

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.12.2016

PRONOUNCED ON : 06.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CS.No.772 of 2006

R.M.Cyril
R.M.Towers
No.108, Chamiers Road,
Teynampet,
Chennai - 600 018.

.. Plaintiff

V.

1. V.Jyotsana N.Shah
No.47, Krishnappa Naicken Tank Street,
Chennai - 600 079.
2. M/s.Bherula & Sons
Rep. By its Propr. R.J.Bherulal
No.413, Mint Street, First Floor,
Chennai - 600 079.

.. Defendants

PRAYER : Civil suit is filed under Order IV Rule 1 of OS Rules
r/w.Order VII, Rule 1 of CPC 1908 :-

(a) Directing the defendants 1 and 2 to pay the plaintiff jointly and severally a sum of Rs.50,00,000/- together with interest at 18% p.a. from the date of plaint till the date of realization.

(b) grant such further or other reliefs ; and

(c) costs of the suit.

For Plaintiff	:	Mr.R.Thiagarajan
For Defendants	:	Mr.A.Babu for D1 Mr.S.Vasudevan for D2

J U D G M E N T

The prayer in the plaint filed by the plaintiff is for a Judgment and Decree directing the defendants 1 and 2 to pay jointly and severally a sum of Rs.50,00,000/- as compensation towards damages on account of publishing the plaintiff as "Insolvent" in the Dina Malar on 08.12.2015. He also prays for 18% interest per annum for the aforesaid amount from the date of suit till the date of realisation and costs of the suit.

2. The brief facts of the plaint are as follows:

(i) The plaintiff claims to be a well-known, prominent and reputed Builder and Promoter of Flats and houses in the field of construction for over 20 years and has executed various Projects in the City of Chennai and other parts of Tamil Nadu. The plaintiff has also constructed over 70 individual houses and over 250 Apartment Blocks in the City of Chennai and also constructed School and Administrative Blocks in the State of Andhra Pradesh. It is further stated in that plaint that the plaintiff is the Managing Partner of M/s.R.M.Constructions, which is the Flag-ship concern which has diversified business interests. The Plaintiff has extensive knowledge about the real estate sector and reliable Promoter.

(ii) In the plaint, it is further stated that the second defendant is a finance broker and the first defendant is a financier, who had lent money through the second defendant to M/s. Arul Saw Mills, Shencottah Road, Tenkasi. The plaintiff stood as a guarantor for due repayment of the principal amount lent to M/s. Arul Saw Mills along with the interest payable. Since M/s. Arul Saw Mills had committed default in repayment of the amount borrowed by the first defendant, the plaintiff being the guarantor, settled the claim of the first defendant through the second defendant and that the first defendant had also issued a letter stating that the loan amount has been fully settled and cleared. As such there is no claim as against either M/s. Arul Saw Mills or the plaintiff as the guarantor of the said loan amount.

(iii) It is alleged in the plaint that the first defendant having received the amount from the plaintiff in full and final settlement of the loan amount, mischievously and with ill-motive filed a Civil Suit in O.S.No.4802 of 2002 as against the Plaintiff as well as M/s. Arul Saw Mills on the file of the learned XIV Assistant City Civil Court, Chennai, for recovery of a sum of Rs.20,050/- payable with interest at 1.60% per month on Rs.17,500/- and for costs. In the said suit, the plaintiff was set ex-parte and subsequently an ex-parte decree was passed for a sum of Rs.20,050/- together with interest on Rs.17,500/- at 1.60% along with Rs.2,315.50p. towards costs of the suit.

It is further alleged that no valid notice was caused on the plaintiff and as such the first defendant secured the ex-parte decree resorting to sharp practices. Thereafter, without valid notice to the plaintiff, the first defendant initiated Insolvency Proceedings as against the plaintiff in I.P.No.37 of 2004 on the file of this Court. In the said proceedings, the first defendant also got the plaintiff adjudged as an Insolvent by an order dated 25.07.2005 and subsequently, a Public Notice was caused in “Dina Malar”, Chennai Edition on 08.12.2005 through the Official Assignee, High Court, Madras, with regard to the adjudication of the plaintiff herein as an Insolvent.

(iv) The plaint further proceeds that the plaintiff is a reputed Builder and financially sound and never committed any act of Insolvency as alleged by the first Defendant. The plaintiff came to know about the proceedings and the order of Adjudication dated 25.07.2005 only when he received the message from his friend at Dindigul. Thereafter, the plaintiff filed Application Nos. 629 and 630 of 2005 in I.P.No.37 of 2005 to set aside the order dated 25.07.2005, and this Court, by an order dated 13.12.2005, pleased to set aside and recall the order and permitted the first defendant to withdraw I.P.No.37 of 2004 as “Settled out of Court”. It is alleged that by reason of the malicious proceedings indulged by the first defendant, the plaintiff has not only suffered loss of reputation as reputed Builder and Flat

Promoter but also his credit-worthiness in the market had dwindled sharply on account of the Public Notice caused in “Dina Malar” dated 08.12.2005. By reason of the publication about the Insolvency Proceedings, the first Defendant defamed the Plaintiff and also his reputation as a Builder.

(v) It is further alleged in the plaint that the plaintiff is very affluent and owns various properties in Chennai. His monthly rental income alone is nearly Rs.5.00 lakhs and he is an Income Tax Assessee and the turnover in the year 2004 of his construction firm M/s.R.M.Constructions was over Rs.3.15 Crores and he has substantial means and had not committed any act of insolvency. Since the publication has created an impact in the construction field, the persons who have entered into contracts with him for purchase of the Flats as well as promotion of the Flats have expressed their apprehensions whether the plaintiff would be in a position to complete the Project/Flats as originally envisaged and hand over the premises to them. The publication has created a very bad impression in the minds of the public and also his customers and thereby the reputation of the Plaintiff has been brought down in the minds of his customers.

(vi) The plaint further proceeds that only because of the malicious prosecution conducted by the first Defendant as against the Plaintiff, he was adjudicated as Insolvent by the Public Notice dated 08.12.2005. The first defendant had deliberately and wantonly prosecuted the Insolvency Proceedings even after receiving nearly Rs.6,20,000/- from the plaintiff only with sinister motive and to undermine the reputation and to cause loss of dignity of the plaintiff herein.

(vii) It is further alleged in the plaint that the persons in the real estate business have started commenting and being apprehensive of the plaintiff's credit-worthiness. The Public Notice dated 08.12.2005 has adversely affected the image and reputation of the plaintiff as a reputed and well known Promoter/Builder in the minds of the general public, more so, the persons in the real estate business and the customers. It would be pertinent to state that in the real estate business the credit-worthiness of the person is of paramount concern and as such the publication has severely tarnished his image and credit-worthiness. The Public Notice is *per se* defamatory and that though the first Defendant by a Publication dated 08.01.2006 has stated that she had received a sum of Rs.6,30,000/- from the plaintiff, it has not in any manner helped the plaintiff to regain his reputation. Since the publication dated 08.12.2005 has caused enormous

damage to the plaintiff's professional as well as personal life, the plaintiff has no other alternative efficacious remedy except to initiate the present proceedings for defamation. The Public Notice dated 08.01.2006 caused by the first defendant, it has been categorically admitted that by inadvertence and oversight, despite the receipt of the payment from the plaintiff, in March 2004, she had initiated Insolvency Proceedings. The first defendant, having irretrievably damaged the reputation of the plaintiff by issuing Publication alone she cannot avoid the consequences of the damages caused to the Plaintiff's reputation which has given rise to the impugned proceedings. Hence, the plaintiff filed the present suit for the relief as prayed for.

3. The contentions in the written statement filed by the defendants is as follows:

It is stated by the first defendant that she has not lent any money and her father-in-law has lent loan, who is a small financier who used to finance to a maximum of Rs.10,000/- to Rs.15,000/- to known persons in the market to earn his livelihood. The plaintiff stood as guarantor to whom the first defendant's father-in-law had financed about Rs.15,000/- to M/s.Arul Saw Mills, Shencottah Road, Tenkasi who is the principal borrower. A decree in O.S.No.4802 of 2002 dated 09.01.2003 passed by the learned XIV Assistant Judge, City Civil Court, Chennai for a sum of Rs.20,050/- with interest and

cost, subsequently, the decretal amount was not paid by the plaintiff as guarantor or by the borrower. The father-in-law of the first defendant initiated action in her name in Insolvency Proceedings in I.P.No.37 of 2004 on the file of this Court. The plaintiff was adjudicated insolvent by an order dated 25.07.2005 and public notice was caused in "Dina Malar" Chennai Edition dated 08.12.2005 by the Official Assignee, High Court, Madras. It is stated that she being a housewife and do not have enough source and means to run the family. She runs the family with a small income earned by her husband, who is working in an electrical shop as an assistant. It is further stated that first defendant has no intention to cause disrepute to the image of the plaintiff. The issue was settled out of Court as recorded by this Court in the Insolvency Proceeding, hence, nothing survives in the suit. However, with a view to put a quietus to the whole issue, the first defendant has no objection in tendering an unconditional apology, if at all his reputation is affected by publication in Dinamalar dated 08.12.2005, which was consequently recorded as settled. Hence, the first defendant prays this Court for dismissal of the suit.

4. In the written statement filed by the second defendant, it is alleged that plaintiff has not made out any cause of action for instituting the suit against him. It is stated that the first defendant is only a finance broker and the plaintiff has approached him for obtaining finance. The plaintiff is also a partner of M/s.R.M.Constructions had approached the

second defendant for availing finances and the second defendant introduced him to the various financiers who had lent money to the plaintiff. The financiers agreed to lend to M/s.Arul Saw Mills only if the plaintiff joins in the execution of loan documents as co-obligant , thus the role of the second defendant ends on introduction of the plaintiff to various financiers. The plaintiff did not repay the loan after repeated reminders from various financiers and some of the financiers did not receive proper response either from the plaintiff or M/s.Arun Saw Mills and approached on their own to recover the money lent to the plaintiff as well as Arul Saw Mills and one such case was filed in OS.No.4802 of 2002 on the file of XVI Assistant City Civil Court, Madras and in the said suit, the second defendant was not a party. After obtaining a decree, the first defendant issued Insolvency Notice in I.N.No.171 of 2003 dated September 2003. Subsequently, the first defendant filed I.P.No.37 of 2004 in February 2004 and it appears that only after filing the above proceedings and having come to know, the plaintiff had approached the first defendant on 23.03.2004 and made a payment bearing Cheque No.439037 drawn from Dhanalakshmi Bank for Rs.15,000/- and the payment was made by the plaintiff directly to the first defendant. From the above facts, it is very clear that the second defendant is no way caused damage to the reputation of the plaintiff either by initiating any legal action or being a party to any of the legal proceedings.

5. In the written statement filed by the second respondent, it is further alleged that, in the plaint averments, it is stated that the plaintiff is a prominent and reputed builder and promoter of flats and houses in and around the city of Chennai, therefore, he ought not to have borrowed from private financiers that too to the extent of Rs.60,00,000/- in the market. The project promoted by the plaintiff in Sterling Road was found to be violative of the Development control rules of CMDA and directed the building to be demolished. The demolition was carried out in the building constructed and affected the purchasers of the flats. The plaintiff flouted the law on various occasions and claim to be law abiding citizen, such a person cannot claim to be a reputed person. The second defendant reserves its right to proceed against the plaintiff for falsely implicating in the present suit. Hence, the second defendant prays this Court for dismissal of the suit.

6. Based on the above pleadings and documents filed by both parties and submission made by both the Counsel, the following issues have been framed by this Court on 14.08.2009 :-

"1. Whether the plaintiff is entitled for payment of Rs.50,00,000/- towards damages for loss of reputation from the defendants?"

2. Whether the plaintiff is entitled to interest at 18% p.a. on Rs.50,00,000?

3. Is not the second defendant liable for the damage caused to the plaintiff along with the first defendant?

4. To what relief are the parties entitled?"

7. After framing of issues, during trial, on the side of the plaintiff, two witnesses were examined as P.W.1. & P.W.2. and 39 documents were marked as Exs.P1 to P39. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 were examined and 5 documents were marked as Exs.D1 to D5.

8. The learned counsel for the plaintiff submitted that the plaintiff is a prominent and reputed builder and promoter of flats and he has been in the field of construction for about two decades and as such, he has executed various projects in the City of Chennai and other parts of the Tamil Nadu. It is submitted that the first defendant had lent money to one M/s.Arul Saw Mills, Shencottah Road, Tenkasi and the plaintiff stood as a guarantor for due repayment of the amount. It is further submitted that the first defendant, without issuing a notice, instituted a suit against the plaintiff and got an ex-parte decree and also filed a Insolvency Petition. In

the fact, the first defendant filed a Memo, stating that the loan amount has been settled. However, first defendant proceeded the Insolvency Petition and caused publication in Dina Malar on 08.12.2015 through the Official Assignee, Madras High Court, with regard to adjudication of the plaintiff as an insolvent. According to the learned counsel, even after settlement of loan amount, the first defendant deliberately indulged in such scurrilous and scandalous act. Therefore, the first defendant's publication dated 08.01.2006, stating that she has received a sum of Rs.6,30,000/- from the plaintiff will not in any manner help the plaintiff to regain his reputation. Since the publication dated 08.12.2005 has caused enormous damages to the plaintiff's profession as well as his personal life, the defendants are liable to pay Rs.50,00,000/- as damages and in order to prove his case, he examined two witnesses as P.W.1 and P.W.2 and filed documents Exs.P1 to P39. From the above, it is clear that the first defendant got only an ex-parte order, that means, the plaintiff did not aware of the Decree passed in O.S.No.4802 of 2002 and during Insolvency Proceedings, the plaintiff repaid the amount and the matter was settled. It is the contention of the learned counsel that even after receipt of amount, the plaintiff was adjudicated as Insolvent by an order dated 25.07.2005 and as such, the first defendant had deliberately indulged in such scurrilous and scandalous act. Therefore, the first defendant's public notice dated 08.01.2006, stating that "by inadvertence and oversight, despite the receipt of the payment from the

plaintiff, in March 2004, she had initiated Insolvency Proceedings" will not in any manner help the plaintiff to regain his reputation. Therefore, the learned counsel for the plaintiff prays for compensation.

9. The learned counsel for the first defendant submitted that though the plaintiff is stated to have been reputed promoter and builder in the construction field for two decades, the dispute in this case is only, as a guarantor, he has not repaid the loan availed by one M/s.Arul Saw Mills. Despite repeated requests made, neither the borrower nor the guarantor, repaid the loan amount. Therefore, the first defendant initiated proceedings in O.S.No.4802 of 2002 for recovery of a sum of Rs.20,050/- before the learned XIV Assistant Judge, City Civil Court and also obtained Decree on 09.01.2003. Even after the decree, the decreetal amount was not paid by the plaintiff as guarantor. Hence, the first defendant initiated Insolvency Proceedings in I.P.No.37 of 2004, on the file of this Court. Consequently, the plaintiff was adjudicated as insolvent by an order dated 25.07.2005 and subsequently, a Public Notice was caused in "Dina Malar", Chennai Edition dated 08.12.2005 by the Official Assignee, High Court, Madras. After initiation of Insolvency Petition only, the plaintiff has repaid the said amount. It is also contended that by realizing the mistake, the first defendant caused Public Notice in Dina Malar, dated 08.01.2006, stating that "by inadvertence and oversight, despite the receipt of the payment

from the plaintiff, in March 2004, she had initiated Insolvency Proceedings. It is further contended that the first defendant has no intention to cause disrepute to the image of the plaintiff. The issue was settled out of Court as recorded by this Court in the Insolvency Proceedings, hence, nothing survives in the suit. It is further contended that the first defendant has no objection in tendering an unconditional apology, if at all his reputation is affected by Publication in Dinamalar, dated 08.12.2005, which was consequently recorded as settled. Therefore, the learned counsel for the first defendant prays for dismissal of the suit.

10. The learned counsel for the second defendant would submit that the plaintiff has not made out any cause of action for instituting the suit against the second defendant. Even in the suit filed by the first defendant in O.S.No.4802 of 2002, the second defendant was not made as a party. It is further submitted that the second respondent is only a finance broker and since, the plaintiff has approached the second respondent for availing loan, he helped. Further, the financiers agreed to lend to M/s.Arul Saw Mills only if the plaintiff joins in the execution of loan documents as co-obligate, thus the role of the second defendant ends on introduction of the plaintiff to various financiers. Hence, the learned counsel prays for dismissal of the suit as against the second defendant.

11. Heard the rival submissions made on both sides and perused the materials available on record.

Issue Nos.1 and 2

12. It is the case of the plaintiff that he is a well-known prominent and reputed builder and promoter of flats and houses and he has been in the field of construction over 20 years and has executed various projects in the City of Chennai and other parts of the Tamil Nadu. He is the Managing Partner of M/s.R.S.Constructions and he has extensive knowledge about the real estate sector and reliable promoter. The second defendant is the finance broker and the first defendant is the financier to whom he lent the money through the second defendant to M/s.Arul Saw Mills, Shencottah Road, Tenkasi. The plaintiff stood as a guarantor for due repayment of the principal amount lent to M/s.Arul Saw Mills along with interest payable. Since M/s.Arul Saw Mills had committed default in repayment of the amount borrowed from the first defendant, the plaintiff being the guarantor settled the claim of the first defendant through the second defendant and the first defendant had also issued a letter stating that the loan amount has been fully settled and cleared. As such, there is no claim as against either M/s.Arul Saw Mills or the plaintiff herein as the guarantor of the said loan amount. The first defendant, having received the amount from the plaintiff in full and final settlement, had mischievously and with ill-motive filed a

Civil Suit in O.S.No.4802 of 2002 as against the plaintiff as well as M/s.Arul Saw Mills on the file of the learned XIV Assistant City Civil Court, Chennai, for recovery of a sum of Rs.20,050/- payable with interest at 1.60% per month on Rs.17,500/- and for costs. The plaintiff was set ex-parte and subsequently an ex-parte decree was passed for a sum of Rs.20,050/- together with interest on 17,500/- at 1.60% along with Rs.2,315.50p. towards costs of the suit and there was no valid notice was caused on the plaintiff in the said suit and as such, the first defendant secured the ex-parte decree resorting to sharp practices. Thereafter, without valid notice to the plaintiff herein, the first defendant initiated Insolvency Proceedings as against the plaintiff in I.P.No.37 of 2004 on the file of this Court. Consequently, the plaintiff was adjudicated as Insolvent by an order dated 25.07.2005 and subsequently, a Public Notice was caused in "Dina Malar" Chennai Edition on 08.12.2005 through the Official Assignee, High Court, Madras, with regard to the adjudication of the plaintiff herein as an Insolvent.

13. It is the further case of the plaintiff that he is a reputed Builder and financially sound and never committed any act of Insolvency as alleged by the first defendant and the first defendant had deliberately indulged in such scurrilous and scandalous act. The materials which has been printed and circulated clearly brings disrepute to the plaintiff. The first defendant

has also deliberately attempted to malign, ruin and impair the image and reputation of the plaintiff by resorting to the intention of legal proceedings and consequently to have the plaintiff adjudicated as Insolvent. The persons in the real estate business have started commenting and being apprehensive of the plaintiff's credit-worthiness. The Public Notice dated 08.12.2005 has adversely affected the image and reputation of the plaintiff as a reputed and well known promoter / builder in the minds of the general public, more so, the persons in the real estate business and the customers. The Public Notice is *per se* defamatory and that though the first defendant by a Publication dated 08.01.2006 has stated that she had received a sum of Rs.6,30,000/- from the plaintiff, it has not in any manner helped the plaintiff to regain his reputation. Since the Publication dated 08.12.2005 has caused enormous damage to the plaintiff's professional as well as personal life, the plaintiff has no other alternative efficacious remedy except to initiate the present proceedings for defamation.

14. The case of the first defendant is that she has not lent any money and her father-in-law has lent money. The plaintiff stood as guarantor to whom the first defendant's father-in-law had financed about Rs.15,000/- to M/s.Arul Saw Mills, Shencottah Road, Tenkasi, who is the principal borrower. A decree in O.S.No.4802 of 2002 dated 09.01.2003 passed by the learned XIV Assistant Judge, City Civil Court, Chennai for a sum of Rs.20,050/- with

interest and cost, subsequently, the decretal amount was not paid by the plaintiff as guarantor or by the borrower. The father-in-law of the first defendant initiated action in her name in insolvency proceedings in I.P.No.37 of 2004, on the file of this Court. The plaintiff was adjudicated insolvent by an order dated 25.07.2005 and Public Notice was caused in "Dina Malar" Chennai Edition dated 08.12.2005 by the Official Assignee, High Court Madras. The first defendant has no intention to cause disrepute to the image of the plaintiff. The issue was settled out of the Court as recorded by this Court in the Insolvency Proceedings, hence, nothing survives in the suit. It is the further case of the first defendant that she being a housewife and does not have enough source and means to run the family and she runs the family with a small income earned by her husband, who is working in an electrical shop as an Assistant. However, with a view to put a quietus to the whole issue, the first defendant has no objection in tendering an unconditional apology, if at all his reputation is affected by publication in Dinamalar dated 08.12.2005, which was consequently recorded as settled.

15. The case of the second defendant is that the plaintiff has not made out any cause of action for instituting the suit against the second defendant. The second defendant is only a finance broker and the plaintiff approached him for obtaining finance. The plaintiff is also a partner of

M/s.R.M.Constructions had approached the second defendant for availing finances, the second defendant introduced him to the various financiers who had lent money to the plaintiff. The financiers agreed to lend to M/s.Arul Saw Mills only if the plaintiff also joins in the execution of loan documents as co-obligant, thus the role of the second defendant ends on introduction of the plaintiff to various financiers. M/s.Arul Saw Mill have paid some amount and committed default and therefore, the first defendant directly filed O.S.No.4082 of 2002 on the file of XIV Assistant City Civil Court, Chennai against M/s.Arul Saw Mills and the plaintiff as defendants recovery of money and the second defendant herein is not a party to the said proceedings. After obtaining a Decree, the first defendant issued Insolvency Notice in I.N.No.171 of 2003, dated September 2003. subsequent, the first defendant filed I.P.No.37 of 2004 in February 2004. It appears only after filing the above proceedings and having come to know, the plaintiff had approached the first defendant on 23.03.2004 and made a payment bearing cheque No.439037 drawn from Dhanalakshmi Bank for a sum of Rs.15,000/-, the payment was made by the plaintiff directly to the first defendant. Therefore, it is clear that the second defendant is no way caused damage to the reputation of the plaintiff either by initiating any legal action or being a party to any of the legal proceedings. It is further stated that if the plaintiff is sound in finance, he ought not to have borrowed from private financiers that too to the extent of Rs.60,00,000/- in

the market.

16. It is an admitted fact that M/s.Arul Saw Mills borrowed money from the first defendant, for which, the plaintiff stood as guarantor. Since the principal borrower M/s.Arul Saw Mills did not repay the loan amount, as a guarantor, the plaintiff had also not repaid the money. The first defendant filed the suit in O.S.No.4802 of 2002 as against the plaintiff before the learned XIV City Civil Court, Chennai and got a Decree with interest and costs. Though admittedly, it is an ex parte decree, neither the borrower nor the guarantor / the plaintiff herein have not repaid the decree amount. Therefore, the first defendant initiated proceedings as against the plaintiff in I.P.No.37 of 2004 before this Court and the plaintiff was adjudicated as insolvent by an order dated 25.07.2005 and subsequently publication was caused in the Dinamalar, Chennai Edition on 08.12.2005 by the Official Assignee, Madras High Court.

17. It is the case of the plaintiff that the first defendant got an ex parte decree and without issuing notice, filed I.P. and during the pendency of I.P., the plaintiff has paid the loan amount. After receiving the loan amount, the first defendant got an order dated 25.07.2005 and Public Notice was caused in "Dina Malar", Chennai Edition, dated 08.12.2005 by the Official Assignee, High Court, Madras. Therefore, the publication has

created a very bad impression in the minds of the public and his reputation has been brought down in the minds of his customers.

18. Though the plaintiff is a guarantor to the loan, added as a party to the suit, and also in the Insolvency Petition, the plaintiff repaid the amount only after serving of Notice in the Insolvency Proceedings, and subsequently, the Insolvency Proceedings have been dismissed as settled out of Court. A reading of Ex.P5-letter of the first defendant, dated 12.12.2005, it is clearly seen that the first defendant acknowledged the entire payment subsequent to Exs.P1 to P4. However, on the date of filing I.P., there was due from the plaintiff and therefore, there is no intention to cause damages to his reputation. Even during cross examination, the first defendant denied that she deliberately filed Insolvency Petition against the plaintiff and got adjudication of insolvency as insolvent. Even in Ex.P9 [Affidavit of the plaintiff in I.A.Nos.629 & 630 of 2005 in I.P.No.37 of 2004] the plaintiff has not stated anything about Ex.P8-Public Notice, dated 08.12.2005, has caused defamation to him.

19. Therefore, the plaintiff has not established that the first defendant, in order to cause damage to the reputation of the plaintiff, Public Notice was caused in Dinamalar on 08.12.2005. As already stated, on the date of filing of I.P., there was a due and subsequently he repaid the

money. The plaintiff is a party to the Insolvency Proceedings and even after receiving Insolvency Notice, the plaintiff as Judgment Debtor in the Decree passed in O.S.No.4802 of 2002 has not satisfied the Decree Holder by paying the decree amount. It is not in dispute that Insolvency Notice in I.N.No.171 of 2003 filed on 30.09.2003, and the Insolvency Notice was served on 15.11.2003. It is also not in dispute that Insolvency Petition No.37 of 2004 filed on 16.02.2004. It is also to be noted that the plaintiff had issued a cheque dated 23.03.2004 for a sum of Rs.15,000/-, which was realized on 23.03.2004 and the said amount was only towards part satisfaction. On that day, the alleged payment of interest was not confirmed as received and therefore, on 16.06.2005, the evidence was recorded. Therefore, the Public Notice caused in Dinamalar on 08.12.2005 will not tantamount to defamation. Subsequently, on 08.01.2006, the first Defendant caused a Public Notice in "Dina Malar" wherein she has categorically admitted that by inadvertence and oversight, despite the receipt of the payment from the plaintiff, in March 2004, she had initiated Insolvency Proceedings. Further, in the Applications filed by the plaintiff in A.Nos.629 and 630 of 2005 in I.P.No.37 of 2005, this Court, dismissed I.P.No.37 of 2004 as settled out of Court.

20. It is also to be noted that in paragraph No.3 (d) of the written statement, the first defendant has clearly stated that there was no intention on the part of the first defendant to disrepute the image of the plaintiff. The matter was settled out of Court as recorded by this Court and she has also stated that with a view to put a quietus to the whole matter, the defendant has no objection in tendering an unconditional apology, if at all his reputation is affected by the Publication in Dinamalar, dated 08.12.2005. It is stated in the plaint that the plaintiff is a well sound and reputed contractor, if it is so, atleast immediately soon after receipt of Insolvency Notice, he should have repaid the loan amount and avoided the Insolvency Petition. Further, though the plaintiff in his evidence says that his reputation has been lowered down among the persons in the real estate business and customers, he has not stated how his reputation has been affected. Therefore, regarding lowering of reputation, there should be evidence as to how, his reputation became affected or lowered among the right thinking people. Such evidence is lacking in this case. Even though the plaintiff has stated that he is an income tax assessee and filed documents to show that effect, he has not repaid the loan amount, as a guarantor for the loan borrowed by M/s.Arul Saw Mills, when he received the suit notice. Even after passing the decree, he has not satisfied the decree by paying decree amount. Further, even soon after receipt of Insolvency Notice in I.N.No.171 of 2003 on 15.11.2003, he has not repaid the decree amount,

hence, he is not deserved to file such a suit for compensation. Therefore, under the circumstances, the plaintiff is not entitled to any compensation. For the aforesaid reasons, Issue Nos.1 and 2 are answered as against the plaintiff.

21. Issue No.3:-

As contended by the second defendant that he is not a party to the Insolvency Proceedings and since he is only a finance broker for the arrangement of the finance and after introducing the plaintiff to the Financier, he has no role. Therefore, the plaintiff has not proved any role of the second defendant regarding Publication in Dinamalar, dated 08.12.2005. Thus, all these issues are decided against the plaintiff.

22. In the light of the above findings, the suit necessarily fails and it is dismissed. However, there shall be no order as to costs.

Index : Yes/No.
Internet : Yes/No.

tsh / r n s

WEB COPY

06.08.2020

List of Witness examined on the side of the plaintiff

R.M.Cyril - PW1

S.Janakaran - PW2

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Certified copy of Decree in OS.No.4802 of 2002	---
2.	P2	Certified copy of Affidavit in IN.No.171 of 2003	---
3.	P3	Certified copy of petition in IP.No.37 of 2004	16.02.2004
4.	P4	Certified copy of supporting affidavit filed by the first defendant in IP.No.37 of 2004	16.02.2004
5.	P5	Letter from 1 st defendant to the plaintiff	12.12.2005
6.	P6	Certified copy of evidence recorded in IP.No.37 of 2004	---
7.	P7	Certified copy of the order in IP.No.37 of 2004	25.07.2005
8.	P8	Paper publication by the Official Assignee effected in Dinamalar	---
9.	P9	Office copy of Affidavit and Judge's summon in Appln.Nos.628 to 630 of 2005 in IP.No.37 of 2004	---
10.	P10	Certified copy of order passed in Appln.No.628 to 630 of 2005 in IP.No.37 of 2004	13/12/2005
11.	P11	Certified copy of Auto Order passed in IP.No.37 of 2004	25.07.2005
12.	P12	Paper publication by the 1 st defendant effected in Dinamalar	08.01.2006
13.	P13	Office copy of Legal notice along with postal receipts	14.02.2006

14.	P14	Postal Acknowledgment card	---
15.	P15	Postal Acknowledgment card	---
16.	P16	Photo copy of Firm Registration Certificate of RM construction	09.02.1999
17.	P17	Photo copy of the PAN card bearing No.ADE PM 7803N of Mr.Rayappa Mariya Cyril	---
18.	P18	Photo copy of the company profile of RMC Travellers INN (P) Ltd	---
19.	P19	Original business profile of RM Constructions	---
20.	P20	Photo copy of certificate of incorporation of RMC Travellers INN (P) Ltd	---
21.	P21	Photo copy of income tax returns - counterfoil	---
22.	P22	Tax payers - counterfoil (5.Nos.)	---
23.	P23	LIC policy premiun paid receipts (2 Nos.)	---
24.	P24	Photocopy of property tax paid receipt	20.07.2010
25.	P25	Photocopy of Balance Sheet of RMC Travellers INN (P) Ltd	---
26.	P26	Photocopy of TDS Certificate in the name of RMC Travellers INN (P) Ltd	---
27.	P27	Photo copy of income tax paid receipts	---
28.	P28	Photocopy of TDS Certificate in the name of RMC Travellers INN (P) Ltd	---
29.	P29	Computer generated property tax receipt	22.03.2012

30.	P30	Photocopy of Balance sheet as on March 31 st 2011 of RM constructors	---
31.	P31.	Photocopy of provisional balance sheet as on March 31 st 2012 of RMC Travellers INN (P) Ltd	---
32.	P32.	Photocopy of LIC Premium paid receipt	09.05.2012
33.	P33.	Photocopy of TDS certificate in the name of RMC Constructions	---
34.	P34.	Photocopy of TDS Certificate in the name of RMC Travellers INN (P) Ltd	---
35.	P35.	Photocopy of property tax card	---
36.	P36.	Photocopy of the certificate issued by Kanyakumari District, Golden Committee	---
37.	P37.	Photocopy of the letter	10.09.2011
38.	P38.	Photocopy of the certificate issued by the metro flat promoters' association for membership.	---
39.	P39.	Original Statement of luxury tax paid from April 2005 to March 2011 in respect of RMC Travellers in Private Limited.	---

List of Witness examined on the side of the defendants

Nirmal Kumar U.Shah - DW1

Bherulal R.Jain - DW2

WEB COPY

List of documents marked on the side of the defendants

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Photocopy of the Memorandum of Association of RMC Travellers INN Private Limited	
2.	D2	Photocopy of the partnership deed of RM Constructions	28.09.2005
3.	D3	Certified copy of the postal acknowledgment cards	
4.	D4	Certified copy of the postal acknowledgment cards	
5.	D5	Original Death Certificate of Umedmal P.Jain	11.08.2006

सत्यमेव जयते

WEB COPY

P. VELMURUGAN, J.

tsh / r n s



Pre Delivery Judgment in
CS.No.772 of 2006

WEB COPY

06.08.2020