

THE HON'BLE SRI JUSTICE S.V.BHATT

SECOND APPEAL No.985 of 2017

ORDER:

Heard Mr.Y.Ashok Raj, for appellants.

The plaintiffs in O.S.No.120 of 2008 are the appellants.

The appellants filed the suit for damages of Rs.1,00,000/- for malicious prosecution. The circumstances have resulted in filing the suit for damages, are substantially considered by the Courts below. The trial Court on the issue, namely, whether the plaintiff is entitled for recovery of suit claim held that it cannot be said that there was no reasonable or probable cause for the defendant in instituting such criminal case and that the proceedings was initiated for the proceedings was malicious.

The appellant herein filed A.S.No.50 of 2014. The learned Principal District Judge through judgment impugned in the appeal framed the following points:

1. Whether the plaintiffs were prosecuted by the defendant without reasonable or probable cause but having malicious intention to defame them?

2. That those proceedings were ended in favour of the plaintiffs?
3. Whether the plaintiffs are entitled for damages, if so, to what quantum they are entitled to?

and held that the appellant herein failed to prove the basic elements for bringing home the claim for malicious prosecution. It is further held that there is no evidence on the damages, which the claim can be considered by the Court. The learned Judge expressed agreement with the consideration by the trial Court and dismissed the first appeal. Hence, the Second Appeal.

Mr.Ashok Raj while referring to the substantial questions of law framed in the memorandum of appeal forcibly contended that the findings recorded need consideration by this Court under Section 100 of the Code of Civil Procedure (CPC) and the findings recorded are completely unsustainable.

I have perused the judgments impugned in the Second Appeal and also the substantial questions of law raised by the appellant. The gist of findings of the Courts below is already referred. *Prima facie*, I am of the view that the grounds raised by appellants do not come within the

scope of Section 100 of CPC. Assuming, without recording a finding that there is an element of scope for interference of this Court, that by itself is not a ground available under Section 100 of CPC to constitute a substantial question of law. Such ground is available, had the Court been exercising the jurisdiction of first appellate court under Section 96 of CPC.

For the above reasons, the Second Appeal is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 23.01.2018
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S. V. BHATT, J



