

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 No.5014 of 2019
in CS No.346 of 2017

Sathiyam Media Vision Private Limited,
Rep. By its Managing Director,
Mr.Issac Livingstone,
No.1, Kamaraj Park Street,
Kalmandapam, Royapuram,
P.O.Box.553, Chennai 600 013.

... Applicant

Vs

Isha Foundation,
Rep by its Administrator,
Swami Eka, Having office at
Isha Yoga Centre,
Velliangiri Foothills, Ishana Vihar Post,
Coimbatore 641 114.

... Respondent

Prayers: Application is filed under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 11 of the Code of Civil Procedure, praying to reject the plaint in CS No.346 of 2017 on the file of this Court.

For Applicant : Mr.P.T.Perumal
for M/s.V.Vargees Amal Raja

For Respondents : Mr. Rajendra Kumar
for M/s.Norton and Grant

ORDER

This application has been filed by the defendant in C.S.No: 346 of 2017 seeking rejection of the plaint on the ground that it does not disclose cause of action. The said suit is one for damages for defamation and for permanent injunction restraining the defendant from publishing or telecasting any material or news item which either directly or indirectly defames the plaintiff foundation. The case of the plaintiff is that the defendant which is a television channel airing news items has been indulging in persistently broadcasting various programs which tend to lower the image of the plaintiff foundation and the founder of the plaintiff foundation. Setting out the content of the programmes broadcast by the defendant the plaintiff claims that the compere of the programmes can be seen to put leading questions with a view to extract a response which disparages the reputation of the plaintiff foundation and its founder. It is also stated that the only concern of the defendant is to increase the television rating points and to sensationalise by publishing the response of people who have certain grievance against the plaintiff foundation and its founder.

2. The defendant had filed a written statement and the suit is at a part heard stage. It is at this stage the defendant has come forward with the

above application seeking rejection of the plaint on the ground that some of the issues which have been raised in the various broadcasts made by the defendant are subject matter of certain writ petitions pending before this court and therefore the suit will have to await the disposal of the writ petitions. It is also contended by the defendant that the evidence of PW1 does not disclose that there has been a publication of defamatory allegations against the plaintiff foundation which had had the effect of lowering the reputation or image of the plaintiff foundation and its founder in the eyes of strangers or third persons. According to the defendant in the absence of such evidence it cannot be said that a case of defamation has been made out. The third contention of the applicant/defendant in support of the application for rejection of the plaint is that several other television channels and newspapers have carried articles and broadcasts about the same set of facts or incidents that are attributed to the plaintiff foundation by the defendant and the plaintiff foundation had not taken any action against any of them and therefore the suit for defamation cannot be maintained.

3. This application is opposed by the plaintiff foundation basically contending that the application is ill-conceived and belated. The evidence of the first witness of the plaintiff is almost complete and he has also been cross-examined by the counsel for the applicant/defendant. It is the further contention of the plaintiff/respondent that none of the grounds that are urged

by the defendant in support of its application for rejection of plaint would come within the purview or sweep of Order 7 Rule 11 of the Code of Civil Procedure. It is not the case of the applicant that the plaint is barred under any law or that the plaint does not disclose a cause of action. In the absence of such claim an application under Order 7 Rule 11 cannot be maintained by the applicant/defendant. Whether a case of defamation has been made out, on evidence or not, is a question that is to be decided after completion of trial. The plaintiff/respondent would also further submit that the fact that it has not taken any action against other persons who had published various news items regarding the same set of facts or incidents cannot be a ground to reject the plaint.

4. I have heard Mr.P.T.Perumal learned counsel appearing for M/s.V.Vargees Amal Raja for the applicant/defendant and Mr.Rajendrakumar learned counsel appearing for M/s. Norton and Grant for the respondent/plaintiff.

5. Mr.P.T.Perumal learned counsel appearing for the applicant/defendant would vehemently contend that an application and Order 7 Rule 11 can be maintained at any stage of the proceedings and therefore the same cannot be rejected or thrown out on the ground of delay. He would

further submit that the same issue relating to the encroachment of forest land by the plaintiff, interference with the elephant corridor, occupation of government land etc. are subject matter of various writ petitions pending in this court and as such until the writ petitions are decided the suit cannot be proceeded with and therefore according to him suit is premature. He would also point out that PW1 in his evidence had admitted that various other TV channels had also made similar broadcasts regarding the incidents complained of by the plaintiff and no action has been taken by the plaintiff against those persons or TV channels. Therefore according to Mr.P.T.Perumal the suit has to be struck off. The third contention of Mr.P.T.Perumal is that there is no evidence of publication of the defamatory material apart from there being no evidence of the fact that the publication had lowered the image of the plaintiff foundation in the eyes of the general public or any third person. According to Mr.P.T.Perumal evidence relating to lowering of the image of the plaintiff in the eyes of the general public or any third person is an essential requirement for proving defamation and if such evidence is absent the plaintiff cannot be favoured with the decree for damages or permanent injunction. Therefore the plaint is liable to be rejected.

6. Contending Contra Mr Rajendrakumar, learned counsel appearing

for the respondent/plaintiff would contend that no doubt true an application for rejection of plaint can be filed at any stage but the grounds of rejection must be the ones provided under Order 7 Rule 11 of the Code of Civil Procedure. He would further contend that none of the grounds raised in support of this application would fall within the ambit of Order 7 Rule 11 of the Code of Civil Procedure and hence the application has to be dismissed.

7. As regards the contention of the learned counsel for the applicant that there is no evidence regarding the fact that the contents of the programmes that were aired by the applicant had the effect of lowering the image of the plaintiff in the eyes of third persons, Mr Rajendrakumar, learned counsel appearing for the respondent/plaintiff would submit that it is only the evidence of PW1 that has been completed and there are other witnesses to be examined on the side of the plaintiff. Hence according to him the claim of the applicant/defendant that there is no evidence is premature. On the question relating to the absence of any action by the plaintiff against the other TV channels who had also published similar programs, Mr Rajendra kumar would contend that the same cannot be a ground for rejection of the plaint. It is also his contention that the pendency of the writ petitions do not have a bearing on the issues involved in the suit. In an action for defamation if the defendant wants to set up truth as a

defence it is for him to prove the same he cannot depend on external aids to prove that his publications are true and therefore the same would not amount to defamation.

8. I have considered the rival submissions. Mr.P.T.Perumal learned counsel appearing for the applicant would also invite my attention to the judgement of the Gujarat High Court in ***Narottamdas L Shah Vs Patel Maganbhai Revabhai reported in 1984 Cri law journal 1790*** to contend that the suit having been filed by the foundation it should it should prove that there was a loss caused to the reputation of the foundation as such and reputation being what neighbours and others think about another person unless it is proved that the reputation of the plaintiff in the eyes of such other person or persons was lowered it cannot be said that there was defamation.

9. No doubt true in the said judgement relied upon by the learned counsel for the applicant the Gujarat High Court has made a distinction between reputation and character and concluded that in order to prove damage to reputation it should be shown that the reputation of the plaintiff suffered damage in the eyes of others but I don't think that this would form a ground for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure. May be it is a valid defence for the defendant in the suit. The fact

that the trial is not completed also should be taken into account while pronouncing upon the aforesaid contention of the learned counsel for the applicant/defendant. It is open to the plaintiff to let in more evidence to show or prove the requirements of defamation are satisfied. Therefore, I do not think that the absence of evidence regarding damage to the reputation of the plaintiff in the eyes of third persons could form a ground for rejection of plaint at this stage or even at a later stage. Presence or absence of evidence is essentially a matter to be decided in the suit and not in an application under order seven rule 11 of the Code.

10. The next contention of Mr.P.T.Perumal is that there are other proceedings pending regarding the very same incidents that were reported by the defendant in the form of writ petitions and therefore unless those writ petitions are disposed of there cannot be a conclusion on the truth or otherwise of the content of the broadcasts made by the defendant. Though this submission of the learned counsel looks attractive at the first blush I do not think that this could, again, form a ground for rejection of the plaint. If the defendant in an action for defamation raises the defence of truth it is for him to establish it and succeed on the basis of evidence. He cannot rely upon or seek aid of some dispute which is pending before a court of law to prove his case. It is open to the defendant to let in evidence to show that whatever has

been alleged or said broadcasts which are subject matter of the suit are true and as and hence they do not constitute defamation. Rejection of a plaint is an extraordinary remedy and the same cannot be invoked on grounds other than the ones specified in the rule itself. I am therefore constrained to reject the contention of Mr.P.T. Perumal on the ground that the pendency of the writ petitions would bar the present suit

11. The third and final contention raised by Mr.P.T. Perumal is that several other TV channels had published programs relating to the incidents that are subject matter of the publications attributed to the defendant and the plaintiff had not chosen to take action against any of them. This inaction on the part of the plaintiff according to Mr.P.T. Perumal would disentitle the plaintiff from proceeding with the suit. In support of the said submission Mr.P.T. Perumal would rely upon judgement of a single judge of this court in ***Sanjay Pinto and another –Vs- A. Kamaraj reported in 2012 (2) CTC 352***. The said judgement was delivered in a proceeding under section 482 of the code of criminal procedure seeking to quash a complaint under sections 499 and 500 of the Indian Penal Code. In the said context the learner single judge concluded that filing of the complaint against a chosen few would amount to malicious prosecution and quashed the complaint. A prosecution under sections 499 and 500 of the Indian Penal Code is different from suit

for damages for defamation. If there are hundred TV channels and hundred news papers and all of them publish defamatory material against an individual or an organisation the organisation or the individual cannot be forced to file suits for damages against all of them. It is left to the discretion of the plaintiff to decide as to who is to be sued depending on the damage caused. I am therefore unable to accept the submissions of Mr.P.T. Perumal on this ground also.

12. For the foregoing reasons I do not find any merit in the application and the same is dismissed. No costs.

Index : Yes
Internet: Yes
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06.08.2019

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R.SUBRAMANIAN,J.

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