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

+ FAO(OS)No.138/2017, CAV.No.457/2017 &
CM Nos.17236-38/2017

% Date of decision : 5th May, 2017

KIRTI AZAD

..... Appellant

Through : Mr. Manish Tewari, Mr. Amit
A. Pai and Mr. Rahat Bansal,
Advs.

versus

NARINDER BATRA & ANR

... Respondents

Through : Mr. Rajiv Nayyar, Sr. Adv.
with Mr. Shyel Trehan and Mr.
Manjira Dasgupta, Advs.
Mr. Akhil Anand and
Mr. Shivang Singh, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CAV.No.457/2017

As ld. counsel for the caveator has put in appearance, the caveat stands discharged.

CM No.17238/2017

1. We have heard ld. counsel for the parties on this application.
2. We are satisfied that the appellants have adequately explained the circumstances in which the delay in filing this appeal has occasioned. The delay in filing the appeal is condoned.

The application is disposed of.

CM No.17237/2016

Allowed, subject to just exceptions.

The application is disposed of.

FAO(OS) 138/2017

3. The appellant assails the order dated 9th of March 2017 passed by the Id. Single Judge dismissing I.A.No.8473/2016 filed by the appellant/defendant under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint in CS(OS)No.72/2016 filed by the respondents herein.

4. For reasons of clarity, we refer the appellant and respondents by their appointment in the suit. The respondents/plaintiffs, filed the suit seeking recovery of damages in the sum of Rs.10 crores for defamation and for a decree of permanent injunction restraining the defendant in future defaming the plaintiffs.

5. So far as description of the appellant/defendant is concerned, in para 5 of the plaint, it was stated thus: **(Page 23 para 5)**

“5. The plaintiffs have instituted the suit pleading (i) that the plaintiff no.1 is the President of the plaintiff no.2; (ii) that the plaintiff no.2 is a registered Society engaged in the promotion, organization and development of hockey in India and is the sole body responsible for the governance of hockey in India; (iii) that the plaintiff no.1 is also the Vice President on the Executive Board of the Asian Hockey Federation and a member of the Executive Board of the International Hockey Federation; (iv) that the plaintiff no.1 has served in and managed national and regional sports

organization and has earned a distinct regard and reputation for his work and integrity; (v) that the plaintiff no.2 Hockey India has been granted recognition by the Government of India, Ministry of Youth Affairs and Sports as the National Sports Federation for the sport of hockey in India; (vi) that the plaintiff no.2 Hockey India was granted affiliation with the International Hockey Federation; (vii) that the plaintiff no.2 Hockey India is also recognized by the Indian Olympic Association as the Central Authority responsible for all matters relating to hockey in India; (viii) that the defendant is a renowned cricketer on the international stage and a Member of Parliament (Lok Sabha) and a member of various Parliamentary Committees; (ix) that the defendant has made completely false statements against the plaintiffs, with the knowledge and intention of causing injury to the reputation and public image of the plaintiffs and has succeeded therein; (x) that the highly malicious, defamatory, reckless, baseless, false and libellous statements against the plaintiffs are aimed at maligning the public image of the plaintiffs and generating adverse public opinion against the plaintiffs; and, (xi) the defendant has repeatedly written various communications to the Finance Minister, Minister of Sports and Youth Affairs and various senior officials of the Sports Ministry, with false allegations against the plaintiffs, with the sole intention of maligning the images of the plaintiffs.”

6. The plaintiff had thereafter in para 6 complained that the defendant had made completely false statements against the plaintiff with the knowledge and intention of causing injury to their reputation and public image as well as mental harassment to the plaintiff no.1. It was specifically alleged in para 6 that highly malicious, defamatory,

reckless, baseless, false and libellous statements against the plaintiff aimed at maligning the public image of the plaintiffs stood made by the defendant who, it asserted had “repeatedly” written various communications to the Finance Minister, Minister of Sports and Youth Affairs and various senior officials of the Sports Ministry making false allegations with the said intention against the plaintiffs.

7. We extract hereafter the specific averments in this regard contained in para 7 of the plaint :

“7. The plaintiffs have also pleaded that all the aforesaid letters have wide circulation to various officials of Ministry of Youth Affairs and Sports and are read by officials of both Ministry of Finance and Ministry of Sports. It is further the plea of the plaintiffs (i) that the statements of the defendant are false, malicious and defamatory and have been made with reckless disregard of the truth; (ii) that the defendant has clearly misused his position of power and responsibility to malign the image and reputation of the plaintiffs and to discredit the plaintiffs; (iii) that the defendant is attempting to promote Indian Hockey Federation which was disaffiliated from the International Hockey Federation in the year 2000 and which from the year 2000 to 2008 had perpetrated a complete sham on the International Federation; (iv) that the defendant has misused his role as Member of Parliament to further his ambitious as a sports administrator in various organizations of which he is a member or otherwise associated; (v) that the impact of the publication of such communications is not confined to the officials of the Ministries of Finance and Sports Affairs but also with the officials of Central Bureau of Investigation (CBI), Central Vigilance Commission

*(CVC), with several people expressing great shock at the contents of the said article; (vi) that the **plaintiff no.1** has been subjected to humiliation at social gatherings where the contents of these communications have been discussed and questions have been raised by members of the sports fraternity to whom the defendant circulated the communication; (vii) that the statements have tarnished the image of the plaintiffs and self respect of the plaintiff no.1; and (viii) the statements have tarnished the image of the plaintiff no.2, in the eyes of hockey players, sponsors and Government officials and other sports organization at national and international levels.”*

(Emphasis by us)

Thus, from the above, it appears that the plaintiff had complained in the plaint, not only with regard to alleged misrepresentations and allegations made by the defendant in communications addressed to Cabinet Ministers, but also to senior officials of the Sports Ministry as well as the communications which were distributed by the defendants to various office bearers of M/s Hockey India.

8. Upon receipt of the summons in the suit, the appellant/defendant filed an application being I.A.No.8473/2016 dated 3rd June, 2016 (under Order VII Rule 11 C.P.C.) seeking rejection of the plaint on the following grounds which have been noted in para 3 of the impugned order dated 9th March, 2017:

“3. The defendant seeks rejection of the plaint on the ground that (i) allegedly defamatory statements attributed to him are privileged and are made by the defendant as a

public representative to the authorities in the Government seeking investigation by the authorities of various irregularities and cannot constitute defamation; (ii) that the allegations in the plaint are vague; (iii) that the plaintiffs have not made any averments or specific pleading in respect of publication of the allegedly defamatory statements; the averments in the plaint are wholly based on documents which have been obtained by the plaintiffs under the Right to Information (RTI) Act, 2005; and, (iv) that the plaintiffs in the plaint have loosely used the word “libel” or “defamation”, without substantiating the same.”

9. Upon consideration of the matter, the application was rejected by the Id. Single Judge by the order dated 9th March, 2017 concluding that the grounds on which the rejection was sought, were not made out.

10. Before us, this order dated 9th March, 2017 is assailed primarily on the ground that the Id. Single Judge has misconstrued the privilege allowed to a Member of Parliament by virtue of Article 105 of the Constitution of India. It is contended that this privilege applies to all dealings of the Member of Parliament and that, the suit for defamation premised on communications addressed by such Member of Parliament in official capacity to the authorities, is not maintainable.

11. We find that, in view of this objection being pressed, the Id. Single Judge has considered in detail the contours of the privilege conferred on the Member of Parliament under Article 105 of the Constitution of India and observed that Article 105 could not be read

as allowing a Member of Parliament to, even outside the Parliament, in the name/garb of being a representative of the people of its constituency or in public interest, make statements which are defamatory, without being liable therefor.

12. We may also usefully extract hereunder Article 105 of the Constitution of India which reads thus:

“105. Powers, privileges, etc of the Houses of Parliament and of the members and committees thereof

(1) Subject to the provisions of this constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty fourth Amendment) Act 1978

*(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this constitution have the **right to speak in**, and otherwise to **take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.**”*

(Emphasis by us)

13. A bare reading of the Constitutional provision would show that, so far as the protection and privilege under Article 105 is concerned, sub clause (2) of Article 102 clearly states that Member of Parliament shall not be liable to any proceedings in any court “*in respect of anything said or any vote given by him in Parliament or any committee thereof*”. The said privilege does not extend to representations and communications addressed by a Member of Parliament not only to other Parliamentarians but also to members of the general public, which in the present case, included office bearers of M/s Hockey India.

14. In support of these observations, the Id. Single Judge has placed reliance on the pronouncement of the Supreme Court reported at ***(1970) 2 SCC 272 Tej Kiran Jain & Ors. vs N. Sanjiva Reddy & Ors.*** wherein it was held that Article 105(2) though gives immunity in respect of everything said in Parliament but subject to the limitation that it should have been said during the sitting of Parliament and in the course of business of Parliament.

15. It is also trite that so far as the consideration of an application for rejection of plaint under Order VII Rule 11 of the CPC is concerned, the same has to be tested on demurer. The court has to examine the prayer for such rejection assuming the averments in the plaint as correct. Defence of the defendant cannot be pressed into service to seek rejection of the plaint under Order VII Rule 11 C.P.C.

16. Mr. Rajiv Nayyar, Id. Senior Counsel for the respondents/caveators has placed before us a pronouncement of this court reported at (2015) 217 DLT 79 (DB), *T. Muralidhar vs. PVR Murthy* wherein settled principles of law were relied upon and reiterated in the following terms :

“Scope of inquiry under Order VII Rule 11 of the Code of Civil Procedure

7. *While construing the plaint from the perspective of its rejection for want of cause of action or its being barred by law under Order VII Rule 11 of the Code of Civil Procedure, the Supreme Court has unequivocally declared that the court should not pick out averments in the plaint in isolation but has to conduct its meaningful reading. In this regard, reference may be made to (1977) 4 SCC 467 T. Arivandandam v. T.V. Satyapal wherein it was held that:*

“5. ...The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi.

“It is dangerous to be too good.” (underlining by us)

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10. Cause of action is that bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. It is trite that only material facts are required to be stated and that evidence can be lead only on such facts as have been specifically pleaded.

11. It is equally well settled that so long as the plaint discloses some cause of action or raises some questions of facts to be decided by a judge, the mere fact that the case is weak and not likely to succeed would not be a ground for striking it out. The failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars (Ref. (1994) 2 SCC 392 Mohan Rawale v. Damodar Tatyaba @ Dadasaheb.)”

(Emphasis by us)

17. Placing reliance on the pronouncement of the Supreme Court, the ld. Single Judge has held that the appellant has been unable to establish that his representations, which have given rise to the cause of action for filing the suit, were privileged communications within the meaning of the expression in the Constitution of India. We have noted the Constitutional provision in Article 105 and found that it confines privilege of the Member of Parliament to proceedings in the Parliament. It does not extend to actions of the Member of Parliament outside the House, as in the present case.

18. The respondent/plaintiff in the present case, as extracted above, has specifically complained in para 7 of the plaint (and elsewhere) that the defendant had circulated defamatory letters to “various

officials” of two ministries, officials of the Central Bureau of Investigation, Central Vigilance Commission; being subjected to humiliation at social gatherings; questions about the plaintiff being raised as a result amongst members of the sports community. As per the plaint, these amongst other acts, have given rise to the cause of action for filing of the suit.

19. Before us, Mr. Tiwari, Id. Senior Counsel for the appellant does not press the rejection of the plaint on the ground that on the face of the plaint, it does not disclose cause of action for filing the suit.

20. We hasten to clarify that we have not expressed any opinion on the merits of the plaintiff’s case which has to abide by final adjudication after recording of evidence.

21. Furthermore, the grounds on which the application being I.A.No.8473/2016 was filed, which are the very grounds pressed in this appeal, are concerned , the same are in the nature of the defence of the appellant.

The order dated 9th March, 2017 clearly cannot be assailed on any legally tenable grounds.

22. In view of the above discussion, the challenge by way of the present appeal is clearly misconceived and is hereby rejected.

23. We may note that Mr. Rajiv Nayyar, Id. Senior Counsel for the respondents has pressed an objection with regard to the appeal being precluded under Order XLIII of the CPC. An examination of Rule 1 of Order XLIII would show that an appeal is provided under sub-rule

(a) of Rule 1 of Order VII only against an order passed under Rule 10 of Order VII returning the plaint to be presented in a proper form. Ld. counsels have argued the matter on merits and we have even otherwise, rejected the appeal.

This appeal is therefore, dismissed.

CM No.17236/2017

In view of the orders passed in the main appeal, this application does not survive for adjudication which is hereby dismissed.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

MAY 05, 2017

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