment and victimization by relieving the appellant of his legitimate duties even to the extent of upgrading some tainted faculty as an overall Incharge so as to downgrade and downplay the appellant's service and credentials.

5. The alleged incidents whereby the appellant intended to paint and project his alleged harassment as a faculty member of Islamia College, Science and Commerce, Srinagar, under the principalship of the respondent as a caretaker Principal, have been set out in the plaint to the extent of stating that a criminal defamation case was initiated by him against the respondent in June 2001 in which cognizance came to be taken resulting in the conviction of the respondent for three months imprisonment and a fine of Rs.5000/- but which judgement came to be overturned in an appeal by the Court of Sessions Judge, Srinagar.
6. On the basis of his pleadings, the appellant sought a money decree of Rs.5.00 lakhs as just compensation and damages for the alleged wrong done to the appellant and to his reputation by the respondent.
7. The respondent appeared in the suit to contest by filing a written statement meeting each and every allegation of the appellant and throwing a challenge.
8. The appellant came forward with the submission of a heavy load of documents in support of his averments in the

plaint and obviously were meant to proved as an evidence to be taken in the civil suit given the nature of the allegations as made in the plaint which were purportedly documents' drawn and related.

9. The court of learned First Additional District Judge, Srinagar framed ten issues of law and facts in a case which are reproduced as under:

- (1) Whether the defendant on 04.07.1998 in the absence of the plaintiff convened a meeting of college employees in which a resolution containing defamation statement against the plaintiff was prepared and circulated in the college employees? OPP.
- (2) Whether the defendant filed the document on 20.07.2002 in the court of Sub-Registrar (JMIC), Srinagar in a criminal case pending against him containing the defamatory statements against the appellant? OPP.
- (3) Whether the defamatory statement contained in the resolution dated 04.07.1998 and the document filed before the court of Sub-Registrar (JMIC), Srinagar by the defendant has damaged, harmed and injured the reputation, status, name and fame, respect and honour of the plaintiff? OPP.
- (4) Whether the appellant is entitled to compensation from the defendant? OPP.
- (5) Whether the defamatory statement contained in the resolution and the documents referred to in issue No.1 and 2 are based on facts? OPD.
- (6) Whether the plaintiff has got no cause of action against the defendant? OPD.
- (7) Whether the suit of plaintiff is barred by law? OPD.
- (8) Whether the suit of the plaintiff is liable to be dismissed for non-joinder of necessary parties? OPD.

- (9) Whether the suit of the plaintiff is time barred?
OPD.
- (10) Relief.

10. Evidence from the end of the appellant was that he examined himself as his own witness deeming it fit not to bring in any other witness to depose in support of his case and to prove the documents accompanying the plaint on the basis whereof the appellant was pressing his claim for damages against the respondent.

11. Likewise the respondent also appeared as his own witness in support of his written statement without producing any other evidence be it witness-wise or document-wise.

12. The Court of First Additional District Judge, Srinagar came up with issue-wise finding.

13. With respect to issue No.1, as to whether the respondent on **04.07.1998** in absence of the appellant convened a meeting of college employees in which resolution containing defamation statement against the appellant was prepared and circulated in the college employees, same came to be held not proved because of finding that there is nothing defamatory in nature with respect to the words used in the

resolution so as to count as harming, injuring and lowering the reputation of the appellant.

14. On issue No.2 as to whether the respondent filed the document on **20.07.2002** in the court of Sub-Registrar (JMIC), Srinagar in a criminal case pending against him containing the defamatory statements against the appellant, the trial court came to finding that though the respondent had filed documents on **20.07.2002** in the court of Sub-Registrar (JMIC), Srinagar in a criminal case pending against the respondent but the appellant has failed to prove that said documents so produced by the respondent in a legal proceeding contained defamatory statement against the appellant and, thus, this issue was again proved against the appellant.

15. On issue No.3 as to whether the defamatory statement contained in the resolution dated **04.07.1998** and the document filed before the court of Sub-Registrar (JMIC), Srinagar by the respondent has damaged, harmed and injured the reputation, status, name and fame, respect and honour of the appellant, the court below came to hold that no evidence brought on record to show and suggest that

the reputation , status, name and fame, respect and honour of the appellant was damaged, harmed and injured, particularly when there was no supporting witness coming forward to depose on that count in support of the appellant's sole testimony which was of a self-serving nature. Thus, the appellant was held to have failed to prove that his reputation, status, name and fame, respect and honour stood damaged, harmed and injured from the end of respondent.

16. On issue No.4 as to whether the appellant is entitled to compensation from the respondent, the court below came to finding that since the appellant had failed to prove the preceding issues, as such, this issue was also held to be against the appellant.

17. On issue No.5 as to whether the defamatory statement contained in the resolution and the documents referred to in issue No.1 and 2 are based on facts, the said issue was found to have become redundant because of failure on the part of the appellant to prove that the resolution and the documents referred to in issue No.1 and 2 were defamatory in nature.

- 18.** On issue No.6 as to whether the appellant has got no cause of action against the respondent, the court below came to finding that the appellant had no cause of action to sue the respondent.
- 19.** Finding on issue No.7 about the suit barred by law, the same was held in favour of the appellant but with no productive purpose.
- 20.** On issue No.8 as to whether the suit of the appellant is bad for non-joinder of necessary parties, the court below came to hold that all the staff members who were privy and signatories to the resolution in reference objected to by the appellant were necessary parties to be impleaded in the suit as co-defendants and, therefore, the suit on that count was also not maintainable.
- 21.** On issue No.9 as to whether the suit of the appellant is time barred, the court below came to hold that the suit is time barred by purported reference to the cause of action having accrued in favour of the appellant on **20.11.2022**, whereas the period of limitation for damages claimed by the appellant is one year under J&K Limitation Act, Samvat, 1995.

22. The appellant came forward with the institution of the present appeal on **16.11.2011**. The appeal preferred by the appellant is having an inherent deficiency of non-payment of court fees which otherwise was paid by the appellant for a civil suit and same amount of court fees was meant to be payable by the appellant with respect to his civil first appeal.

23. Be that as it may, the appellant has gone on a long narrative in his memo of appeal without adverting to the core of the case as to how come without proving any fact on record and any document on record in the manner in which the same are meant to be proved for the purpose of seeking a judgment in favour as a plaintiff against a person as a defendant, the appellant expected the trial court to decree the suit of the appellant. Mere narrative does not stand for evidence in a civil suit and the same remains as a demand in a civil first appeal where examination of facts is available co-extensively to be done by the appellate court. It is a well-established dictum of law that he is supposed to prove who alleges and not who denies.

24. The appellant came up with the allegations without proof.

The respondent came up with a denial and need not to prove his denial.

25. In view of the aforesaid, this court finds no basis whatsoever be it legal or factual to allow the civil first appeal of the appellant, which is, accordingly, **dismissed** without costs.

26. This case was heard and reserved on 14.03.2024 with the order pronounced then that the appeal shall stand dismissed and reasoned order to follow. Today, the said order is being passed.

(RAHUL BHARTI)
JUDGE

SRINAGAR:
28.07.2026
Manzoor

Whether the judgment is speaking	:	Yes / No
Whether the judgment is reportable	:	Yes / No