

**A.Nos.7321 & 4282 of 2019  
and C.S.No.389 of 2019  
and O.A.No.624 of 2019**

**SENTHILKUMAR RAMAMOORTHY, J.**

This suit is filed for damages and permanent injunction to restrain the defendants from publishing defamatory articles/statements about the plaintiff. In the said suit, the present application is filed by the first defendant to reject the plaint.

2. I heard the learned counsel for the applicant and the learned counsel for the respondents.

3. The learned counsel for the applicant submitted that in a suit for defamation, the plaint should disclose three aspects, namely, a) publication b) the publication should be defamatory and c) the defamatory material lowered the reputation of the plaintiff in the eyes of specific persons from amongst the public.

4. By referring to paragraph 23 of the plaint, which deals with cause of action, the learned counsel contended that the said paragraph largely deals with the reasons as to why this Court has territorial jurisdiction over the dispute. However, it does not disclose a cause of action against the first defendant.

5. The learned counsel, thereafter, referred to paragraphs 18 and 19 of the plaint. In particular, he pointed out that the plaintiff has not disclosed as to

the persons, patients or other members of the public, whose opinion of the plaintiff had been adversely impacted by the alleged publication. He pointed out that in an action for defamation, the plaintiff should provide particulars of the persons who were allegedly impacted by the publication by setting out the names of such persons and by including the letters written by such persons to the plaintiff or the transcripts or telephonic conversation between such persons and the plaintiff.

6. In this case, he submitted that the plaint is bereft of such details. Consequently, he submits that the plaint is liable to be rejected under Order VII Rule 11(a) C.P.C.

7. In response, the learned counsel for the respondent submitted that all the three ingredients to establish a cause of action are present in the plaint. The publications of the first respondent have been adverted to and it has been averred that the said publications are defamatory. The impact of such publications on the public have also been adverted to in paragraph 18 and 19 so as to prove that the publications are indeed defamatory.

8. The learned counsel submitted that proof would be adduced during the trial and that the plaint cannot be rejected because the plaint does not establish the cause of action.

9. I considered the submissions of the learned counsel for the respective

parties and examined the plaint.

10. The settled legal position with regard to an application to reject the plaint is that it should be tested and determined with reference to the plaint and not with reference to the affidavit in support of the application to reject the plaint or the written statement. In ***T.Arivanandam vs. T.V.Satypal and Another (Arivanandam) (1997) 4 SCC 467***, at paragraph 5, the Hon'ble Supreme Court held that Order VII Rule 11 CPC should be resorted to when the plaintiff through clever drafting creates the illusion of a cause of action. However, in ***Kamala and others vs. K.T.Eshwara Sa and others, AIR 2008 SC 3174***, it was held that the Court would not consider evidence for the purposes of deciding an application under Order VII Rule 11 CPC and that res judicata is a mixed question of fact of law. In other cases, the Supreme Court held that the power to reject the plaint is a drastic power and, therefore, it should only be exercised if, on reading the plaint as a whole, it can be concluded that the plaint does not disclose a cause of action or that the suit is barred by law. Therefore, the question that arises in this case is whether the plaint discloses a cause of action. On this aspect, it is pertinent to bear in mind that the plaint need not establish all the elements of the cause of action; it is sufficient if the plaint discloses a cause of action.

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11. On perusal of the plaint, I find that the plaintiff set out details of the article published on the web site of the first defendant at paragraphs 11 and 12 with extracts from the article. In paragraphs 18 and 19, the plaintiff adverted to the alleged non adherence by the defendants to the Norms of Journalistic Conduct of the Press Council of India and to the alleged impact of the allegedly defamatory articles of the defendants. On perusal of these paragraphs, I find that the plaint does disclose a cause of action. It is a separate and distinct matter as to whether the plaintiff has established the cause of action for such defamation, which would have to be tested at the time of final disposal of the suit.

12. Therefore, I find that this is not a fit case for the rejection of the plaint on the ground that it does not disclose a cause of action. As held in various judgments of the Hon'ble Supreme Court, the power to reject the plaint is a power exercised at the pre-trial stage and, therefore, this power should be exercised circumspectly. For all these reasons, the application to reject the plaint is dismissed.

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