

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.02.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.595 of 2010

Pramodkumar, I.P.S.,
S/o.S.P.Singh
Additional Commissioner of Police
Head Quarters
Chennai - 600 008

... Plaintiff

Vs.

1.Mr.O.Thomas
Printer & Publisher
M/s.Deccan Chronicle & Holdings Limited

2. Ms.A.T.Jayanthi
Editor
M/s.Deccan Chronicle & Holdings Limited

3.Mr.V.P.Raghu
4.Ms.Vidyashree Dharmaraj
5.Mr.Pradeep Damodaran

Reporters
M/s.Deccan Chronicle & Holdings Limited

.. Respondents

This Civil Suit is preferred, under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of the Code of Civil Procedure 1908 praying for

a) Directing the defendants to make payment of a sum of Rs.1,00,00,000/- towards the damages caused by the publication of the articles in the magazine filed as Doc.Nos.1 and 2 in the plaint;

b) for a permanent injunction restraining the defendant, their men, servants, agent (s) or any person or persons acting through or under them

or for and on behalf of them from in any manner, whatsoever, publishing or causing to be published any news articles resembling one published in Deccan Chronicle in the Magazines files as Doc Nos.1 and 2 in the plaint and

c) for Costs of the suit;

d) and pass such further or other orders as this Hon"ble Court may deem fit in the facts and circumstances of the case and thus render justice.

For Plaintiff : Mr.Vigneshwar Elango

For Defendants : Ex parte

JUDGMENT

Mr.Vigneshwar Elango, learned counsel representing the counsel on record for sole plaintiff is before this Court. There are five defendants. The case file placed before this Court brings to light that all the five defendants have been duly served with suit summons. They have entered appearance through a common counsel and have filed a common written statement dated 12.02.2011. Therefore, pleadings were completed. Post completion of pleadings, this Court on 31.03.2011 framed eight issues.

2. Thereafter, the suit was placed before learned Additional Master III for recording evidence. Sole plaintiff was examined as PW1 and he was

extensively cross-examined by the counsel for defendants. Thereafter, defendants did not let-in any oral evidence or no document were marked on defendants' side. To be noted, no documents have been filed along with the written statement dated 12.02.2011.

3. In the aforesaid backdrop, as the defendants did not come forward to let-in evidence, this suit was directed to be posted before Court by learned Additional Master III vide order dated 26.08.2013. When the matter was listed for arguments, learned counsel on record for defendants submitted that he has no instructions from any of the five defendants. Learned counsel filed a memo dated 11.12.2019 to that effect. In this regard, proceedings of this Court dated 20.01.2020 and 28.01.2020 are of relevance and the same read as follows:

'Proceedings dated 20.01.2020

Learned counsel for plaintiff is before this Court. Mr.C.A.Diwakar, learned counsel for all the five defendants submits that he has no instructions from the defendants.

2. Learned counsel seeks time to file a suitable memo in the Registry and bring it on Board.

3. At request, list on 28.01.2020.'

Proceedings dated 28.01.2020

' Read this in conjunction with and in continuation of earlier proceedings of this Court dated 20.01.2020.

2. Mr.C.A.Diwakar, learned counsel before this Court submits that a suitable memo has since been filed. The memo is dated 11.12.2019, the same is before this Court and reads as follows:

MEMORANDUM FILED BY THE COUNSEL FOR THE DEFENDANTS

The counsels for Defendants state as follows:

1. Notice dated 05.10.2019 had been sent by Speed Post to the Defendants seeking instructions for proceeding with the hearing. The said letters sent to the Defendants individually had been returned as "No such addressee".

2. Fresh Notice dated 04.11.2019 were once again issued by the Counsel by RPAD to the defendants to their addresses given in the plaint. The said envelopes were once again returned with the postal endorsement "Left".

3. In the above circumstances, the Counsels are filing the instant Memo reporting "No Instructions" and to seek Leave of this Hon'ble Court to withdraw their appearance & Vakalatnama for the Defendants.

4. In the above circumstances, it is prayed that this Hon'ble Court may be pleased to record 'No Instructions' and permit the counsels to withdraw their appearance & Vakalatnama for the defendants and pass such other or further orders as this Hon'ble Court deem fit and proper in the circumstances of the case and thus render justice.

Dated at Chennai, this the 11th day of December 2019.

(sd./)

Counsel for Defendants.'

The said memo is recorded.

3. Mr.Vigneshwar Elango, learned counsel for plaintiff is before this Court.

4. Mr.C.A.Diwakar, learned counsel drew the attention of this Court to sub-Rule (2) of Rule 4 of Order III

of 'The Code of Civil Procedure, 1908' ('CPC' for brevity).

Sub-Rules 1 and 2 of Rule 4 of Order III reads as follows:

'Order III-Recognised Agents and Pleadings

Rule 4: Appointment of Pleadings:

(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorized by or under a power of attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall, for the purpose of sub-rule (1), be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.'

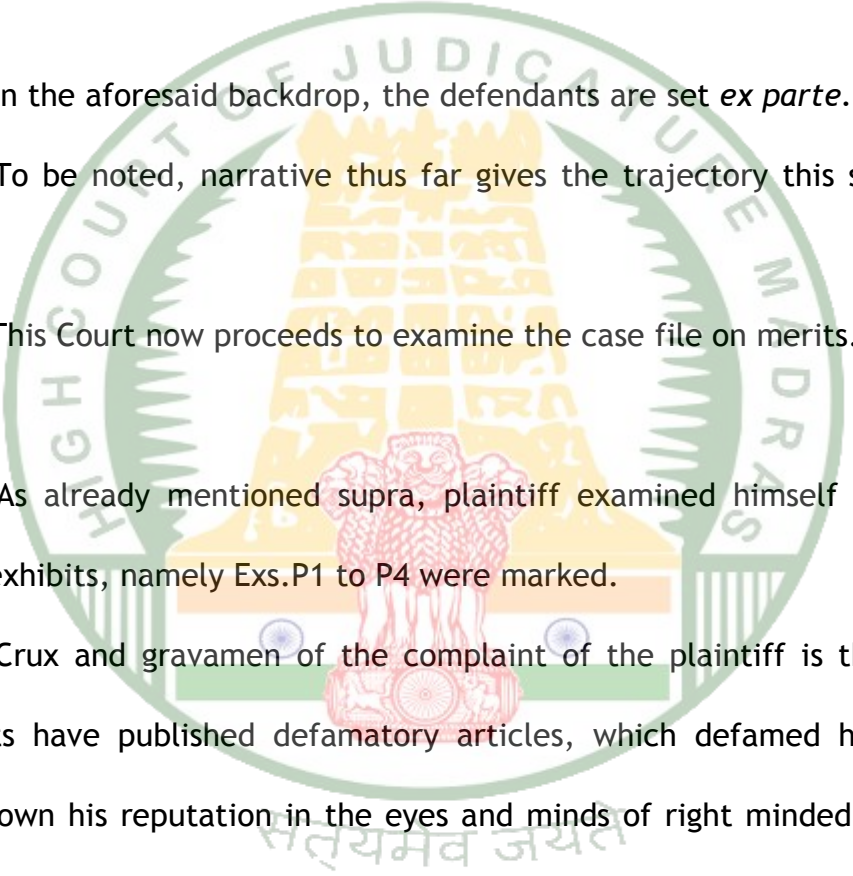
5. Adverting to the aforesaid provision, learned counsel submits that the vakalatnama filed by him along with his co-counsel may please be determined by this Court in the light of aforesaid memo.

6. This Court has perused the annexures to the memo. Annexures to the memo reveal that all the communications sent to each of the defendant have been returned with the postal endorsement 'left' and the returned envelopes have been annexed to the memo.

7. In the light of the aforesaid memo, annexures and sub-Rule 2 of Rule 4 of Order III, vakalatnama of Mr.C.A.Diwakar and his co-counsel dated 11.12.2019 stands determined i.e., withdrawn. Therefore, Registry shall not

show the name of learned counsel or his co-counsel from the next listing and show the name of all the defendants together with their full/complete address as in the short and long cause titles of the plaint in the next listing.

List on 18.02.2020.'

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4. In the aforesaid backdrop, the defendants are set *ex parte*.
 5. To be noted, narrative thus far gives the trajectory this suit has taken.
 6. This Court now proceeds to examine the case file on merits.
 7. As already mentioned supra, plaintiff examined himself as PW1 and four exhibits, namely Exs.P1 to P4 were marked.
 8. Crux and gravamen of the complaint of the plaintiff is that the defendants have published defamatory articles, which defamed him and brought down his reputation in the eyes and minds of right minded people or in other words, it is the case of the plaintiff that two articles published by the defendants have lowered the esteem of the plaintiff in the minds of right minded people. On this basis, instant suit has been filed claiming damages of Rs.1,00,00,000/- besides a prayer for permanent injunction restraining the defendants from publishing or causing to be published articles resembling the articles, which form subject matter of instant suit.

9. This takes us to the articles, which form subject matter of instant suit, while one article is captioned 'CONWOMAN POINTS FINGER AT TOP COP' was published in the defendants' daily dated 06.03.2010, another article captioned 'COPS RAPED WOMAN' was published on 11.03.2010. These two articles have been marked as Exs.P1 and P2.

10. Considering the nature of the matter, this Court deems it appropriate to say that it would suffice if Exs.P1 and P2 are read as integral part and parcel of this judgment. Owing to the nature of the matter and the trajectory it has taken, this Court refrains itself from extracting and reproducing Exs.P1 and P2, but as mentioned supra, Exs.P1 and P2 shall be read as integral part and parcel of this judgment.

11. Ex.P3 is a notice dated 14.03.2010 issued by the plaintiff and Ex.P4 is the reply from defendants dated 22.03.2010.

12. This suit was presented in this Court on 15.02.2011 and it took the trajectory which has been captured and set out supra.

13. A perusal of evidence of PW1 (plaintiff) reveals that he received several phone calls from friends and well wishers, who had read the aforesaid offending articles and it has lowered the esteem of the plaintiff in

the minds of such people besides other right minded people. A perusal of the common written statement filed by the five defendants reveals that sum and substance of the defence of the defendants is that aforementioned publications (Exs.P1 and P2) were made in public interest, besides saying that the material was already available in public domain in another legal proceedings.

14. In other words, defendants did not deny the publication. Defendants stand by the publication, but have taken the plea that offending articles fall under aforementioned two exceptions to defamation claim. One is, matter already being in public domain and the other is publication in public interest. This is articulated with specificity in Paragraph 5 of the common written statement filed by all the five defendants, which reads as follows:

' 5. The contentions in Paragraph 8 are denied. As stated earlier, the news item was published by the Defendants in the interest of the public and as a responsible newspaper. There are more than 20 officers of the rank of I.Gs posted in Chennai. Further there being absolutely no reference to the plaintiff either by name or position, any speculation about the identify of the persons referred to in the news item cannot be a cause of action for filing a suit for defamation.'

15. Therefore, with the consent of Mr.Vigneshwar Elango, learned counsel for plaintiff, this Court deems it appropriate to frame one other

additional issue and the same is as follows:

'Additional Issue

Whether the offending publications on 06.03.2020 and 11.03.2010 were made in public interest and whether they were already available in public domain?

16. Learned counsel fairly submits that the above is an all too critical issue, which ought to have been framed.

17. However, exercising the powers of this Court to frame additional issue at any stage of the suit, the above additional issue is now framed.

18. This Court now embarks upon the exercise of testing the additional issue first as answer to the additional issue effectively lays the foundation for answering or gives answer to the other issues as a sequitur, as the eight issues framed on 31.03.2011 reads as follows:

' 1. Whether the article published by the defendants in its publication dated 06.03.2010, Vol.5 and issue 345 defames the plaintiff?

2. Whether the 'news item' impugned in the plaint could be construed as defamatory?

3. Whether the suit for defamation is maintainable against a media/news paper for reporting facts contained in pleadings in a judicial proceedings or reporting of events that took place in open Court?

4. Whether the plaintiff has any cause of action for maintaining a suit for defamation?

5. Whether the defendants is entitled to recover costs?

6. Whether the plaintiff is entitled to a sum of Rs.1 Crore towards damages?

7. Whether the plaintiff is entitled to relief of permanent injunction as prayed for?

8.To what relief the plaintiff is entitled to?

19. The defendants, who plead exception to a claim of defamation, ought to have established that the publication was made in public interest. In this regard, the law regarding burden of proof, which is well settled becomes significant and relevant. Burden of proof is always on the plaintiff, but the onus of proof swings like a pendulum from one end to another. In the instant suit, plaint having been filed, on defendants filing a common written statement and onus shifts to the defendants to establish that the offending articles were published in public interest and were in public domain. In the instant case, trajectory of the suit set out supra would reveal that the defendants have not let-in oral evidence and have not marked any documents. In other words, there is no oral or documentary evidence on behalf of defendants. Not only have the defendants not marked any documents, they have not chosen to file any document along with the written statement also. Therefore, there is no difficulty in coming to the conclusion that the defendants have not discharged the onus that shifted to them on the written statement being filed. As the defendants have not discharged the onus, the defendants taking umbrage under the

two exceptions for defamation claims, falls flat on its face. Therefore, this additional issue is answered in favour of the plaintiff and against the defendants by holding that the defendants have not discharged their onus by establishing that the offending publications/offending articles were published in public interest and that they were already in public domain.

20. This takes us to the other issues. Issues 1 and 2 go together. In the absence of contra evidence, on a perusal of two offending Articles (Exs.P1 and P2), this Court is left with the considered view that the articles and more particularly, the captions are clearly defamatory. With regard to Issue No.3, onus shifted on the defendants to establish that material published was only a reporting of facts contained in another judicial proceedings as the defendants have not discharged the onus by demonstrating that Exs.P1 and P2 were merely reporting facts contained in pleadings in another judicial proceedings. This issue is also answered against the defendants and in favour of the plaintiffs.

21. With regard to cause of action, considering the narrative thus far, there can be no doubt or dispute about the existence of cause of action. The obtaining legal position is very clear that 'cause of action' is a term/expression which has not been defined in any statute or Code and

therefore, one has to turn to case laws to have clarity on what 'cause of action' is. One lead judgment on this aspect is **Nawal Kishore** case [**Nawal Kishore Sharma v. Union of India** reported in (2014) 9 SCC 329]. Relevant Paragraph in **Nawal Kishore** case is paragraph 10 and the same reads as follows:

“10. In *State of Rajasthan v. Swaika Properties* [(1985) 3 SCC 217], the fact was that the respondent Company having its registered office in Calcutta owned certain land on the outskirts of Jaipur City, was served with notice for acquisition of land under the Rajasthan Urban Improvement Act, 1959. Notice was duly served on the Company at its registered office in Calcutta. The Company, first appeared before the Special Court and finally the Calcutta High Court by filing a writ petition challenging the notification of acquisition. The matter ultimately came before this Court to answer a question as to whether the service of notice under Section 52(2) of the Act at the registered office of the respondent in Calcutta was an integral part of cause of action and was it sufficient to invest the Calcutta High Court with a jurisdiction to entertain the petition challenging the impugned notification. Answering the question this Court held: (*Swaika Properties* case [(1985) 3 SCC 217], SCC pp. 222-23, paras 7-8)

“7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require the respondents to surrender or deliver possession of the

lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under sub-section (6) thereof.

8. The expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure:

'The "cause of action" means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court.'

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The Notification dated 8-2-1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

22. This Court, therefore, is left with the considered view that cause of action certainly subsists in favour of the plaintiff with regard to claim of

damages in the absence of contra evidence. The claim for damages has clearly been made out and the plaintiff is entitled to sum claimed in the prayer paragraph as quantum has not been dislodged. Therefore, Issue No.6 is also answered in favour of the plaintiff. In the light of aforesaid issues having been answered in favour of the plaintiff, it follows as a sequitur that the plaintiff is entitled to an injunction qua defendants with regard to further publication of similar articles. Therefore, Issue No.7 is answered in the affirmative. With regard to costs, Section 35 of 'The Code of Civil Procedure, 1908' deals with costs. This Court has already held that vexatious defence need not be merely in the nature of the defence but filing a written statement, cross-examining the plaintiff and thereafter, not turning up in trial is also a vexatious mode of defending. In this view of the matter, though this is a fit case for imposing exemplary costs, suffice to say that this Court refrains itself from imposing exemplary costs and it would suffice to answer the issue regarding costs i.e., Issue No.5 in favour of plaintiff. Issue No.8 is a residuary issue and no other relief falls for consideration.

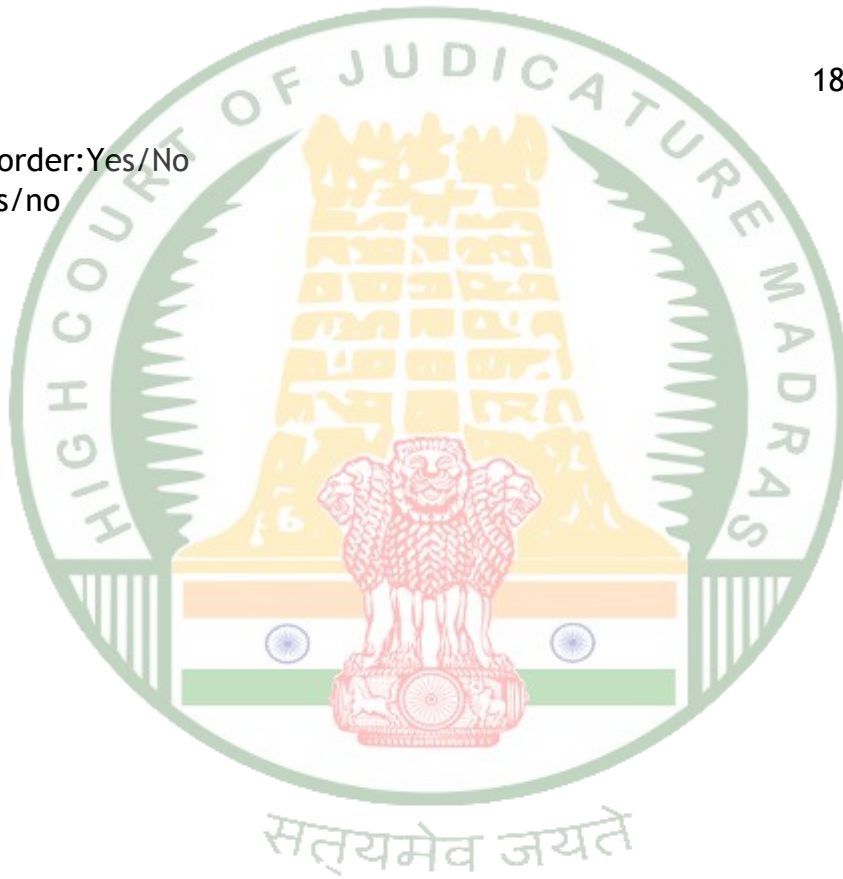
23. Before concluding, this Court deems it appropriate to record that a perusal of evidence of PW1 (to be noted, the sole plaintiff examined himself as PW1) read in juxta-position with exhibits marked on the side of

the plaintiff, leaves this Court with the considered view that evidence, both oral and documentary, is cogent, coherent and compelling qua the prayers.

In the light of narrative, thus far, suit decreed with costs as prayed for.

18.02.2020

Speaking order: Yes/No
Index: Yes/no
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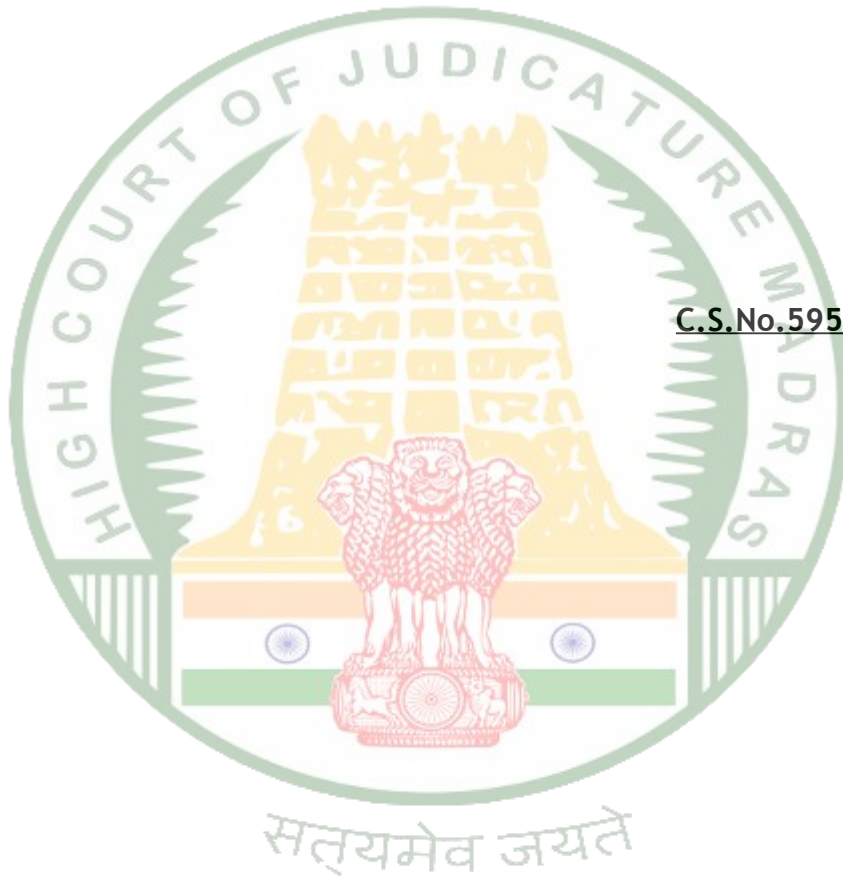


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