

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

SUIT NO. 3165 OF 2007

Reliance Power Limited	.. Plaintiff
Vs.	
Mr.Dipayan Mazumdar & 2 Ors.	.. Defendants

Mr.Vishal Kanade i/b Datta P. Dighe for plaintiff.

None for defendants.

**CORAM : K.R.SHRIRAM, J.
DATE : 1ST SEPTEMBER, 2016**

P.C.

1 The plaintiff has filed this suit claiming a sum of Rs.1,000 crores with interest thereon @ 18% per annum as damages alleging that the defendants have defamed the plaintiff by publishing defamatory articles on various websites.

2 It is alleged in the plaint that the defendants are engaged in the business of media campaigns and market communications for profit and the primary business of the defendants as advertised in the websites by the defendants appears to be in the nature of public relations and public view modulation as described by them on their own website. It is alleged in the plaint that the defendants have, *inter-alia*, published two 'per se' malicious, defamatory, motivated, libelous articles – (a) Capitalizing Investors'

interests; and (b) Reliance Energy Shareholders wealth divided. Printouts of these documents/articles are at Exh.P-6 and P-7.

3 The defendants have filed written statement. In the written statement, the defendants have raised the defence that the articles were not defamatory and in any event they were in the nature of fair comment on the basis of analysts' opinion and complaints made by several distinguished and leading personalities to the Government of India. The defendants have also denied that the plaintiff has suffered any loss of Rs.1,000 crores.

4 Issues were settled on 5th September 2014 as under :

1 *Whether this Court has jurisdiction to receive, try and dispose of the suit?*

2 *Whether the plaintiff proves that the articles that appeared on 15.10.2007 and 18.10.2007 respectively in the websites controlled by the defendants were defamatory?*

3 *Whether the plaintiff proves that the articles were defamatory lowered the reputation and image of the plaintiff and in the eyes of the public and hence the plaintiff is entitled to damages?*

4 *Whether the defendants prove that the articles contain opinion, fair comments and facts and hence cannot termed as malicious or defamatory?*

5 *Whether the defendants prove that the articles were published in the interest of public at large and without any intention to defame anybody and that they contain inferences, observations and deductions of the author and the author honestly believed in the views expressed by him in the articles in question?*

6 *Whether the plaintiff proves that the plaintiff is entitled to a decree in the sum of Rupees One Thousand Crores together with*

interest thereon at 18% per annum from the date of filing of the suit until/realization?

7 *What decree? What order ?*

5 The plaintiff thereafter filed affidavit in lieu of examination in chief of their witness, namely, Mr.Paresh Rathod, whose affidavit was taken on record and marked as Exh.P-1. The plaintiff also filed a compilation of 7 documents in three sets. These documents were received in evidence and marked as Exh.P-2 to P-8, respectively. On the date, these documents were received in evidence, i.e., 6th January 2015, none appeared for the defendants. Nobody had appeared for the defendants even when the issues were settled. In fact, the defendants never appeared after filing of the written statement.

6 After the evidence of PW-1 was taken on record on 6th January 2015, the matter was stood over to 16th February 2015 for cross-examination of PW-1. It was also made clear in the order of 6th January 2015 that if the defendants are not represented on 16th February 2015, the evidence will stand closed. The matter didn't get listed on 16th February 2016 but got listed on 1st October 2015. On 1st October 2015, again the defendants were absent. The matter was stood over to 23rd October 2015 on which date again the defendants were not present. Therefore, the evidence of PW-1 was closed on the basis that the defendants were not interested in cross-examining PW-1.

7 The plaintiff closed their evidence and directions were passed against the defendants, should they wish to file evidence, the same to be filed and copy served upon the Advocate for the plaintiff on or before 25th November 2015 and the matter was stood over to 26th November 2015 for marking of documents on which date the defendants' witness was directed to remain present in Court. On 26th November 2015, again none appeared for the defendants nor any evidence was filed by that date by the defendants. The evidence of the defendants was, therefore, closed.

The matter came up on 8th January 2016, 3rd March 2016, 14th March 2016 and 19th August 2016 and on none of the occasions, the defendants were represented.

8 The plaintiff has led evidence. The plaintiff has not been cross-examined by the defendants. Therefore, we will have to accept the testimony of PW-1 as correct.

9 The onus was upon the defendants to prove issue nos.4 and 5 that the articles contained opinion, fair comments and facts and therefore cannot be termed as malicious or defamatory. The defendants have not led any evidence though opportunities were given to them. Simply filing a written statement is not enough. The defendants also will have to first demolish th

evidence filed by the plaintiff and then prove the issues where the onus is cast upon them.

At the same time, considering the evidence filed by the plaintiff, though I am ready to accept the plaintiff's stand that the articles published were defamatory in nature, the plaintiff has not proved anywhere as to how they are entitled to a sum of Rs.1,000 crores as damages for defamation.

10 In the circumstances, with this background, I answer the issues as under :

- (1) : Yes, in view of the averments contained in paragraph 19 of the plaint, I am satisfied that this Court has jurisdiction.
- (2) : Yes.
- (3) : Yes.
- (4) : No.
- (5) : No.
- (6) : No.
- (7) : As stated above.

11 The suit accordingly stands disposed of.

(K.R. SHRIRAM, J.)