

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO. 2437 OF 2012

Tulsidas Gopalji Charitable &
Dhakleshwar Temple Trust & Ors.

.. Plaintiffs

Vs.

Bhogilal Rambhia & Ors.

.. Defendants

Mr.Ashutosh Kaushik i/b M/s. Manilal Kher Ambalal & Co. for plaintiffs.

None for defendants.

CORAM : K.R.SHRIRAM, J.

DATE : 3RD MAY, 2016

P.C.

1 This is a suit for defamation filed by the plaintiffs. According to the plaintiffs, the defendants had indulged in making and publishing defamatory/libelous statements/imputations against the plaintiffs in the media. Defendant no.1 is tenant of the plaintiff no.1-trust, defendant no.2 is a weekly newspaper owned and run by the defendant no.3. Defendant nos.2 and 3 are controlled and managed by the defendant no.4. Defendant no.4, it is alleged, is concerned with and responsible not only for publishing/editing, printing of the defendant no.2 but he is also responsible for all day-to-day affairs and management of defendant Nos.2 and 3. The defendant Nos.5 and 6 are the ex-employees of the plaintiff no.1-trust and defendant no.7 is the son of the defendant no.5.

2 There has been a long history of litigation between the plaintiffs and defendant no.1. On account of various illegal and nefarious activities of the Defendant no.1 of the defendant no.1 concerning the aforesaid premises of the plaintiff no.1-trust, disputes arose and the plaintiffs commenced various proceedings against defendant no.1.

3 Defendant Nos. 5 and 6, during the course of employment with the plaintiff no.1-trust, were also found indulging in nefarious activities inasmuch as of colluding and conspiring with the defendant No.1 and in the process of disappearance of important and valuable documents/records of the plaintiff no.1-trust. They were also found manipulating vouchers and documents.

4 The plaintiff no.1-trust, therefore, decided to initiate legal action against defendant nos. 5 and 6. Various F.I.Rs. were also lodged against defendant Nos.5 and 6. The defendant No.1 lodged F.I.R. against the trustees of plaintiff no.1 too on false grounds. After the F.I.R. had filed, the defendant no.1 with the aid of and in connivance with defendant nos.2 to 4, published an article in defendant no.2-Newspaper, viz., "Our Country Pulse" on 21st February 2010. The said article contained the same false and ill intentioned allegations that found mentioned in the F.I.R. dated 19th

February 2010. According to the plaintiff, these articles were defamatory /libelous statements/imputations made with the intention to create an incorrect impression in the mind of public at large and the readers of the newspaper that the plaintiffs were indulging in the illegal acts alleged therein. It is alleged that the publishing of such article caused tremendous harm and disrepute to the plaintiffs who have always been upright and honest in their activities. Defendant Nos.1, 5, 6 & 7 ensured that defamatory/libelous statements/imputations contained therein against the plaintiffs were spread over extensively, they displayed flex banner, poster, placards, inviting others as well to lodge complaints against the plaintiffs. Defendant Nos.5, 6 & 7 were distributing enlarged copies of the aforesaid newspaper cutting to the passerby/customer, who visited the shop premises run by defendant no.1 and invited their attention to defamatory/libelous statements/ imputations contained therein against the plaintiffs. The defendants by colluding and conspiring with each other also got the defamatory /libelous statements/ imputations concerning the plaintiffs published in Gujrathi and Marathi newspapers as well, viz., Lokmat and Janmabhumi.

5 The plaintiffs, therefore, filed this suit claiming Rs.1 crore against each of the plaintiffs aggregating to Rs.3 crores.

6 By an order dated 9th December 2014 as none of the defendants filed written statement though served with the writ of summons, the suit was transferred to the list of undefended suits.

7 As three persons were inducted as new trustees of the plaintiffs, leave to amend the plaint was granted on 22nd September 2015. The amended plaint has also been served upon the defendants. An affidavit of service of one Vishwajit Mhatre, affirmed on 12th April 2016 is also filed. The defendants not having filed any pleadings, under Order VIII, Rule 5 of the Code of Civil Procedure, 1908, the Court is empowered to pronounce judgements on the basis of the facts contained in the plaint. Therefore, the plaintiff is entitled to judgement as contained in prayer clauses (a) the bracketed portion of prayer (b) and (d). I am not granting part of prayer clause (b) and prayer (c) because there is no evidence whatsoever to show that the plaintiff have (a) suffered any damages; (b) those damages amounts to Rs.3 crores. Prayer (a), part of prayer (b) and (d) read as under :

(a) that this Hon'ble Court be pleased to hold and declare that the defendants by making and publishing defamatory/libelous statements/ imputations against the plaintiffs have committed an act of defamation under which the plaintiffs have been irreparably and gravely defamed and damage have been caused to the plaintiffs.

(b)the defendants be ordered and directed to give unconditional apology to the plaintiffs

and same be ordered and directed to be published in at least three national news papers having wide publication.

(d) that this Hon'ble Court be pleased to issue a permanent order of injunction against the defendants thereby restraining the defendants, their servant/s, agent/s and/or anybody else claiming through or under them from making any defamatory / libelous statements/ imputations against the plaintiffs in print and/or electronic media.

8 The plaintiffs have also filed affidavit in lieu of examination in chief of one Amit Bhansali-PW-2 and compilation of documents. The same are taken on record and marked as Exh.P-1 and Exh.P-2 (colly.).

9 The suit is accordingly decreed.

10 The plaintiffs is also entitled to costs in the sum of Rs.50,000/- from each of the defendants.

11 The defendants are also directed to tender an unconditional apology in writing to the plaintiffs and the same to be also published in three National newspapers having wide publication at their cost. Publication has to be made within four weeks.

(K.R. SHRIRAM, J.)