

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: June 03, 2016

+ **FAO(OS) 174/2016**

ASHUTOSH Appellant
Represented by: Mr.H.S.Phoolka, Sr.Advocate
instructed by Mr.Peeyoosh Kalra and
Ms.Shilpa Dewan, Advocates

versus

ARUN JAITLEY & ORS Respondents
Represented by: Mr.Rajiv Nayar, Mr.Sandeep Sethi,
And Ms.Pratibha M.Singh,
Sr.Advocates instructed by Ms.Radha
Chawla and Mr.Amit Mahajan,
Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The first respondent filed a suit for damages alleging that the six defendants were members of a political party which was in power in the Union Territory of Delhi and that the first defendant was the Chief Minister of Delhi and defendants No.2 to 5 were the office bearers of the political party.
2. The appellant is defendant No.2. The plaintiff is respondent No.1. Other respondents were the co-defendants. Counsel appeared for the contesting respondent yesterday and arguments were heard.

3. As per the plaint, the political party of which the defendants are members of is a political opponent of the party to which the plaintiff belongs. It is pleaded that it is in public knowledge that since December, 2013 the plaintiff was not the president of DDCA. As per the plaint, when the Central Bureau of Investigation conducted a search in the Secretariat of the Government of NCT of Delhi on December 15, 2015, a malicious propaganda of disseminating false information was orchestrated in which the defendants made statements which are defamatory of the plaintiff and his family and false to their knowledge. In various sub-paras of para 5 of the plaint the statements said to be defamatory, used by the defendants, have been extracted.

4. Since the appeal is by defendant No.2, we note that qua him the averments are in sub-paras (vii) to (x) and (xii) of para 5 of the plaint; and pithily put would be : (i) the statement made at a press conference on December 18, 2015 by defendant No.2 that one Lokesh Sharma, a Director of 21st Century Media Private Ltd. got a financial benefit of over ₹5 crores and members of the plaintiff's family have been associated with the said company. At the press conference, it is alleged that defendant No.2 further said that ₹57 crores was given to EPIL and another ₹57 crores was distributed amongst 9 companies, all of which were alleged to be close to the plaintiff and/or his family members; and (ii) the statement made at a press conference on December 20, 2015.

5. In the written statement filed, a response has been given by the appellant to para 5 and its sub-paras, with the preamble that the '*statements attributed to answering defendant are in no manner false and in any event do not amount to defamation of the plaintiff*'. There is a denial that the

appellant made any allegations against the family members of the plaintiff.

6. Other defendants also filed their respective written statement.

7. Replications were filed.

8. Pertaining to the replication filed by the plaintiff to the written statement filed by the appellant, in para 5 of the preliminary submissions, with reference to the download obtained from the twitter, extracts have been pleaded, and qua defendant No.2 four extracts from the twitter have been extracted and a reference has been made to an extract of what was allegedly said by him along with defendants No.3 to 6 at the press conference held on December 18, 2015.

9. Taking objection to the preliminary submissions in the replication, where four extracts from the twitter were extracted as pleadings of statements calculated to damage the reputation of the plaintiff and another extract of what defendant No.2 said along with defendants No.3 to 6, the appellant filed IA No.5160/2016 under Order 6 Rule 16 of the Code of Civil Procedure pleading that the statements referred to in the replication attributed to the defendant No.2, which were not specifically mentioned in the plaint should be struck off by striking of the pleadings in the preliminary submissions in the replication.

10. Applications to similar effect were filed by defendants No.1, 3 and 4 concerning their pleadings in the written statement filed by them and replications filed to the written statement filed by them, with which applications we are not concerned because, though the impugned order dated April 29, 2016 has dismissed all applications, only the appellant is aggrieved.

11. Sh.H.S.Phoolka learned senior counsel for the appellant urged that the

recording by the learned Single Judge in para 32 of the impugned order that the appellant has not disowned the statement attributable to him is incorrect. Learned senior counsel urged that if the impugned order is sustained it would mean that the appellant cannot lead evidence that he did not make the statement attributable to him. The second contention urged is that the view taken by the learned Single Judge in paragraph 31 of the impugned judgment that defamatory statements attributed as actionable need not be pleaded in the plaint and it would suffice if reference is made in the plaint to a document which is filed with the plaint, and in the document is contained the defamatory statement. Learned senior counsel urged that serious prejudice would be caused to the appellant, who would be taken by surprise upon the plaintiff proving various documents and the appellant left in the lurch to find out as to what part of the document could possibly be defamatory.

12. Concerning the first contention, as we have noted hereinabove, in the written statement filed by the appellant, the appellant has not denied having made the statements attributed to him qua the plaintiff and as pleaded in sub- paras (vii) to (x) and (xii) of para 5 of the plaint, but has denied having made any defamatory statement concerning the family members of the plaintiff.

13. Thus, to this extent the sweeping observation made by the learned Single Judge in the impugned judgment that the appellant has not denied the statements attributable to him is incorrect.

14. We have already noted what part of the statements attributable to him have been admitted by the appellant and which have been denied and these are in the pleadings and thus when issues would be settled the learned Single Judge would not go by the observations in the impugned judgment but

would look at the pleadings and settle the issues.

15. Concerning the second aspect of the matter, the legal position culled out by the learned Single Judge in paragraph 31 of the impugned order is patently incorrect for the reason the plaintiff must set forth the exact words (spoken or written) which the plaintiff alleges to be defamatory, for the reason the defendant must know exactly what to defend. It is not the law that a plaintiff simply avers that the defendant has been making defamatory statements and proof thereof is the documents filed with the plaintiff. Sentences spoken or written may consist of different facts and perhaps intertwined, may be the opinion of the maker. The plaintiff must dissect the sentences spoken or written and plead with precision what the plaintiff makes actionable.

16. Thus, the position of law enunciated by the learned Single Judge in para 31 of the impugned order is set aside.

17. But that would make no difference to the pleadings in the replication, because we find that the actionable defamatory statements attributed to the appellant have been succinctly pleaded in the plaint, and in the replication with reference to the documents filed along with the plaint and reference made in the pleadings in the plaint, it would be a case of repeat of the same statements albeit with a word here or there being different in the replication. It would be a case of a re-publication of a defamatory statement, where in the plaint the defamatory statement first made is reproduced with the date given when it was further made with pleadings that the defamatory statements were repeated on different dates and documents filed with reference to the said subsequent dates, and in the replication a reference being made to the words re-published by reproducing the same.

18. The conclusion arrived at by the learned Single Judge that no part of the replication needs to be struck off is thus correct. The route taken may not be the correct route in law. We have corrected the route but we reach the same destination.

19. The appeal is accordingly disposed of but without any order as to costs.

20. We note that vide impugned judgment the learned Trial Judge has granted defendant No.2 time to file an additional written statement, but limited to the pleas in the preliminary objections in the replication concerning defendant No.2. It would not be an additional written statement required to be filed because the response would be to a replication and the correct word for the additional pleading would be : sur-rejoinder. We therefore permit the appellant to file a sur-rejoinder and not an additional written statement and the reason being the plaintiff not challenging the impugned order wherein said liberty has been granted to the appellant. Needful shall be done by the appellant within a week, meaning thereby the sur-rejoinder would be delivered in the office of the counsel for the plaintiff within a week but it may be filed when the Registry of this Court opens after the ensuing summer vacation on July 02, 2016.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JUNE 03, 2016/mamta