

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 01.08.2019	Delivered on 06.08.2019
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application Nos.5224 and 5225 of 2018
in CS No.287 of 2018

A.Vikram Suthakar ... Applicant in both the Petitions

Vs

M/s.ChemplastSanmar Ltd.,
Rep by its Authorised Signatory
No.9, Cathedral Road,
Chennai 600 086.

... Respondent in both the Petitions

Prayer in Appl. No.5224 of 2018: Application is filed under Order III Rule 1 of the Original Side Rules read with Clause 12 of Letter Patent Act, praying to revoke the leave granted by this Court in Application No.3697 of 2018 on 24.04.2018 in favour of plaintiff to initiate the suit before this Court.

Prayer in Appl. No.5225 of 2018: Application is filed under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 11 of C.P.C., praying to reject the plaint filed by the plaintiff in CS No.287 of 2018 pending on the file of this Court as no cause of action arose for suit.

For Applicant : Mr.R.N.Amarnath
in both the Petitions for M/s.G.Prakash Kumar

For Respondent : Mr.Vijay Narayanan (Advocate General)
in both the Petitions Assisted by Mr.S.Raghunathan

COMMON ORDER

This application has been filed by the sole defendant in C.S.No: 287 of 2018 seeking rejection of the plaint on the ground that it does not disclose a cause of action. The suit in C.S.No: 287 of 2018 was filed by the respondent herein seeking damages for defamation and for injunction restraining the defendant from in any manner writing and/or publishing any letters either in print and/or in electronic form to any authority and/or persons which are per se false and/or defamatory against the plaintiff or its directors or employees. The said suit came to be filed contending that the defendant's father was a dealer of the goods manufactured by the plaintiff apart from being a shareholder of the plaintiff company. During the year 2012 the plaintiff company implemented a delisting process as per the regulations of the Securities Exchange Board of India. At the time of the said delisting the shares held by the defendant's father were purchased by the holding company of the plaintiff for a consideration of Rs. 9 crores. The said amount was transferred to the account of the defendant's father by way of RTGS on

25/4/2015. However during the year 2017 the sales tax department raised certain demands against the defendant's father which prompted him to make certain complaints to the authorities against the plaintiff on issuance of certain statutory forms which were to be furnished as per the provisions of the taxing statutes. After the death of the defendant's father the defendant has been writing various letters making scurrilous and disparaging remarks against the plaintiff and its directors to statutory authorities as well as the family members of the family of the promoters of the plaintiff. The defendant apart from addressing those letters to the address of the company has chosen to send them to various institutions in which the family members of the promoter of the plaintiff had some role to play. This action of the defendant, according to the plaintiff had resulted in loss of reputation as well as loss of business to the plaintiff. Therefore according to the plaintiff the defendant is liable to make good the damage that is caused due to his vituperative campaign against the plaintiff. The said suit is pending.

2. It is at this juncture the defendant has come forward with the above application seeking rejection of the plaint on the ground that it does not disclose a cause of action. According to the defendant, whatever has been stated in the complaints and letters written by the defendant addressed to the statutory authorities and the family members of the promoters of the plaintiff is true to the knowledge of the Applicant, therefore there is no

question of those letters amounting to defamation. Even assuming that the contents of the letters is not true, there being no publication of the defamatory material as alleged by the plaintiff, the plaintiff is not entitled to maintain the suit particularly seeking damages for defamation and for permanent injunction. The defendant would further contend that all that he had done his only to bring to the notice of the promoters' family members about certain actions of the plaintiff company which are against the provisions of the Companies Act and the SEBI regulations. These actions according to the defendant cannot, at any stretch of imagination; be termed as defamatory entailing the plaintiff to sue for damages. Referring to the requirements of a civil defamation or slander the defendant would contend that even if one of the conditions required is absent the statement attributed to the defendant cannot be said to be defamatory. On the above contentions the defendant seeks rejection of the plaint.

3. A counter has been filed by the respondent contending that a plaint cannot be rejected on the basis of the defence set up by the defendant to the suit. The court will have to look only at the plaint allegations and on a close reading of the plaint, if a case has been made out, the plaint cannot be rejected for want of course of action. It is the further contention of the plaintiff that whether the contents of the letters are false or whether the letters

contained any defamatory material or whether there was publication of such defamatory material are all questions which have to be gone into the suit based on the evidence to be let in and those questions cannot be decided at the threshold in an application under Order 7 Rule 11 of the Code of Civil Procedure. It is the further contention of the plaintiff that the defendant had intentionally forwarded copies of the letters written by him to the family members of the promoters and to various organisations with which they were connected only to enable publication of his defamatory statements. The sending of the letters to various addresses establishes that the intention of the defendant was to malign and defame the plaintiff as well as the family members of the promoters of the plaintiff and therefore there is enough and more cause of action that is available to the plaintiff to sue for damages

4. I have heard Mr.R.N.Amarnath, learned counsel for the applicant and Mr Vijay Narayanan, learned Advocate General appearing for Mr.S.Raghunathan for the respondent.

5. Mr.R.N.Amarnath, learned counsel appearing for the applicant would vehemently contend that there is no cause of action for the suit. According to him even assuming that the defendant had written letters to the family members of the promoters of the plaintiff since there was no

publication of the alleged defamatory material, the plaintiff cannot sue for damages on the ground that the letters contain certain defamatory allegations against the plaintiff. It is the further contention of the learned counsel for the defendant/applicant that a reading of those letters would show that the allegations have been essentially made against the members of the promoters' family who were on the board of the plaintiff company. There is no allegation in the said letters as against the plaintiff company. Therefore according to Mr. R.N. Amarnath, the plaintiff would have no right to sue for defamation. It is the further contention of the learned counsel that the plaintiff being a registered company it cannot sue for loss of reputation but it can only sue for loss of business. The learned counsel for the defendant/applicant would also invite my attention to the following judgements:

(i) Maung chit Tay –Vs- Maung Tun Nyun reported in AIR 1935 Rangoon 108

(ii) Soundrapandian –Vs- Viswanathan reported in 1986 Cri Law Journal 1181 and

(iii) Narottamdas L Shah –Vs- el Mangabhai Revabhai and another reported in 1984 Cri Law Journal 1790 in support of his submissions.

6. Contending contra Mr Vijay Narayanan learned Advocate General

appearing for the respondent/plaintiff would submit that while considering an application under Order 7 Rule 11 of the Code of Civil Procedure the court cannot go beyond the plaint and look into the other material available to decide whether the plaintiff has made out a cause of action or not. He would further submit that on a wholesome reading of the plaint if it is found that there was a cause of action for the suit the plaint cannot be rejected at the threshold. Drawing my attention to paragraph 22 and 23 of the plaint, the learned Advocate General would submit that the plaintiff has made out a case for defamation. He would also further submit that looking into the documents that has been filed along with the plaint or with a written statement or with an application for rejection of plaint is wholly unnecessary and the court has to go by the averments in the plaint.

7. I have considered the rival submissions. A perusal of the plaint would show that the essential grievance of the plaintiff is to the conduct of the defendant in writing letters to various authorities as well as the members of the family of the promoters of the plaintiff who have nothing to do with the plaintiff as of today. It is also pointed out that the defendant apart from addressing the letters to the company's address, has also chosen to send copies of the letters to various organisations in which the members of the promoters family are involved. This action according to the plaintiff is

calculated to harm the reputation of the plaintiff as well as the family members of the promoter in the eyes of people connected with those organisations. It has been specifically alleged in the plaint that some person working in the said organisation or a lower level staff in the plaintiff company would have an opportunity to open the cover and read the contents of the letter and he may pass on the information to others which would definitely lead to publication of the defamatory material.

8. Mr.R.N.Amarnath learned counsel appearing for the defendant/applicant would invite me to go into the contents of the letters and decide as to whether it would amount to a defamatory allegation against the plaintiff. He would also invite my attention to the documents filed along with the plaint namely the letters attributed to the defendant and decide as to whether the allegations contained therein amounted to disparaging remarks against the plaintiff. I am afraid that I cannot take upon the said exercise at this stage since I am only concerned with an application for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure on the ground that it does not reveal a cause of action. As regards the judgements that are relied upon by the learned counsel for the applicant/defendant all the three judgements deal with essentials of defamation and the presence or absence of the said essentials on a given set of facts. I do not think I could decide as

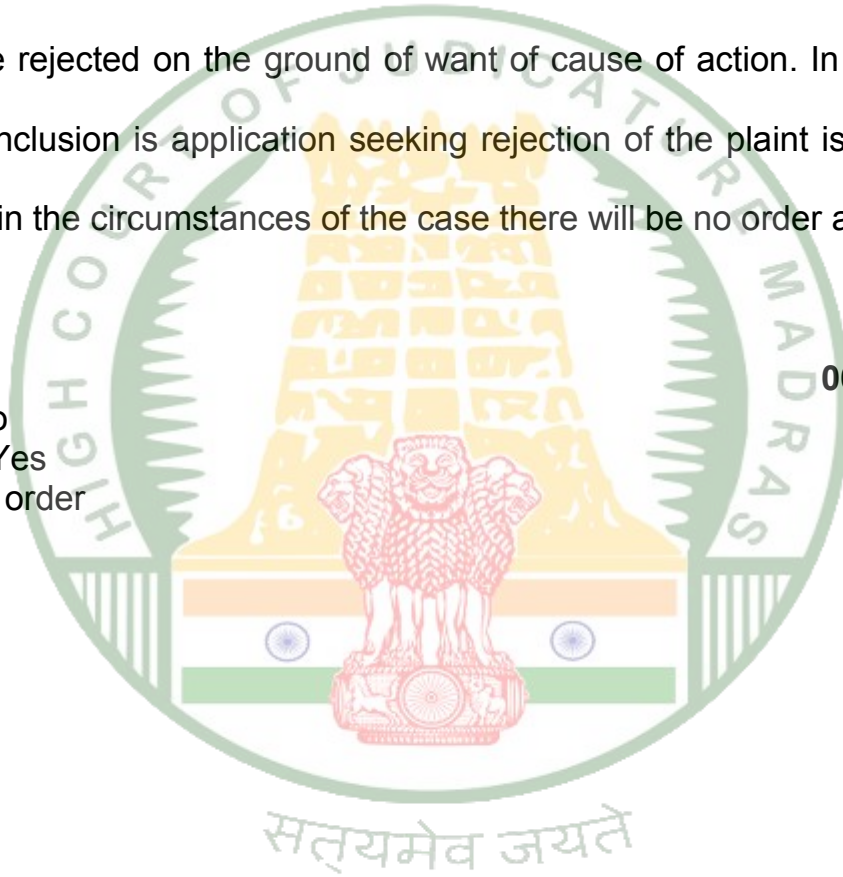
to whether the letters written by the defendant amounted to defamation or not, whether there was a publication of the defamatory material at the instance of the defendant and whether or the plaintiff would be entitled to sue for loss of business or loss of reputation at this stage.

9. As rightly contended by Mr Vijay Narayanan appearing for the respondent/plaintiff if a cursory reading of the plaint discloses that there is or there has been an attempt by the defendant to defame the plaintiff the suit cannot be rejected as not disclosing a cause of action. A perusal of the allegations in paragraph 22 and 23 of the plaint, in my considered opinion, would show that these allegations form the basis of the claim of the plaintiff and if the allegations in paragraph 22 and 23 of the plaint are taken on their face value it should be concluded that the plaintiff has made out a case for defamation. I hasten to add that I am not pronouncing on the merits of the claim of the parties. My above observations are only in the context of deciding an issue relating to rejection of plaint. I am unable to accept the contention of the learned counsel for the applicant /defendant that there is nothing in the plaint to show that the letters written by the defendant constituted defamation. There has at least been an attempt made by the defendant to publish his grievances against the plaintiff company to statutory authorities as well as the members of the family of the promoters. Whether

such action amounted to defamation or not is a question that has to be decided after trial and the same cannot be decided in application under Order 7 Rule 11 of the Code of Civil Procedure. Therefore I am of the considered opinion that the plaint discloses a cause of action at least for the purposes of Order 7 Rule 11 of the Code of Civil Procedure and the same cannot be rejected on the ground of want of cause of action. In view of the above conclusion is application seeking rejection of the plaint is dismissed. However in the circumstances of the case there will be no order as to costs.

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R.SUBRAMANIAN,J.

jv



Pre Delivery Order

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