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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 13th February 2018

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RFA 352/2015

JACINTHA BROWN

..... Appellant

Through: Mr. Punit K. Bhalla & Ms. Chetna
Bhalla, Advocates (M-9810080772)
along with Appellant in person.

versus

SYED SAJID ALI

..... Respondent

Through: Respondent in person (M-
9717175051).

CORAM:

JUSTICE PRATHIBA M. SINGH

PRATHIBA M. SINGH, J (Oral)

1. The Respondent/Plaintiff (*hereinafter*, 'Plaintiff') had filed a suit for damages on account of defamation, mental torture, harassment, etc. against the Appellant/Defendant (*hereinafter*, 'Defendant') praying for a decree to the tune of Rs.15 lakhs. The origin of the case was a complaint by the Defendant against the Plaintiff, that he had used improper language with her and she had thus alleged sexual harassment.
2. Summons were issued in the suit on 28th January, 2012. Defendant entered appearance on 2nd May, 2012 through counsel. However, subsequently the Defendant stopped appearing in the matter and on 29th August, 2012 she was proceeded ex-parte. The Plaintiff then led evidence. The Defendant did not join the proceedings even at that stage.
3. The following witnesses were examined by the Plaintiff—

- PW-1 Sh. Dev Dutt UDC, CBI
- PW-2 Sh. Anil Kumar Tehlan Deputy Director (Vig.)
- PW-3 Sh. Nilesh Trivedi, Assistant Director MSME
- PW-4 Ms. Neelam Singh, DSP, CBI
- PW-5 Plaintiff had examined himself

4. Matter was partly heard on 22nd April, 2014 and on 17th May, 2014, the Trial Court decreed the suit for a sum of Rs.10 lakhs along with costs and interest @ 6% p.a. from the date of decree of the suit till realisation. The Defendant filed this appeal challenging the impugned judgment/order.

Appeal Proceedings

5. The first submission of the Defendant is that though she appointed counsel to represent her, there was no follow up by the counsel and hence her defence was not filed and she was proceeded ex-parte before the Trial Court. Apart from this, the counsel for the Defendant also submits that the letter dated 25th March, 2011, which was relied upon by the Trial Court, was not genuine. It is further submitted that the contents of the letter dated 25th March, 2011 are contrary to subsequent letters sent by the Defendant. These submissions of the Defendant are also recorded in order dated 30th July, 2015 passed by this Court. The relevant portion of the order reads:

" 5. Learned counsel for the appellant, in his brief submission (while conceding that the appellant was proceeded ex-parte), has drawn my attention to two aspects of the matter. First, that the trial court has proceeded against the appellant on the ground that she herself in a communication dated 25.03.2011, addressed to, one, Sh. H.S. Meena, JDC&CVO, in the Ministry of Micro, Small and Medium Enterprises (M/o MSME), has conceded that the complaint made by her against the respondent was false and baseless.

5.1 Second, that the trial court in the impugned judgement has laid stress on the fact that on the date of the incident, the respondent, was not present in the city where the incident took place i.e. in Indore.

5.2 In respect of the first aspect, learned counsel for the appellant has drawn my attention not only to the communication dated 25.03.2011 (see page 53 Annexure 'G'), but also to subsequent communication dated 25.04.2011, whereby the M/o MSME, wrote back to the appellant, seeking to know as to whether she had sent the communication dated 25.03.2011.

5.3 My attention has also been drawn to the response of the appellant dated 29.04.2011 to the communication dated 25.04.2011 and another communication dated 02.05.2011 on the same issue. In both letters, it was contended, the appellant had in no uncertain terms conveyed that she had not written the letter dated 25.03.2011. It is, therefore, the submission of the learned counsel for the appellant that the officer of M/o MSME, who was produced as a witness by the respondent had, failed to draw the attention of the court to the said correspondence.

5.4 In so far as the second aspect is concerned, which is, as to whether or not the respondent was present in Indore on the alleged date of incident i.e. 21.06.2010, the learned counsel for the appellant has drawn my attention to annexure 'J' at page 59 of the paper book, which is a letter dated 09.01.2012 addressed to the Deputy Director of M/o MSME whereby, the appellant seeks to advert to the fact that the date of incident be read as 28.06.2010 as against 21.06.2010. "

6. Thus, the Defendant's submission is that though in her complaint, an incorrect date was mentioned in respect of the incident, the same was

rectified thereafter. But the trial court has taken the incorrect date as a basis to pass a decree against her. She prays that a decree for Rs.10 lakhs has been wrongly passed in favour of the Plaintiff, while in fact she was the complainant who had a grievance against the Plaintiff's behaviour towards her, during his visit to Indore.

7. The Plaintiff, on the other hand, contends that the Defendant, who appears in person, is generally in the habit of making baseless allegations against male officials and she has done so even in the past. He submits that the decree for damages has been rightly passed in his favour inasmuch as the decretal amount, which was deposited in Court, has also now been released in his favour. He further submits that because of the baseless complaints of the Defendant, he has suffered enormous mental agony and injury. He submits that his salary for the duration of more than 8 months has not been given till date and even his retirement benefits have been withheld.

8. Counsel for the Defendant on the other hand submits that the Plaintiff has in fact been dismissed from his position of DSP, CBI on 31st October, 2014. The Plaintiff however submits that the dismissal was in relation to the complaint filed by the Defendant.

9. The submissions of both sides are on the merits of the matter. Considering the nature of allegations and the counter allegations, it is noted that the Defendant did not avail of the opportunity to defend herself, despite the fact that she was served in the suit. The Defendant has undoubtedly been negligent in prosecuting her defence, resulting in the decree. However, considering the nature of allegations made by her and the fact that it was she who had complained against a superior officer in the first place, this Court is of the opinion that one opportunity deserves to be given to her to file her

defence and lead evidence in the matter. The Plaintiff has already concluded his evidence in the matter.

10. As per the settled position in law, the defendant can join the proceedings even at a later stage as held by the Supreme Court in ***Vijay Kumar Madan and Ors. vs. R.N. Gupta Technical Education Society and Ors.*** (AIR 2002 SC 2082)

“7. Power of the Court to impose costs and to put the defendant-applicant on terms is spelled out from the expression "Upon such terms as the Court directs as to costs or otherwise". It is settled with the decision of this Court in Arjun Singh v. Mohinder Kumar & Ors. [1964]5SCR946 , that on an adjourned hearing, in spite of the Court having proceeded ex parte earlier the defendant is entitled to appear and participate in the subsequent proceedings as of right. An application under Rule 7 is required to be made only if the defendant wishes the proceedings to be relegated back and re-open the proceedings from the date wherefrom they became ex parte so as to convert the ex parte hearings into bi-parte. While (sic) power of putting the defendant on terms under Rule 7 the Court cannot pass an order which would have the effect of placing the defendant in a situation more worse off than what he would have been if he had not applied under Rule 7. So also the conditions for taking benefit of the order should not be such as would have the effect of decreeing the suit itself. Similarly, the Court may not in the garb of exercising power of placing upon terms make an order which probably the Court may not have made in the suit itself. As pointed out in the case of Arjun Singh (supra), the purpose of Rule 7 in its essence is to ensure the orderly conduct of the proceedings by penalizing improper dilatoriness calculated merely to prolong the litigation.”

11. Accordingly, the Defendant is given one final opportunity to file her written statement and to lead evidence in the matter. Considering the conduct of the Defendant, a period of two weeks is given to her to file the written statement, subject to the payment of Rs. 1 lakh as costs to the Plaintiff. If the same is not filed, the right to file the same shall stand closed.

12. Since the Plaintiff has already withdrawn a sum of Rs.10 lakhs by furnishing security, the said security shall continue to be operational during the pendency of the suit. The sum of Rs.1 lakh would be deductible from the amount which has already been received by the Plaintiff. Insofar as the remaining Rs.9 lakhs is concerned, the same should be subject to the final decision in the suit.

13. The written statement shall be filed within two weeks from the date. If the Plaintiff wishes to file Replication, the same shall be filed within two weeks from filing of written statement. Affidavits by way of evidence on behalf of the Defendant shall be filed within six weeks from the date. After the filing of the affidavits in evidence on behalf of the Defendant, the Defendant shall be given an opportunity to cross-examine the Plaintiff in a session of only 2 hours, in one sitting. The cross-examination of defendant's witnesses will be conducted immediately thereafter. The Trial Court is requested to complete the final hearing of the matter by 31st May, 2018. Any default by the Defendant in filing written statement or filing affidavits by way of evidence within six weeks shall result in the judgment/decree coming into operation without any further orders of this court.

14. Original Trial Court record be sent back. The judgment/decree dated 17th May, 2014 is set aside in the above terms.

15. The matter be listed for directions before the Trial Court on 21st April,

2018 for cross-examination of the Plaintiff.

16. Appeal and all pending applications are disposed of.

PRATHIBA M. SINGH
Judge

FEBRUARY 13, 2018/ R

