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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and Order: 1st September 2017.

+ RFA 49/2009
N.N.S.RANA

..... Appellant

Through: Mr. Aditya Kumar Choudhary,
Mr.Kushagra Sinha, Advocates

versus

INDIAN EXPRESS & ANR.

..... Respondent

Through: Mr.N.B. Joshi, Mr. Abhijeet Negi,
Advocates

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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01.09.2017

P.S. TEJI, J. (ORAL)

1) The appellant has filed the present appeal under Section 96 of the CPC thereby challenging the judgment and final order dated 03.12.2008 passed by learned Additional District Judge – 16 (Central) Tis Hazari Courts, Delhi whereby the learned trial court had dismissed the suit filed by the appellant.

2) The facts in brief are that the plaintiff/appellant was highly qualified officer and belonged to Indian Railway Personnel Service (IRPS), 1964 Batch of Civil Services and was in the rank and pay of Joint Secretary to Government of India. He had filed a suit against the defendants/respondents against their publication of news item in the Late City Edition of newspaper Indian Express 04.02.2000 of

respondent No. 1, with the heading “Railway Official guilty of sexual harassment may get promoted.” It was alleged in the suit that the defendant/respondent with a view of defame, denigrate and bring the bad reputation of the plaintiff/appellant and at the behest of some unknown vested interests. The plaintiff/appellant claimed to have suffered great humiliation, harassment, loss of reputation, loss of respect not only in the immediate society and acquaintances but also in the mind and thoughts of general public at large. The plaintiff/appellant also wrote legal notice dated 17.03.2000 requesting respondent No. 1 and 2 to withdraw the said news item and publish an unconditional apology and pay a compensation of Rs.10,00,000/- as damages. Since despite service of notice, defendants neither withdraw the news item nor paid the compensation, the plaintiff/appellant filed a suit praying therein for a decree granting damages and compensation of Rs.10 lakhs.

3) In response to the plaint, the defendant/respondent urged that the publication of article was entirely based on true and correct facts and in support thereof, the facts leading to inquiry were referred by the defendant/respondent. In replication to the response of the defendant/respondent the plaintiff/appellant reiterated and reaffirmed his submissions.

4) On the basis of pleadings of the parties, the following issues were framed:-

- a) Whether the suit is not maintainable in view of the preliminary objection No.1 of the written statement? OPP

- b) Whether the plaintiff is entitled to a decree of Rs.10,00,000/- on account of damages and compensation, as prayed for? OPP
- c) Relief.

5) After hearing the parties and the material placed before the trial court the learned ADJ held that the plaintiff is not entitled for decree of damages and compensation, as prayed for and the suit of the plaintiff was ordered to be dismissed.

6) Aggrieved by the aforesaid judgment dated 03.12.2008, the plaintiff/appellant has preferred the instant appeal.

7) Heard.

8) During the course of hearing, it has been admitted by counsel for the parties that Issue No.1 has been wrongly framed either the onus was to be fixed on the defendant or the issue was to be framed in positive manner not in negative, to be established by the plaintiff. It has been further agreed that since the finding on the issue has been given as the finding given on preliminary issue considering the evidence lead by the parties, it would not be sustainable in the eye of law for the simple reason that preliminary issue has to be decided without the evidence of the parties on merit. The other factor is that the preliminary objection raised is virtually the defence of the defendant on which basis the issue was framed. In the totality of the circumstances that after framing the issue and calling for the evidence on merit of the case, the court is to deliver the judgment on the basis of the evidence lead by the parties and not being the preliminary issue. In such a scenario, the finding given by the court below as

mentioned above, is redundant or in other words, no consequence. So the same is deleted.

9) So far as the other issue framed by the court below as Issue No.2, admittedly, despite leading evidence by the parties, no finding had been provided by the court below on this issue and it has decided as a consequence to Issue No.1. In the considered opinion of this court, the finding on issue No.2 are required to be delivered by the court below as in fact Issue No.2 is the only issue, which needs to be adjudicated upon merits of the case by the court below.

10) In the facts and circumstances of the case and with the agreement of the counsel for the parties, this court is of the considered opinion that the ends of justice would be met if the matter is remanded back to the court below who shall hear and decide the Issue No.2 afresh on the basis of the evidence already lead by the parties. Accordingly, the parties are directed to appear before the District Judge, Tis Hazari on 13th October 2017, who shall hear the arguments of the parties afresh or to assign the same to some other court competent to try the same.

11) Trial court record alongwith judgment of this court be sent back forthwith.

12) The appeal stands disposed of in the aforesaid terms.

P.S.TEJI, J

SEPTEMBER 01, 2017
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