

APPEAL FROM ORDER NO.1066 OF 2015

Ms.Meenakshi Iyer a/w Ms.Prachi Ojha i/by M/s. Advaya Legal for Appellants.
Mr.R. Subramanian, Respondent in-person present.

By this appeal from order, the appellants have impugned the order dated 17th July 2015 passed by the Joint Civil Judge, Senior Division, Thane by which the learned Judge has allowed the review petition filed by the respondent (original plaintiff) and has directed that the foot note below sheet of issue (Exh.18) that issue no.5 be treated as preliminary issue and be decided first and the parties shall adduce their respective evidence shall be treated as ignored and clarified that the issue no.5 would be tried and decided with all other issues.

2. It is not in dispute that the respondent herein filed a suit based on alleged defamatory articles published by the appellants. The respondent (original plaintiff) who claims to be a promoter and Managing Director of M/s.Subhiksha Trading Services Ltd. filed a said suit (Special Civil Suit No.526 of 2012) in the Court of Civil Judge, Senior Division, Thane. It was the case of the original plaintiff in the said

suit that the defamatory material was circulated by the appellants herein all over India including Thane. The averments made in the plaint were denied by the appellants herein by filling written statement.

3. Learned trial Judge framed issues on 22nd August 2013. Issue no.5 was “Whether this Court has got jurisdiction to entertain the suit.” The learned trial Judge directed that in so far as the said issue of jurisdiction is concerned, the same shall be treated as a preliminary issue and directed that the said issue being decided first. The learned trial Judge also directed the parties to adduce their respective evidence.

4. The original plaintiff, thereafter, filed a review application before the learned Civil Judge, Senior Division, Thane inter alia praying for recall of the note i.e. Issue no. 5. There was some delay in filing the review application. The learned Civil Judge, Senior Division, Thane condoned the delay and recorded a prima facie finding that the issue of jurisdiction raised in the suit was based on mixed question of fact and law and was required to be considered and adjudicated upon along with all other issues. The learned trial Judge accordingly allowed the said review application and directed that the foot note below sheet of issue Exh.18 that issue no.5 be treated as preliminary issue and parties were directed to decide the issue first and adduce their respective evidence shall be treated as ignored. The learned trial Judge clarified that the said issue no.5 would be tried and decided with all other issues. The said order dated 17th July 2015 passed by the Joint Civil Judge, Senior Division, Thane has been impugned by the appellants in the present appeal from order under Order XLI of the Code of Civil Procedure, 1908.

5. Learned counsel for the appellants submits that no part of cause of action had arisen at Thane and thus the learned trial Judge while framing the issues on 22nd August 2013 had rightly directed that the issue of jurisdiction raised by the appellants (original defendants) shall be treated as a preliminary issue and directed the parties to adduce their respective evidence and that the same shall be decided first. She submits that there was gross delay on the part of the original plaintiff to file review application. She submits that the learned trial Judge could not have recalled the order passed by his predecessor on 17th July 2015.

6. The respondent (original plaintiff) appearing in-person, on the other hand, invited my attention to various averments made in the plaint and also the written statement. He also invited my attention to the issues framed by the learned trial Judge on 22nd August 2013. He submits that the learned trial Judge while passing the said order dated 22nd August 2013 was under an impression that the issue of jurisdiction was raised by the appellants (original defendants) under Section 9A of the Code of Civil Procedure, 1908. He submits that the issue as to whether the defamatory articles were published at Thane or not or whether the original plaintiff was defamed in Thane or not or elsewhere and whether Thane Court had jurisdiction or not was mixed question of fact and law and could not have been tried as preliminary issue. He submits that if the evidence is required to be led for determination of the issue, the said issue cannot be tried as a preliminary issue but can be tried along with all other issues under Order XIV Rule 2 of the Code of Civil Procedure, 1908. In support of this submission, the respondent placed reliance on various judgments of the Supreme Court and this Court.

7. A perusal of the plaint read with written statement indicates that the case of the original plaintiff is that the defamatory articles were published not only in Chennai but also other places including Thane. The appellants (original defendants) have disputed this averment made by the original plaintiff in the plaint. The original plaintiff is entitled to file a defamatory suit within the jurisdiction of a Court where he was alleged to have been defamed. In these facts and circumstances of this case, the issue of jurisdiction raised by the appellants (original defendants) could not have considered as a preliminary issue of jurisdiction by the learned trial Judge when the issues were framed on 22nd August 2013.

8. In my view, the learned trial Judge was right in his prima facie view in the impugned order dated 17th July 2015 that in the facts and circumstances of this case, the issue of jurisdiction raised by the appellants was a mix question of fact and law and not a simplicitor issue of jurisdiction which could be decided at the threshold as a preliminary issue. In my view, there is thus no merit in this appeal. Appeal is devoid of merit and is accordingly dismissed. In view of dismissal of the appeal, civil application for stay of the impugned order does not survive and is accordingly dismissed. No order as to costs. Hearing of the suit is expedited.

R.D. DHANUKA, J.