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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 19th July, 2019

+ CM(M) 1078/2019

RITIKA JUNEJA & ORS

..... Petitioners

Through: Dr. M.K. Gahlaut, Advocate.

versus

ANSHUMAN NARANG

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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CM APPL. 32205-32206/2019(*exemption*)

Exemption allowed, subject to all just exceptions.

The applications are disposed of.

CM(M) 1078/2019 & CM APPL. 32204/2019

1. The present petition is directed against an order dated 23.04.2019 passed by the Additional District Judge- 02 (North-West), Rohini Courts, Delhi in CS No. 550/2018 by which the application of the petitioners/defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter, "the CPC") was dismissed.

2. The respondent/plaintiff filed the suit against the petitioners/defendants in May, 2018 for defamation, harassment, and other reliefs. The

petitioner no. 1 [defendant no. 1] is the wife of the plaintiff, the petitioner no. 2 [defendant no. 2] is her brother, and petitioner nos. 3 and 4 [defendant nos. 3 and 4] are her parents.

3. It is stated in the plaint that the plaintiff and the defendant no. 1 were married on 07.07.2014. It appears that their relationship ran into difficulties, and various proceedings have been filed by the parties against each other. The plaintiff alleges that he has suffered undue harassment at the hands of the defendants, including *inter alia* by reason of an e-mail dated 06.04.2018 sent by the defendant no. 2 to IIM Lucknow, Noida Campus in which the plaintiff had been admitted for an educational degree. The plaintiff has alleged that the contents of the e-mail were defamatory and tarnished his reputation. Further, he has alleged that the defendant nos. 1 to 4 have been making calls and writing e-mails to the institute by which they are threatening institute with criminal prosecution, if it does not cancel the admission of the plaintiff. It is further stated in the plaint that the institute has resultantly constituted an Enquiry Committee to look into the matter against the plaintiff.

4. The relevant averments in the plaint are *inter alia* as follows:-

“11. That the plaintiff in the month of December, 2017 resigned from his job with Astha Packaging and joined a job as Manager in ICICI Bank In Mumbai on 03.01.2018 at higher salary of Rs.93,803/- p.m. It is pertinent to mention here that on the basis of his score in GMAT Exam the plaintiff was offered admission in International Program in Management for Executives by reputed institute IIM-Lucknow, Noida campus and for the better career and future prospects plaintiff immediately resigned from ICIC bank Mumbai and got enrolled himself into the above Institute for academic session 2018-19. The plaintiff not only procured the educational (scholar)loan for pursuing the aforesaid course but has also deposited the fees of Rs

16,23,000/- (Rupees sixteen lakh twenty three thousand only) in three installments to the institute.

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14. That it was a matter of grave shock and dismay to the plaintiff that immediately after the Hon'ble Judge Manu Rai Sethi had passed his order dated 06.04.2018, releasing the passport of Plaintiff for joining IPMX Course , IIM-Lucknow, the defendant no.2 brother of defendant no.1 having mobile no. 8700102210 on the same day with malice and in order to tarnish the reputation of plaintiff sent an email at 4.17 p.m. to the institute IIM, Lucknow containing false, frivolous, slanderous and defamatory allegations against the Plaintiff so that Institute should cancel the admission of the plaintiff. Actually the aforesaid e-mail dated 6.4.2017 was sent by the defendant no.2 to the institute in order to put spokes and hurdles in registration of Plaintiff with the Institute...

15. That because of the above mentioned email dated 06.04.2018 of defendant no.2 the institute had sent an email dated 13.04.2018 to the Plaintiff requiring him to bring No Objection Certificate from the concerned court for pursuing IPMX program and travelling abroad and deadline for submission of above certificate was given 20.04.2018. The above e-mail dated 6.4.2018 as sent by defendant no.2 to the Institute has not only tarnished and spoiled the reputation of Plaintiff with the institution but has also caused great mental agony to the Plaintiff. In fact because of the above e-mail dated 6.4.2018 of the defendant no.2 the plaintiff has become a stuff of mockery among his fellow students and they started addressing him as criminal which has not only caused a great humiliation and mental agony to the plaintiff but he has also become reluctant to attend his classes in the Institute.

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17. That it is highly shocking that the defendant no.2 in order to malign the reputation of the plaintiff in the campus sent a email dated 6.4.2018 which was not only for ulterior motives but also was far away from the facts as neither the plaintiff's application for release of its passport was

dismissed ten times nor any case for forgery had been registered against the plaintiff for getting bail from Hon'ble High Court of Delhi at New Delhi. Similarly the plaintiff is also not involved in any manipulations as alleged in the above-mentioned e-mail dated 6.4.2018 of the defendant no.2. In fact the above mentioned e-mail was in the form of threat to the institute so that it should cancel the admission of the plaintiff.

18. That even after the Hon'ble Judge Sh. Manu Rai Sethi, ASJ, Rohini Court has given No Objection to the plaintiff for pursuing IPMX course vide its order dated 21.4.2018 the defendants no.1 to 4 have not stopped in their nefarious designs to malign the reputation of the plaintiff in the institute and on the daily basis defendants no.1 to 4 have been making calls and writing e-mails to the IIM institute by which they are not only threatening the institute that either it should cancel the admission of the plaintiff or the institute would be involved in criminal cases. As a result of this disgusting and mischievous conduct of the defendants the institute sent a letter to the plaintiff vide its e-mail dated 18.5.2018 stating therein that An enquiry committee has been constituted to look into the matter as IIM Lucknow has received some information related to the plaintiff and his involvement in some criminal and court cases and further the plaintiff was required to be available with all related documents at IIM Lucknow, Noida Campus.

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21. Actually there are number of litigations are pending between the parties and if the defendants have still any grievances remained against the plaintiff they could have moved before the court of Justice but the defendants deliberately, intentionally and with malafide intention in order to tarnish the reputation of the plaintiff and to destroy his carrier have opted this wrong way and made illegal attempts which are wrong and against the law as the Hon'ble court of Manu Rai Sethi ASJ Rohini Courts has already given the permission to the plaintiff to pursue his IPMX with IIM Lucknow. Infact the defendants no. 1 to 4

can not be permitted to take law in their hands and spoil the life of the plaintiff. Hence the aforesaid illegal acts of defendants no.1 to 4 of making threatening calls and writing defamatory letters against the plaintiff to the institute are liable to be restrained by a decree of injunction from doing such activities which would disturb and spoil not only the mental peace of the plaintiff but also his reputation.

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24. That after the e-mail dated 6.4.2018 sent by the defendant no. 2 and subsequent illegal and nefarious activities of defendant no.1 to 4 by sending threatening e-mails and making calls to the IIM Lucknow so that the plaintiff's admission is cancelled, the plaintiff is facing mental agony, humiliation, harassment by changed attitude of the institute along with his batch mates towards him. The acts of the defendants have not only tarnished, spoiled, lowered the reputation, character and credit of Plaintiff in the institute and among his batch mates but have also caused great humiliation, mental agony, harassment as he is continuously facing the mocking from his surrounding calling him accused and making fun of him. The humiliation, harassment and mental agony caused to the Plaintiff has not only affected his health but has gravely tarnished and spoiled his reputation as well. The Plaintiff had sleepless nights after the incidents of mocking, directly or indirectly, in his institute occurred and had to take medical help in order to get his health fit and better.

25. That no law has permitted the defendants to destroy the carrier of the plaintiff and tarnish his reputation in the society by making false and frivolous e-mails and calls to the plaintiff's institute. Actually the loss of reputation which the plaintiff has suffered and the mental agony caused by the illegal acts of defendant no.1 to 4 can not be measured and further compensated in any form but still the defendants no.1 to 4 are jointly and severally liable to pay damages of Rupees 50,00,000/- (Fifty Lakhs Only) to the plaintiff."

5. On the basis of these averments, the plaintiff has claimed the following reliefs in the suit:-

“IN VIEW OF THE ABOVE FACTS AND CIRCUMSTANCES IT IS MOST RESPECTFULLY PRAYED that this HON’BLE COURT may be pleased to pass a decree of perpetual injunction in favour of the plaintiff and against the defendant no.1 to 4 thereby retraining them, their agents, servants, representatives, associates and relatives from

a) approaching, contacting, writing or communicating the Institute IIM, Lucknow, Noida Campus in any manner Particularly making threatening calls and sending e-mails containing false, frivolous, slanderous and defamatory allegations against the Plaintiff.

b) approaching, contacting, writing or communicating the ESCP, Europe, Business School, London Campus, 537, Finchley Road, London, NW37BG, United Kingdom in any manner Particularly making threatening calls and sending e-mails containing false, frivolous, slanderous and defamatory allegations against the Plaintiff.

c) approaching, contacting, writing or communicating the The YMCA Indian Student Hostel, 41 Fitzroy Square, London, W1T 6AQ in any manner Particularly making threatening calls and sending e-mails containing false, frivolous, slanderous and defamatory allegations against the Plaintiff.

d) approaching, contacting, writing or communicating the government and private organization including UK Embassy and immigration department or any other Ministry in any manner Particularly making threatening calls and sending e-mails containing false, frivolous, slanderous and defamatory allegations against the Plaintiff.

e) Further grant a decree of damages for the amount of Rs.50,00000/- (Rupees Fifty Lakhs only) in favour of the plaintiff and against the defendant no. 1 to 4. Jointly and severally.

Any other or such others, as this Hon'ble court may deem fit and proper in facts and circumstances of the case may also be passed in favour of the plaintiff and against the defendants."

6. During the course of proceedings, the petitioners/defendants filed the application under consideration under Order VII Rule 11 of the CPC, contending that the plaint did not disclose a cause of action against them. The said application has been rejected by the impugned order of the Trial Court in which, after reference to the judgments cited, it has been observed that the plaintiff's allegation in paragraph 24 of the plaint pertain not just to the e-mails sent by defendant no. 2 on 06.04.2018 but also to the e-mails and calls from the defendant nos. 1 to 4 to the IIM institute, resulting in mental harassment and reputational damage to the plaintiff.

7. Having heard learned counsel for the petitioners, I am of the view that the impugned order does not call for interference under Article 227 of the Constitution. The law regarding the exercise of jurisdiction under Order VII Rule 11 of the CPC is well settled. The Court is bound to adjudicate the said application only on the basis of the plaint and the documents filed with the plaint. The evidence which may be led by the parties and its probative value do not form any part of the consideration at the stage of rejection of the plaint. The strength of the plaintiff's case is to be adjudicated at trial and not on an application under Order VII Rule 11. In this regard, the Supreme Court has, in *Saleem Bhai vs. State of Maharashtra*, (2003) 1 SCC 557, held as follows :-

"9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before

registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

The Supreme Court in *Mayar (H.K.) Ltd. & Ors. vs. Owners & Parties, Vessel M.V. Fortune Express & Ors.*, (2006) 3 SCC 100 has held as follows:-

“12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case,

the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.”

8. In the present case, the cause of action pleaded by the plaintiff is on account of defamation and harassment. He has clearly averred that all the defendants have made false statements to third parties which have resulted in damage to him. Whether the case pleaded by him is right or wrong is a matter for trial. Suffice it to say that the plaint does not suffer from lack of cause of action, and for the purposes of Article 227, it is not possible to conclude that the Trial Court has acted in excess of its jurisdiction, or that the findings recorded by it is perverse.

9. Consequently, this petition is dismissed.

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JULY 19, 2019

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PRATEEK JALAN, J.