

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Regular Second Appeal No.4443 of 2011 (O&M)

Date of decision: 27.4.2015

Som Veer

... Appellant

Versus

Prof. Anand Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Mahesh Saxena, Advocate, for
Mr.Ravi Verma, Advocate
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

CM No.12850-C-2011

For the reasons stated in the application, the delay in re-filing
the appeal is condoned.

CM No.12851-C-2011

The Court fee paid under the amended Court Fee Act has been
made good. Therefore, the application is allowed as proper Court fee has
been affixed on the appeal, though belatedly, which will relate back to the
date of the appeal.

RSA No.4443 of 2011

This is plaintiff's second appeal in a suit for damages brought
against the defendant. The plaintiff was at the relevant time working as a

Junior Engineer with HUDA and claimed in the suit that he held a responsible post in the Department and enjoyed very good reputation and was known for his honesty. His service record was clean. It was the say of the plaintiff that the defendant, who is a Professor, developed 'intimacy' with the plaintiff and started visiting the plaintiff in his office. The plaintiff entertained the defendant because he was a Professor. One day, the defendant approached him requesting a favour to obtain for him a completion certificate of his house in Sector 31, Gurgaon. The plaintiff asked him to see the person concerned and to complete the formalities as required by the Department. Moreover, Sector 31 territory was not under his charge and he could not directly be of any help. The relationship soured which led the defendant to file a complaint against the plaintiff to the Administrator, HUDA. Departmental enquiries were held against the plaintiff and he was found innocent of the imputation of misconduct. All the allegations levelled against him by the defendant are baseless. The result of the enquiry was communicated to the defendant vide letter sent in November, 2000. The defendant threatened him with further complaints even if they were to be made anonymously. In making false complaints, the plaintiff was wronged by the defendant which led him to file the suit for damages claiming ₹ 5 lacs for harassment, mental pain and agony, with interest @ 24% per annum.

On notice, the suit was contested by the defendant by filing written statement. He took several stock objections. The plaintiff had been a tenant in the house of the defendant. He was requested to pay the house rent and other charges with respect to electricity and water etc. for use and

occupation of the first floor of the house. The complaints made by defendant were genuine. The plaintiff filed a complaint against the defendant and provoked HUDA authorities in disconnecting the plaintiff's sewer connection. The plaintiff exploited and blackmailed the defendant and damaged his bath room, water fittings, the mirror over sink and wooden fittings in the kitchen while vacating the house. The plaintiff being in a position of strength had managed to manipulate the proceedings of the complaints. When the defendant met with the dealing hand in the accounts branch in HUDA office, he found that the plaintiff had submitted a false and bogus rent receipts of ₹ 1500/- per month which were attached with the income tax statement of the plaintiff for the year 1999-2000. The defendant filed a complaint in October, 2000 against the plaintiff with the Vigilance Bureau at Chandigarh for forgery in making fake rent receipts. On receiving notice from the Vigilance Bureau, Chandigarh, the plaintiff apologized and felt sorry for his misdeeds and for submitting forged and fake receipts to claim house rent allowance from HUDA. The matter was compromised between the parties at the instance of three relatives of the plaintiff and undertook to give a written undertaking compromising the matter in writing. After sometime, the plaintiff tried to harass the defendant and filed a false complaint against him containing bogus photographs of the house of the defendant which was proved bogus after departmental enquiry. The defendant was given a clean chit by the department. The other allegations in the complaint were denied.

The plaintiff filed a replication to the written statement reiterating the averments made in the plaint.

Parties went to trial on the following issues : -

1. Whether the plaintiff is entitled to recover Rs.5 lacs along with interest at the rate of 24% per annum from the defendant on the grounds as alleged in the plaint by way of damages? OPP.
2. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Relief.

Parties led their oral and documentary evidence appearing as witnesses against each other. The learned trial Court found that the plaintiff and the defendant knew each other and the defendant needed a completion certificate from HUDA. The plaintiff, however, concealed the fact that he was a tenant of the defendant which fact was asserted by the defendant. The plaintiff tried to establish that House No.1244, Sector 31, Gurgaon did not belong to the defendant. To disprove ownership of the defendant, the plaintiff produced letter Mark-A from the Estate Officer, HUDA, Gurgaon to the SHO City, Gurgaon but the document could not be read in evidence as it was not duly proved. The trial Judge felt that it was necessary for the plaintiff to have summoned the official concerned with the original record of allotment from the HUDA. Besides, this plea of the plaintiff could not be taken into consideration being beyond pleadings. The issue between the parties was not with respect to ownership of the property since the suit was one for damages for causing loss of reputation at the workplace and in the community the parties lived in. The trial Judge noted from the plaint that the

defendant has been shown to be resident of House No.1244, Sector 31, Gurgaon. The plaintiff's legal notice was also sent at the said address as well were the complaints of the defendant against the plaintiff written from the same address. The denial of ownership by the plaintiff adversely reflects on the conduct of the plaintiff. The point of fiction was non-payment of rent and other charges like electricity and water to the first floor of the house. The allegations made by the defendant in his written statement have not been specifically denied by the plaintiff in their replication. For want of specific denial, the plaintiff is deemed to have admitted these facts and the net result of such an admission is that it stands proved that the plaintiff was residing in the defendant's house without paying rent for use and occupation of the first floor of the house. The compromise between the parties was not disputed in the replication.

In his evidence on oath, the plaintiff denied the relationship of landlord and tenant between the parties. These statements in the deposition were false which shows the plaintiff in poor light. The trial Judge rightly thought that this was a pointer to the fact that the plaintiff did not come to the Court with clean hands and concealed the true and material facts from the Court. The story set up by the plaintiff was not believed by the trial Judge. When the plaintiff was not in charge of issuance of completion certificate for properties falling in Sector 31, Gurgaon, there was then no question of seeking favour from him for a thing he could not officially do and thus, the trial Judge found no reason to believe the imputation of misconduct on the part of the defendant in his defence against the plaintiff.

Mere filing of the complaints against the plaintiff or the defendant would

not entitle the plaintiff to damages. The Court found nothing on record to show that the defendant was ever joined in any of the enquiries which were filed without hearing him. This did not necessarily lead to the conclusion that the complaints made by the defendant were false. As the foundation of the suit was loss of reputation and causing mental pain and agony etc., the plaintiff failed to lead any evidence to prove facts necessary to succeed in a claim for damages. No evidence was produced by the plaintiff to depose that because of the complaints, loss of reputation was caused to him. If the plaintiff pleaded that due to the false complaints, his father suffered death, there was nothing on the file to show as to how and when the father of the plaintiff died or what the cause of his death was. Mere placing of outdoor tickets of a hospital would not lead to the conclusion that the complaints had any connection with the death of the father. Moreover, the Court found the outdoor tickets relating to the year 2005 and not for the period during which or soon after the domestic complaint was made since the incident pertained to the year 2000. Looked at from all angles, the trial Judge held that the plaintiff has not been able to prove his entitlement for any damages from the defendant for any of the reasons alleged in the plaint.

Issue No.1 was decided against the plaintiff and in favour of the defendant. Issues No.2 and 3 are beside the point and need no further examination in second appeal. The Civil Judge [Senior Division] dismissed the suit on 23rd September, 2009. The first appeal before the learned Additional District Judge, Gurgaon was dismissed on 24th December, 2009.

Learned lower appellate Court retraced the steps of the learned trial Judge and reached the same conclusion but after delving into record on

file with a tooth comb. The Court *a quo* felt that since the defendant was not associated with the enquiry, it did not mean that the complaints were false. The defendant had no knowledge of the manner in which the enquiries were conducted or the basis upon which the complaints were found to be false. There can be no doubt that the parties were engaged in complaints and counter complaints, some of which were addressed to the Chief Minister, Haryana and to the Chief Vigilance Commissioner as well. Merely because the complaints were addressed to high functionaries, would not lead to the irresistible conclusion that the plaintiff was wronged by the defendant or his reputation injured sufficient to merit a claim for damages by a decree. The completion certificate sought by the defendant was to be issued by the Survey Department and even if the plaintiff was posted in the Survey Department of HUDA, he did not have the charge of Sector 31, Gurgaon which was an area falling in the jurisdiction of Mewa Singh, Junior Assistant.

On the other hand, the defendant appearing as his witness stated in his affidavit in chief that he had made two complaints against the plaintiff. It was the plaintiff who had approached the defendant to rent out the first floor of the house to him at a monthly rent of ₹ 2600/- per month. The defendant did not deny that he needed an occupation certificate for which the defendant deposed that if the first floor of the house was rented to him, he would help him in obtaining the completion certificate at the earliest for which he had demanded ₹ 10,000/- as convenience fee. The plaintiff got him an unauthorized sewer connection of his house on 14th June, 1999 and thereafter, started living there as tenant from 20th June, 1999. The plaintiff

resided in the defendant's house from 20th June, 1999 to 12th June, 2000 for which he neither paid rent nor any electricity and water charges despite repeated demands made by the defendant and thereafter, plaintiff vacated the house after picking up a quarrel with him which led to vandalism of the defendant's property while handing over possession.

Learned lower appellate Court looked into the fake rent receipts as well, submitted by the plaintiff to HUDA office showing rent paid @ ₹ 1500/- per month which was reflected in the income tax statement of the plaintiff. The defendant made complaints to HUDA for submitting forged and fake receipts of house rent since this was a serious matter. The defendant was approached by the plaintiff with his relatives to compromise the matter and to withdraw the complaint. The plaintiff also harassed the defendant and made a false complaint against him and his wife regarding running of a coaching centre at the house of the defendant.

Rebuttal evidence was led by the parties. The plaintiff alleged that neither he nor the defendant lived in the subject matter house. Learned lower appellate Court held that in order to claim damages for malicious prosecution, it was incumbent upon the plaintiff to prove ingredients of malicious prosecution. To cull out the ingredients, learned appellate Court applied the ratio of Kerala High Court in **T.Subramanya Bhatta v. A.Krishna Bhatta**; AIR 1978 Kerala 111 and **Padmanabhan Hangadharan v. Matheyang Gangadharan**; AIR 1976 Kerala 49. The ingredients are (1) that the plaintiff was prosecuted by the defendant; (2) that the prosecution terminated in favour of the plaintiff; (3) that the prosecution was malicious and (4) that it was without reasonable and probable cause. Apart from this, learned lower Appellate Court relied on the

Supreme Court decision in para. 19 of the citation as under : -

“Apart from this, learned Apex Court in case 2004 (2) CCC 409 (supra) has observed that to be successful in order to prove a malicious prosecution in civil cases two points are required to be established, are that there was malice on the part of the appellant in giving those complaints., and that those complaints were given without reasonable and probable cause. And Civil Court cannot rely on the findings given by or evidence adduced before, the criminal court for arriving at a conclusion as to the incidence of malice, and the absence of reasonable and probable cause, and that the Civil Court should, on the basis of the evidence adduced before it only, should reach a conclusion about the absence of reasonable and probable cause.”

On these premises, learned Additional District Judge, Gurgaon declined the appeal vide judgment and decree dated 24th December, 2009.

I have heard the learned counsel for the appellant who has canvassed that the Courts below fell in error in not complying with the principles laid down in Order 8 Rule 9 CPC with respect to reception of the replication to the written statement. It has been asserted in the grounds of appeal in para. 2 that the plaintiff did not file any replication to the written statement and therefore it cannot be urged that in the absence of replication the contents of the written statement are deemed to be admitted upon which reasoning inter alia the trial court proceeded. This pleading in the appeal appears to be false. Learned trial Judge had noted in his judgment that the replication was in fact filed but there was no denial of the material pleadings in the written statement in it. They were thus admitted. The statement made in appeal is, thus, found contrary to the judicial record and cannot be accepted though there is a rule against receipt of subsequent pleadings

except by leave of the Court but where a replication is filed and is taken on record, it forms part of pleadings. In this manner, the pleadings in the replication can form basis of striking issues, upon which, the trial is to proceed. Even otherwise, there is sufficient evidence on record to disprove the case of the plaintiff on a cumulative reading of the pleadings and oral and documentary evidence produced on file, would still not entitle the plaintiff to damages for malicious prosecution. It may be remembered that the plaintiff did not bring a suit for defamation for loss of reputation.

I find no cogent reason to disturb the findings of fact and the appreciation of evidence by both the Courts below. They do not constitute in cumulative reading of the entire record as giving rise to a question of law or any error of fact which gives rise to a substantial question of law. As a matter of fact, no question of law, much less a substantial one, is involved in this appeal for which reason, it must fail and be dismissed.

There is no merit in the appeal. Accordingly, the appeal to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

April 27, 2015
Paritosh Kumar