

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 9th January, 2020

+ CS(OS) 383/2018

INDU DALMIA & ORS. Plaintiffs

Through: Mr. Shailender Dahiya, Adv.

Versus

RAJASEKHAR NAIDU GALLA & ORS. Defendants

Through: Mr. Harsh Singhal & Mr. Sanjay Jha, Advs.
for Mr. G.V.R.Choudhary, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The three plaintiffs, namely (i) Indu Dalmia, (ii) Surendra Sharma, and (iii) M/s Dalmia Resorts International Pvt. Ltd., instituted this suit against the four defendants, namely (a) Rajasekhar Naidu Galla, (b) Mirapakayala Parthasarathi, (c) Siddala Ravi Babu and (d) Kakarla Roopesh, for recovery of Rs.10,00,00,000/- on account of compensation/damages for defamation along with interest at the rate of 12% per annum *pendente lite* and future.

2. I may however note that though in the prayer paragraph the claim for Rs.10,00,00,000/- is made for defamation only but in title to the plaint the suit is described as:

“SUIT FOR DAMAGES OF RS.10,00,00,000/- (RUPEES TEN CRORES) ALONG WITH PENDENTE LITE AND FUTURE INTEREST @ 12% PER ANNUM FOR MELICIOUS PROSECUTION, DEFAMATION AND HARASSMENT ETC.”

3. The suit came up first before this Court on 3rd August, 2018 when summons thereof were ordered to be issued. The defendants, after being served, made appearance through counsel on 25th October, 2018 but failed to file their response and vide order dated 29th April, 2019 the right of the defendants to file written statement was closed and by subsequent order dated 1st August, 2019 the plaintiffs relegated to lead evidence.

4. The plaintiffs filed affidavits by way of examination-in-chief of plaintiff no.1 and plaintiff no.2 as PW1 and PW2 and of (a) Madan Singh Negi as PW3, (b) Sachita Nand Chamola as PW4 and (c) Abhishek Sharma as PW5 and on 28th November, 2019 stated that the plaintiffs do not want to examine any other witness. The evidence of the plaintiffs was closed vide order dated 28th November, 2019.

5. I may notice that neither the Joint Registrar granted an opportunity to the witnesses of the plaintiff whose affidavit by way of examination-in-chief were filed, to appear before this Court and tender the said affidavits in evidence nor did counsel for the plaintiffs seek any opportunity therefor. The affidavits by way of examination-in-chief filed, having not been tendered in evidence, resultantly there is no evidence before the Court. I may also mention that even if the right of the defendants to file written statement is closed, the defendants still have to have an opportunity to cross-examine the witnesses of the plaintiffs with respect to their depositions, though not on the defence, if any of the defendants. Reference in this respect may be made to ***Babbar Sewing Machine Company Vs. Trilok Nath Mahajan*** (1978) 4 SCC 188, ***Modula India Vs. Kamakshya Singh Deo*** (1988) 4 SCC 619, ***Dev Chander Sood Vs. H.L. Sud*** 2014 SCC OnLine Del

3716, *Harikishan Vedprakash Agarwal Vs. Bujor Joshi* MANU/MH/0754/2015, *Basalingappa Chinnappa Goudar Vs. Shantavva* 2001 SCC OnLine Kar 485, *Ganpant Chand Vs. Jeth Mal* 1982 SCC OnLine Raj 50, *Chuni Lal Chowdry Vs. Bank of Baroda* 1981 SCC OnLine J&K 9, *Siai Sinha Vs. Shivadhari Sinha* 1971 SCC OnLine Pat 22. Though the defence of the defendants has been struck off but the counsel for the defendants has been appearing and appeared today also.

6. The suit is listed today, for final hearing.

7. Before lunch, Mr. Harsh Singhal Advocate for the defendants mentioned the matter for adjournment but which was denied. Now after lunch, Mr. Harsh Singhal, Advocate has not appeared and has sent Mr. Sanjay Jha, Advocate who again requests for adjournment. However, there being no ground for adjournment, adjournment is again denied.

8. The counsel for the plaintiffs has been heard and the need to give an opportunity to the plaintiffs to rectify the flaw/defect aforesaid of non-tendering of affidavits by way of examination-in-chief in evidence, is not felt.

9. The pleaded case of the plaintiffs is, (i) that the plaintiffs no.1 & 2 are Directors of plaintiff no.3; (ii) that the plaintiff no.3 owns an immovable property at Tirupati and which, the plaintiffs were desirous of selling; (iii) an agreement to sell dated 30th August, 2012 was entered into by the plaintiff no.3 company with the defendant no.1, at Delhi, for total sale consideration of Rs.29,47,56,000/- and the defendant no.1, under the said agreement, paid advance of Rs.3,00,00,000/- to the plaintiff no.3 as earnest money; the balance sale consideration (the counsel for the plaintiffs informs)

was payable in instalments, by 30th November, 2012; (iv) the defendant no.1 failed to make any other payment to the plaintiff no.3 and in spite of communication dated 29th November, 2012 of the plaintiff no.2, acting for plaintiff no.3, did not make the payment and on the contrary sought extension of time and though the plaintiff no.3, on two occasions, extended the time but the defendant no.1 still did not make any further payment; (v) the plaintiff no. 3 thus forfeited the amount of Rs.3,00,00,000/- received from the defendant no.1; (vi) the defendant no.1 however in his correspondence with the plaintiff no.3 started making false claims and thereafter remained quiet for about a year; (vii) the plaintiff no.1, on 12th May, 2014, 15th May, 2014 and 31st May, 2014 received communications from the defendant no.1 seeking to revive the deal; (viii) however since owing to the default of the defendant no.1, the deal already stood cancelled, the plaintiff did not respond thereto; (ix) the defendant no.1 made a false criminal complaint dated 9th October, 2014 to the SHO, PS Alipiri in Tirupati against the plaintiffs and against the husband of plaintiff no.1 and against a next Director of the plaintiff no.3, levelling false and baseless allegations against the plaintiffs; (x) however the police did not register any FIR; (xi) the defendant no.1 thereafter approached the Court of Additional District Munsiff Magistrate, Tirupati and filed a complaint under Section 200 of the Cr.P.C. of offences under Section 420/120-B IPC read with Section 34 IPC, again levelling false allegations against the plaintiffs; (xii) that the Court of Additional District Munsiff Magistrate, Tirupati, without verifying whether ingredients of offence were made out, referred the complaint for investigation under Section 156 (3) of the Cr.P.C. and the police registered FIR No.325 of 2014 against the plaintiffs and others on 5th

November, 2014; (xiii) the allegations of the defendants in the FIR were false; (xiv) charge sheet dated 2nd April, 2015 was filed before the Trial Court in Tirupati; (xv) that the plaintiffs no. 1 and 2 preferred criminal petition under Section 482 of the Cr.P.C. for quashing of the FIR, before the High Court of Hyderabad; (xvi) that in the meanwhile, the Additional Junior Civil Judge, Tirupati on 1st May, 2015 took cognizance of the offence against plaintiffs no. 1 and 2 and two others aforesaid and issued non-bailable warrants; (xvii) that vide order dated 28th April, 2015, the High Court of Hyderabad passed orders protecting the plaintiffs from arrest and ultimately, vide judgment dated 1st September, 2015 quashed the charge sheet filed against the plaintiffs no. 1 and 2; and, (xviii) the defendant no.1 thereafter filed a Special Leave Petition and which was dismissed on 4th July, 2017.

10. The present suit was filed on 2nd July, 2018 and refiled on 9th July, 2018, 17th July, 2018 and 1st August, 2018 and as aforesaid came up before this Court on 3rd August, 2018.

11. The counsel for the plaintiffs has argued, (i) that the police from Tirupati came to Delhi to arrest the plaintiffs no. 1 and 2, after informing the police at Delhi; and, (ii) that the defendant no.1 also sent copies of the report lodged by him with the police, to the plaintiffs at Delhi.

12. The counsel for the plaintiffs, on enquiry informs that defendant no.2 is a close associate of the defendant no.1, who always accompanied the defendant no.1 and was also involved in the correspondence and that the defendants no.3 and 4 are the witnesses who deposed in favour of defendant no.1 in the proceedings in the Court at Tirupati.

13. I have in ***Mahadev I. Todale Vs. Frankfinn Aviation Services Pvt. Ltd.*** MANU/DE/1955/2017, SLP(C) No. 28925/2017 preferred whereagainst was dismissed on 10th November, 2017, held as not maintainable, a suit for damages for defamation by publication of complaints made to the Police. It was inter alia held that the contents of a FIR are in public domain, with the Police itself being required to publish it; that a complainant pursuing due process of law, even if his/her complaint is defamatory, is entitled to protection from a suit for defamation and this protection is the absolute privilege accorded in the public interest to those who make statements to the Court in the course and in relation to judicial proceedings. A Nine Judges Bench of Supreme Court in ***Naresh Shridhar Mirajkar Vs. State of Maharashtra*** AIR 1967 SC 1 held that what takes place in the Court is public and the publication of the proceedings merely enlarges the area of the Court and gives to the trial that added publicity which is favoured by the rule that the trial should be open and public; it is only when the public is excluded from audience that the privilege of publication also goes because the public outside then has no right to obtain at second-hand what they cannot obtain in the Court itself. It was yet further held that if the matter is already published in open Court, it cannot be prevented from being published outside the Court room. Reference may also be made to ***Primero Skill & Training v Selima Publications*** (2017) 239 DLT (CN15) 15, ***Exide Life Insurance Company Vs. Mitun Garg*** MANU/DE/1370/2018, ***Nau Nihal Singh Rana Vs. Sunil Kumar*** 202 (2013) DLT 465, ***The Punjabi Bagh Co-operative Housing Society Vs.***

K.L. Kishwar 95 (2002) DLT 573 and ***Kamalini Mannade Vs. Union of India*** 1965 SCC OnLine Bom 149.

14. The entire claim of the plaintiffs of defamation is on the basis of the stand of the defendant no.1 in the legal proceedings initiated by him and in the steps taken by him preceding the said legal proceedings and else no defamation either by words of mouth or by in writing is pleaded or established. In fact the counsel for the plaintiff on being asked, replied that defamation was in writing and on being further asked to show the said writing, drew attention to Ex.PW1/15 at page 69 of Part IIIA File, being the complaint dated 9th October, 2014 of the defendant no.1 to the SHO, Alipiri Police Station, Tirupati.

15. The claim in this suit, instituted on 2nd July, 2018 of defamation vide complaint dated 9th October, 2014 is, even otherwise barred by time.

16. Though as aforesaid, the plaintiffs in the prayer paragraph of the plaint have not claimed the recovery of damages of Rs.10,00,00,000/- or any part thereof on account of malicious prosecution and in the body of the plaint also no plea of the prosecution by the defendant no.1 of the plaintiffs no. 1 and 2 malicious is found, but as held in ***Deepak Rathour Vs. Shashi Bhushan Lal Dass*** 2016 SCC OnLine Del 5319, ***Radhey Mohan Singh Vs. Kaushalya Devi*** 105 (2003) DLT 678 (DB), ***Gangadhar Pandhy Vs. Prem Singh*** 2011 (2014) DLT 104, ***Akbar Ali Vs. State*** 2014 SCC OnLine Del 1547, ***Sannam Bharti Vs. DTC*** 2013 SCC OnLine Del 3104, ***Bhupinder Chaudhary Vs. Chander Prakash*** 2009 SCC OnLine Del 1126, on the basis of every unsuccessful prosecution, a claim for malicious prosecution does not lie.

17. Though the counsel for the plaintiffs, on being asked to show the paragraph where a plea of malicious prosecution is found, has drawn attention to the cause of action paragraph 44 of the plaint, but therein also no plea of the prosecution being malicious or the essential ingredients required to be pleaded therefor, are to be found.

18. I may even otherwise state that the prosecution by the defendant no.1 of the plaintiffs no. 1 and 2 cannot be treated as malicious, inasmuch as the plaintiffs also have not disputed having forfeited Rs.3,00,00,000/- of the defendant no.1.

19. In the plaint in this suit, there is no plea, of the plaintiff no.3 having suffered any loss on breach of the agreement to sell, even if any by the defendant no.1. As per the dicta of the Supreme Court in ***Kailash Nath Associates Vs. Delhi Development Authority*** (2015) 4 SCC 136 followed by this Court in ***Palm Arts Apparels Pvt. Ltd. Vs. Enkay Builders*** 2017 SCC OnLine Del 12776, ***Satish Verma Vs. Garment Craft*** 2018 SCC OnLine Del 6829, ***Mera Baba Pvt. Ltd. Vs. Ram Lubhaya Puri*** 2018 SCC OnLine Del 9502, ***Mohan Buildmart Vs. Hitesh Kumar*** 2019 SCC OnLine Del 6886 and ***Mahendra Verma Vs. Suresh T. Kalachand*** 2019 SCC OnLine Del 9333, the amounts paid, even if by way of earnest money cannot be forfeited without pleading and proving loss.

20. I have enquired from the counsel for the plaintiffs, whether the plaintiffs, in any earlier correspondence, pleaded any loss suffered on account of breach of agreement to sell by the defendant no.1.

21. The counsel for the plaintiffs states that forfeiture was in accordance with the terms of the agreement to sell.

22. Once it is found that there was a genuine dispute as to an amount of Rs.3,00,00,000/-, between the defendant no.1 and that the plaintiff no.3 and that the plaintiffs were holding monies of the defendants, it cannot be said that merely because the defendant no.1 chose criminal instead of civil proceedings, that the action of the defendant no.1 was malicious, for the plaintiff to be entitled to any damages against the defendant no.1 or against any other defendants. Rather the counsel for the plaintiffs has informed that the suit filed by the defendant no.1 for recovery of Rs.3,00,00,000/- with interest is pending in the Courts at Tirupati.

23. The counsel for the plaintiffs has drawn attention to the judgment of the High Court of Hyderabad Ex.PW1/25 at page 222, where it has been held that the defendant no.1 suppressed facts and filed the complaint abusing the process of law and thereafter filed the complaint before the Magistrate and the police, without proper investigation and simply relying on the defendant no.1's version, filed charge sheet.

24. I am of the view that such observations in the order quashing the prosecution do not lead to the prosecution being malicious.

25. Thus the suit fails and is dismissed.

26. The defendants having not rendered any arguments today also, no costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

JANUARY 09, 2020

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