

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 4 of 2009**

Sushri Chandrabhaga Verma, D/o Late Shri Vidya Chandralal Verma, Aged about 63 years, Occupation Retired Professor, R/o Shriram Colony, Behind of Stadium, Raigarh, Tehsil & District Raigarh.

---- Appellant

Versus

Shakuntala Taneja, W/o Subhash Chandra Taneja, Aged about 58 years, Assistant Teacher, R/o C-07, Parijat Apartment, In front of Govind Provisions, Bilaspur 495001.

---- Respondent

For Appellant : Shri Malay Kumar Bhaduri, Advocate.

For Respondent : None, though served.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****14.01.2019**

1. This First Appeal has been preferred under Section 96 of the Code of Civil Procedure, 1908 (for short 'CPC'), questioning the judgment and decree dated 25.09.2008 passed by First Additional District Judge, Raigarh in Civil Suit No. 05-B/2006 by which the learned trial Court dismissed the plaintiff's suit for damage of defamation on the ground of its prematurity.

2. Shri Bhaduri learned counsel for the appellant submits that the judgment and decree as passed by the trial Court is apparently contrary to law. He submits that while entertaining the Issue No. 8, the trial Court ought not to have dismissed the suit as such. According to him the question of suit being premature does not go to the root of the Court.

Therefore, the entire approach of the trial Court while entertaining the said issue is not sustainable in the eyes of law. In support, he placed his reliance upon the decision rendered in the matter of *Vithalbhai Pvt. Ltd. Vs. Union of India* reported in (2005) 4 SCC 315.

3. I have heard learned counsel for the appellant and perused the entire record carefully.

4. A suit for libel has been filed by the plaintiff against the defendant/respondent on the ground that the plaintiff is a retired professor and hailed from the reputed family. It is pleaded further that the plaintiff is a maternal aunt (mausi) of one Tathagat, who was married to one Kapila daughter of respondent/defendant. According to the plaint averments, the said Kapila has lodged a report against the plaintiff, Tathagat and mother of Tathagat (sister of plaintiff) under Section 498-A and 307 of the Indian Penal Code, 1860 (for short 'IPC'). Based upon the said report the concerned police station registered the case under the above Sections of IPC and after investigation the matter, the concerned Investigation Officer has submitted the charge sheet before the competent Court of law at Raigarh, where the case was subsequently committed to the Court of First Additional Sessions Judge, Raigarh for its trial. The said matter was registered at Sessions Trial No. 60/2003 and during trial, the mother of the victim i.e. respondent/defendant Shakuntala Taneja was examined and she deposed in her statement on 25.06.1999 that the plaintiff Tathagat and his mother on account of demand of dowry driven out the victim Kapila and also assaulted her. Since the said statement of victim's mother was specifically referring to the plaintiff with mala fide intention, therefore, the said statement has grossly injured the credit and reputation of the

plaintiff. As such, the plaintiff has been constrained to file the suit in the instant nature.

5. After receiving the summons of the said suit, the defendant appeared and submitted its written statement and on the basis of the rival pleadings of the parties, the trial Court has framed as many as 9 issues for adjudication of the suit. The trial Court has considered the Issues No. 8 & 9 as preliminary issues. The said issues are material for the purpose and reproduced herein as under:

Issue No. 8 Whether the plaintiff's suit is premature?

Issue No. 9 Whether on the basis of cause of action arose on 08.01.2002, the plaintiff's suit is barred by time?

6. After considering the aforesaid issues as preliminary issues, the trial Court has come to the conclusion with regard to the Issue No. 8 that the statement made in the Sessions Trial No. 60/2003 does not constitute the element of defamation unless and until judgment is passed in the said criminal proceedings. It observed further at paragraph 6 of its judgment that since the said Sessions trial is pending, therefore, no cause of action has arisen for filing of the suit and accordingly held that the suit as framed is premature in nature. After holding as such, it observed further while entertaining the Issue No.9 that question of limitation in filing such a premature suit does not arise. In consequence, the trial Court has dismissed the suit. However, the entire approach of the trial Court cannot be held to be sustainable in the eye of law for the reasons that the question of suit being premature does not go to the root of the jurisdiction of the Court. Merely, on the ground that the said criminal proceedings is pending, the suit as framed cannot be dismissed, as such.

7. At this juncture, the principles laid down in the matter of Vithalbhai (P) Ltd. Vs. Union of India (supra) are to be noted. In the said matter, the suit for eviction was filed even before the expiry of the lease by efflux of time within the meaning of Clause (a) of Section 111 of the Transfer of the Property Act, 1882 and the Supreme Court has extensively considered the issue of a suit being premature and its consequences, and in paragraph 22 of the judgment summarized its conclusion as under:-

22. We may now briefly sum up the correct position of law which is as follows:

A suit of a civil nature disclosing a cause of action even if filed before the date on which the plaintiff became actually entitled to sue and claim the relief founded on such cause of action is not to be necessarily dismissed for such reason. The question of suit being premature does not go to the root of jurisdiction of the Court; the Court entertaining such a suit and passing decree therein is not acting without jurisdiction but it is in the judicial discretion of the Court to grant decree or not. The Court would examine whether any irreparable prejudice was caused to the defendant on account of the suit having been filed a little before the date on which the plaintiff's entitlement to relief became due and whether by granting the relief in such suit a manifest injustice would be caused to the defendant. Taking into consideration the explanation offered by the plaintiff for filing the suit before the date of maturity of cause of action, the Court may deny the plaintiff his costs or may make such other order adjusting equities and satisfying the ends of justice as it may deem fit in its discretion. The conduct of the parties and unmerited advantage to plaintiff or disadvantage amounting to prejudice to the defendant, if any, would be relevant factors. A plea as to non-maintainability of the suit on the ground of its being premature should be promptly

raised by the defendant and pressed for decision. It will equally be the responsibility of the Court to examine the promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit.

8. By applying the aforesaid principles to the case in hand, the finding as recorded by the trial Court that the suit is premature, cannot be held to be sustainable in the eyes of law. The finding so recorded is, therefore, liable to be and is hereby set aside.

9. In view of the forgoing discussions, the appeal is accordingly allowed. The judgment and decree passed by the First Additional District Judge, Raigarh dated 25.09.2008 in Civil Suit No. 5-B/2006 is hereby set aside and the matter is remitted back to the concerned trial Court for deciding the suit on merits in accordance with law. The Appellant/Plaintiff is hereby directed to appear before the concerned trial Court on **25.02.2019**. The said trial Court is directed to issue a fresh notice to Respondent/Defendant and then decide the suit as expeditiously as possible as the impugned judgment and decree was passed way back on 25.09.2008.

10. Registry is directed to send back the entire record to the concerned trial Court forthwith. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge