IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.606 OF 2020
[INTERIM APPLICATION NO.1 OF 2020]
IN
SUIT (LODGING) NO.65 OF 2020

Splendor Complex Co-op. Housing
Society Ltd. and Ors. …. Applicant-Plaintiff

Versus

Mohit Bhardwaj and Ors. …. Defendants

ALONG WITH

INTERIM APPLICATION NO.1045 OF 2020
[INTERIM APPLICATION NO.2 OF 2020]
IN
SUIT (LODGING) NO.65 OF 2020

Mohit Bhardwaj and Ors. …. Applicant-Def. No.1

In the matter between

Splendor Complex Co-op. Housing
Society Ltd. and Ors. …. Applicant-Plaintiff

Versus

Mohit Bhardwaj and Ors. …. Defendants

Mr. Sharan Jagtiani, Senior Advocate, with Mr. Nikhil Ghate, Mr. Siddhesh Bhole and Ms. Apurva Manwani, i/by SSB Legal and Advisory, for the Applicant-Plaintiff.
Mr. Deven Jogdeo for Defendant No.2.
Mr. Mohit Bhardwaj for Defendant Nos.1 and 3.

CORAM : A. K. MENON, J.
DATE : 4TH JANUARY, 2021.

P.C. :

1. Called for hearing and final disposal. By consent, both the IAs are taken up for final disposal. This common order disposes both the above Interim Applications.

2. IA/1/2020 is filed by the plaintiffs, who seek (i) temporary order of injunction restraining the defendants from defaming the plaintiff-society and the managing committee of the plaintiff-society, its auditors or any other person associated with the plaintiff-society directly or indirectly; (ii) removal of specified material alleged to be defamatory from notice board of the plaintiff-society, social media platforms meant for the flat purchasers and occupants of the residential complex managed by the plaintiff-society and; (iii) to restrain the 4th defendant from allowing its web portal to be used by defendant nos.1 to 3 for defaming the plaintiffs or persons associated with the plaintiff-society.

3. IA/2/2020 seeks (i) framing of preliminary issue under Order XIV Rule 2 of the CPC; (ii) rejection of the suit under Order VII Rule 11(a) and/or 11(d) of the CPC for want of cause of action and jurisdiction; (iii) rejection of suit under Section 12 read with Order II Rule 2 of CPC being second suit based on the same cause of action and for want of payment of proper court fee under Order VII Rule 11(c) CPC; (v) for rejection of plaint under Section 3 read with appropriate entry in the Schedule of Limitation Act, 1963.

4. The plaintiffs in the above suit are 13 in number. The 1st plaintiff is a co-operative housing society *(Splendor)*, which manages the Splendor Housing Complex situate at Jogeshwari, Mumbai. Plaintiff nos.2 to 13 are the individuals, who are the 1st plaintiff's managing committee members. Defendants 1 and 2 are flat purchasers in different wings of the building. Defendant no.3 is a non-profit company incorporated under Section 8 of the Companies Act, 2013 believed to have been set up by defendants 1 and 2 ostensibly for managing the affairs of the Splendor. Apart from perpetual injunction in the nature of what is sought in the IA and described above, the plaintiff no.1 seeks damages of Rs.1.50 crores.

5. Briefly put, there have been disputes between the purchasers of flats in Splendor and the developers, that has led to various legal proceedings including a challenge to the registration of the plaintiff-society. In the present suit, it is the plaintiff's case that defendants 1 to 3 are responsible for publication of defamatory and libelous statements against the plaintiffs. The statements are published on the electronic media and by issuing public notices/letters, all of which are defamatory and derogatory and which are causing irreparable damage to the plaintiffs. Plaintiffs 3 to 13 are said to be the part of the management of the society. The property was developed by one Oberoi Constructions, which put up 6 residential towers described as Wings A to F. In 2010. The developer decided to construct the 7th tower consisting of

27 floors and 157 apartments. Purchasers of apartments in towers A to F were unhappy with this decision; more particularly, the inclusion of the 7th tower as a part of the plaintiff- society. The developer proceeded to include 7th tower as a part of the society proposed for towers A to F. In May, 2013, the plaintiff-society was registered.

6. Defendants 1 and 2 were opposed to the formation of the society and including the 7th tower. Defendants 1 and 2 applied for registration of a separate society called Oberoi Splendor A, B, C, D, E, F Co-operative Housing Society. When this proposal was rejected by the Deputy Registrar of Co-operative Societies, plaintiffs need not start functioning / managing the affairs of the defendants. However, disputes relating to the management of the plaintiff-society led to appointment of an Administrator to manage the affairs of the society. After about two years and some litigation, the Divisional Joint Registrar confirmed registration of the plaintiff-society to manage all 7 towers A to G. In the meanwhile, it transpires that yet another Suit No.329 of 2017 filed by the plaintiff-society against the developers has been disposed. Consent terms came to be arrived at in that suit, whereby the developer agreed to grant Conveyance of land and building and pay certain sums to the society. These consent terms made an order of the court on 17th October 2018 and on 9th August 2019, a Conveyance is said to have been executed.

7. According to the plaintiffs, majority of the flat owners decided to go ahead with the plaintiff-society. Elections were then held and it is the plaintiffs' case that defendants 1 and 2 were unhappy with the state of affairs and they set up the Oberoi Splendor Flat Owners Association *(OSFOA)*, which later came to be registered as defendant no.3. The defendants 1 to 3 have since been challenging the authority of the plaintiff-society, initially persuading flat owners to pay monthly maintenance charges to the 3rd defendant-OSFOA rather than to the plaintiff-society; as a result, Suit No.695 of 2016 was filed in this court. Suit No.695 of 2016 was filed by the plaintiffs against defendants 1 and 2 herein and 15 other members of the society, the plaintiffs have claimed injunctions restraining the defendants therein from interfering with the management of the plaintiffs' affairs, from convening a Special General Body Meeting or any Extra-Ordinary General Body Meeting or Annual General Meeting in the name of the aforesaid association or money decree and injunctions restraining the defendants therein from holding out to be managing the affairs of the society. A Notice of Motion has also been taken out in that suit. Contempt proceedings are also pending. Proceedings in the said Suit No.695 of 2016 have meanwhile been stayed pursuant to order dated 27th July 2020 in Appeal No.437 of 2019. The appeal sought to challenge an order dated 14th August 2019 passed by the Single Judge holding that this court has jurisdiction to entertain the suit and that the suit

was not barred under Section 91 of the Maharashtra Co-operative Societies Act, 1960.

8. In connected litigation, since membership of the 2nd defendant was not being regularized, a writ petition was filed in this court being Writ Petition (Lodging) No.549 of 2020 (Registered No.1005 of 2020). The Deputy Registrar of Co-operative Societies was directed to take steps to ensure compliance of order dated 13th January 2020 passed by the Deputy Registrar of Co-operative Societies by having the plaintiff-society herein issue the share certificate in the name of the 2nd defendant and his wife as members of the society. Rule was made absolute on 27th July 2020.

9. In the present suit, statements which are alleged to be defamatory are set out in several annexures to the plaint and in particular those reproduced at Exhibits M, M-1, N, Q to Z and AA to UU. Amongst the impugned statements are several comments posted on the 4th defendant's web-portal. The 4th defendant is a third party believed to be offering billing and management facilities' to housing societies, who have enrolled for its services. It is pertinent to note that the 4th defendant has not appeared during the course of hearing of these IAs.

10. Mr. Jagtiani, learned Senior Advocate appearing on behalf of the

plaintiff-society has taken me through the relevant pleadings and submitted that the defendants have made and continue to make libelous statements defaming the plaintiffs. He has brought to my notice the impugned statements including those alleging that there has been a *"massive sell out to the builder"* indicating that the plaintiffs are *"kingpin in a criminal connivance of the builder"*. Yet, again plaintiffs have been referred to as *"fraudsters"*. One of the plaintiffs is said to be the *"kingpin"* and *"rogue owner"*. The law firm representing the plaintiffs has been described as partners in crime. These are some of the statements that the plaintiffs have found and which Mr. Jagtiani urges has given rise to a cause of action in the suit.

11. Defendants 1 to 3 have filed affidavits-in-reply. The 4th defendant is not represented. Affidavit-of-service filed on record indicates that the 4th defendant has been duly served but it has chosen not to appear. Defendant no.1 appears in person since he is an Advocate of this court. Defendant no.2 is represented by Mr. Jogdeo. Mr. Bhardwaj on behalf of defendants 1 and 3 has appeared without prejudice to his IA for rejection of the plaint.

12. Mr. Jagtiani submitted that even after filing the present suit and the IAs, the defendants have continued to address correspondence and make defamatory statements on social media including via WhatsApp and e-mail. He has tendered a statement of such further messages said to have been sent

by defendant no.2 to various persons. Contents of some of these messages read as follows :-

Date	Medium of Publication	Defamatory Statements
4.5.2020	WhatsApp	*"Thus all who are in connivance with Oberoi Constructions in the systematic pre-meditated, were and are, continue to plunder / cheat and deprive of Oberoi Splendor A to F Towers Owners of their legal rights & dues. "* *All were very very well equipped with full knowledge of all the wrongs / breaches/violations/abuse of laws, statutes, rules & regulations etc.* *And yet not only did all allow it all but actively collaborated with Oberoi Constructions to consistently enhance the violations, breaches etc.* *Of Rs 100s of CRORES AND COUNTING!"*
8.6.2020	E-Mail	*"It is difficult to read the pulse of the officials of the SPLENDOUR COMPLEX OFFICIALS AND ITS LEGAL TEAM AS TO WHAT LEVELS they would go to dupe SPLENDOURITES.* *And against the above deception see the averments of SPLENDOUR CHS ARUN KUMAR AND OBEROI CONSTRUCTIONS CHIEF LEGAL OFFICER RAJEEVAN NAIR….. "*
8.6.2020	E-Mail	*"All frauds were pre mediated and with clear criminal intentions to cheat the OWNERS OF OBEROI SPLENDOUR A TO F TOWERS . In open and blatant connivance of all above. "* *"The total fraud in financial terms is more than Rs 1500 crores . The above is a sketch of all matters relating to direct violations within OBEROI SPLENDOUR A to F Towers with all relevant attachment detailing each and all of them."*
14.7.2020	WhatsApp	*"This is critical to every Splendourites and 19000 sq.mtrs. worth Rs 400 crores FSI that Splendour Complex Friends Of Builder have given away our undivided owned assest in stolen charity to Their Mentor & friend Vikas Oberoi."* *"The 9 mtrs that Splendour CHS Mentees of Oberoi Constructions gave to Prisma was nothing less than severe criminal act of encroachment and every mm should be taken back. And will be!"* *"The 18 mtrs plan has been confirmed in Affidavit of Chief **Legal Officer of Builder - Rajeevan Nair & conniving** Partner Of Splendour CHS Arun Kumar in court submission in Suit 1464 / 2018. "* *"Only the builder & it's conniving Partner Splendour CHS created this falsehood to encroach ·9 mtrs."*

16.7.2020	E-Mail	*"AND THE AUDACITY OF THE SAME PERPETUATORS TO GIVE THIS AFFIDAVIT IN SUIT 1464 / 2018 FILED BY OBEROI PRISMA OWNERS AGAINST OBEROI CONSTRUCTIONS AND SPLENDOUR CHS. FILED BY DUA ASSOCIATES"* *"This is critical to every Splendorites, other than the builders CABAL among us - the 19000 sq mtrs worth Rs 400 crores FSI that the Splendour Complex Friends Of Builder have given away. "* *"This 19000 SQ MTRS FSI is our undivided co-owned assets donated- a stolen charity to Their Mentor & friend Vikas Oberoi "* *"<u>Worth Rs 400 crores over which the SPLENDOUR CHS AND THE BUILDERS CABAL LED BY PRASHANT KARNIK have no iurisdiction whatsoever to give away</u>. "* *"3.Can't take even an iota of our RG or open space at any cost - *not even just as on paper to legitimise Prisma very many frauds & absurdities . * As per farce declared in CONSENT TERMS & DEED OF CONVEYANCE."*
16.7.2020	E-Mail	*"The 9 mtrs that Splendour CHS Mentees of Oberoi Constructions gave to Prisma was nothing less than severe *criminal act of encroachment* and every mm should be taken back. And will be !* *This was not personal property of Builders Cabal Leader Prashant Kamik & Gang"* *"The 18 mtrs plan has been confirmed in the Affidavit of Chief Legal Officer of Builder - Rajeevan Nair & conniving Partner Of Splendour CHS Arun Kumar in court submission in Suit 1464 / 2018.* *Affidavits attached above.* *Attached the Splendour CHS fraudulent statement sgm of June 3rd 2018 -by Arun Kumar/Vikram Bharwada and the whole lot. And in direct contrast to pin the criminal deception of OBEROI SPLENDOUR OWNERS Prashant Kamik Kingpin of "The Pragmatic" Group letter To MLA & BMC regarding the Second exit and compound wall against Prisma. "*

13. According to Mr. Jagtiani, in addition to those statements that have already been referred to in the plaint, these are all actionable. He submitted that the defendants therefore must be restrained from continuing to make such disparaging and defamatory statements pending the disposal of the suit. It is further submitted that defendant no.4 has facilitated the dissemination of

such statements, which are per se defamatory, by permitting the members of the society, who had access to the portal to post the impugned messages. He therefore sought reliefs as prayed for.

14. As far as the IA filed by the defendants 1 to 3 is concerned, Mr. Jagtiani has relied upon an affidavit-in-reply filed on behalf of the plaintiffs dated 12th September 2020 of one Arun Kumar – plaintiff no.3. Since the hearing was via video conference, some of the affidavits are received by e-mail, subject to undertakings to file the original signed copies in the registry. I therefore proceeded to consider the averments in these affidavits including those sent via e-mail. Mr. Jagtiani submitted that IA/2/2020 has been filed seeking reliefs against defendant no.4 since specific reliefs have been sought in the suit against defendant no.4. That the Suit No.695 of 2016 and the above suit are not identical. Causes of action in both the suits are different and distinct and therefore there is no occasion to seek leave under Order II Rule 2 of CPC. The cause of action is clearly set out under the plaint itself and on merits in the submissions. As regards the issue whether the plaint is required to be rejected, Mr. Jagtiani has taken me through the impugned statements, as set out above.

15. In a compilation filed by e-mail and described as File No.26, the defendant no.2 has commented upon the affidavit-in-reply filed on behalf of

the plaintiffs. Specific reference was made to the Advocates appearing for the plaintiffs. In the communication, as seen to be addressed to the Advocate for the plaintiffs as well on 14th September 2020, the comments allege that plaintiff no.1 is "perverting the course of justice", which amounts to "abuse of the statutory body of the Splendor CHS". Several such statements are made. Further, an e-mail dated 16th September 2020 sent at 20:07 p.m., calls for immediate withdrawal of the suit itself. These mails are addressed to numerous persons, to the Advocates appearing in the matter and including the Bar Council. Attention has been drawn to the Advocates appearing for the plaintiffs.

16. Mr. Bhardwaj led the arguments on behalf of defendants 1 to 3. He has relied upon the affidavit filed by defendant no.3. He has submitted that the present suit is not maintainable for the reasons set out in IA/2/2020. He submits that the averments in the two suits are hopefully the same, so also the cause of action is common and therefore the above suit ought to be rejected. Mr. Bhardwaj submitted that the present suit merely repeats various averments in Suit No.65 of 2020 and Suit No.695 of 2016, in which proceedings have been stayed. Mr. Bhardwaj has relied upon a comparative chart of the causes of action in both the suits. According to him, paragraphs 4(a) and (c) to (k) in Suit No.695 of 2016 are same as paragraphs 5(a) to 5(u) in the present suit. On behalf of defendant no.3, an affidavit-in-reply has

been filed by one Sudhir Agarwal. On behalf of defendant no.2, an affidavit-in-reply has been filed on 5th September 2020. The defendant nos.2 and 3 are supporting the defendant no.1.

17. According to Mr. Bhardwaj, none of these statements to which the plaintiffs have referred are defamatory in nature. Members of the plaintiff-society having been accused of cheating and committing fraud. The plaint discloses no cause of action and has been filed only because the earlier suit is stayed. The present suit is filed by the different Advocate in order to avoid the consequences of stay of the previous suit. According to him, the suit does not disclose any cause of action and the plaint is liable to be rejected under the provisions of Order VII Rule 11(a) to (d) of CPC. Moreover, this second suit cannot be maintained in the absence of leave under Order II Rule 2 CPC, which admittedly the plaintiffs have not sought or obtained while filing the first suit. He refuted the contention of the plaintiffs that every instance of defamation gives rise to new cause of action. That the alleged defamation is pertaining to the same issue as in the earlier suit. The plaintiffs themselves have pleaded in paragraph 19 of the plaint that the defendants are indulging in defamation on an on-going basis. He submitted that Mr. Jagtiani's arguments at the bar during the hearing of these applications was not consistent with the pleadings.

18. Mr. Bhardwaj referred to the averments in the earlier Suit No.695 of 2016 to contend that the present suit is identical. According to him, the present suit is also barred by virtue of the Maharashtra Co-operative Societies Act, 1960 and that by adding new particulars, a legal bar cannot be overcome. He then submitted that there is no resolution of the General Body in order to enable the plaintiffs to file a suit and whether or not the society has been defamed, that issue would have to be decided by the General Body. It is contended that none of the statements in the alleged communications and alleged defamatory material affects the plaintiff-society. All the statements are only regarding office bearers and it is only office bearers who can institute the suit. Joinder of plaintiffs 2 to 13 in the suit is of no consequence. They must all be directed to pay court fees in the event they choose to agitate the suit. Mr. Bhardwaj denied any loss of reputation has resulted. According to him, the complaints made by the defendants 1 to 3 are in the nature of privileged communications pertaining to management of the affairs of the plaintiff-society and cannot be considered as defamatory. Mr. Bhardwaj then submitted that if the court is of the view that the suit is maintainable, the relief sought is an omnibus, which seeks to prevent all flat owners from expressing their views and such an order cannot be granted. Apart from the fact that the suit is barred under the law of limitation, the plaintiffs are estopped from making up old claims and if the plaint is not rejected or stayed, the trial will establish that there was no defamation at all.

19. According to Mr. Bhardwaj, the plaintiffs also have been using language similar to that of the defendants. The defendants 1 to 3 have only been making complaints against office bearers regarding affairs of the plaintiff-society. It is contended that there is only one e-mail addressed by defendant no.1 in reply to the plaintiffs' email. The plaintiffs had in fact filed a criminal complaint in relation thereto and according to Mr. Bhardwaj, there are no defamatory contents that the plaintiffs can demonstrate. According to the plaintiffs, there are some posts made probably by defendant no.3 on Facebook, which are alleged to be defamatory. As regards the contents on the Facebook page, there is a disclaimer that this is not an official page of the company and that the page is operated by flat owners collectively. Even otherwise, according to Mr. Bhardwaj, the posts are undated and are prior to one year from filing this suit. These are only administrative messages to the flat owners. The defendant no.2 had been denied membership and has succeeded in his writ petition. The use of the words such as fraud, cheating, criminal etc. are demonstrative of his anger and have been used by him since the plaintiffs have indulged in criminal activity. Merely because it may hurt the feelings of the plaintiffs, it does not become defamatory. It is further stated that the messages sent by defendants 1 to 3 cannot be now implied, nor can defendant no.4, which provides accounts software / web-portal to so many flat owners, be shut down.

20. Mr. Bhardwaj submits that the plaintiffs are harassing other flat owners and the defendant no.2 has also initiated criminal action for defamation against plaintiffs 2 to 13. Mr. Bhardwaj would submit that the plaintiffs have not made out any case for defamation. According to Mr. Bhardwaj, the balance of convenience is not in favour of the plaintiffs and no irreparable loss could be caused to them. Mr. Bhardwaj further submitted that there is no merit in the plaintiffs' suit or IA and that the defendants' IA be allowed. Defendant no.2 has also filed an affidavit-in-reply denying the allegations in the plaint. Mr. Jogdeo has adopted all the submissions made by Mr. Bhardwaj. Mr. Jogdeo has not made any separate submissions based on the affidavit dated 5th September 2020 except to state that the plaintiffs have not made out a prima facie case.

21. The aforesaid submissions were thus made in common in both the aforesaid IAs. In my view, it is appropriate that one considers the prayers in IA/2/2020 in the first instance. IA/2/2020 seeks rejection of the plaint. If the defendants succeed in that application, then the question of granting a relief in IA/1/2020 will not arise. I have therefore proceeded to consider the submissions on behalf of the defendants 1 and 3 in support of their IA. The contentions of the said defendants are premised on the provisions of Order VII Rule 11 of the CPC; primarily sub-rules (a) to (d). Firstly, it is to be shown that the suit does not disclose a cause of action or that the suit is undervalued

and if the plaintiffs fail to correct the valuation within the time specified, the suit is liable to be dismissed. Secondly, if the plaint is insufficiently stamped, the plaintiffs shall be required to pay sufficient court fees and if they fail to do so, the suit is liable to be rejected. Thirdly, if the suit appears to be barred by any law, the same is liable to be rejected. One other challenge is on the basis that the suit is also liable to be dismissed for want of leave under Order II Rule 2 of CPC.

22. Rule 2 of Order II CPC reads as follows :-

"ORDER II - FRAME OF SUIT

1. Frame of suit— ………………………………

2. Suit to include the whole claim—

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation—For the purposes of this rule an obligation and a collateral *security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."*

23. It is contended firstly that the present suit is largely identical to the first suit and even assuming that some reliefs had not been sought in the first suit, which now stands stayed, such reliefs cannot be now sought in the present suit unless the plaintiffs had sought leave to omit to sue for some reliefs in relation to the same cause of action. It also entails that if the plaintiffs have intentionally relinquished any portion of the claim, the plaintiffs cannot thereafter sue in respect of the portion omitted. Explanation to Rule 2 provides that for the purposes of Rule 2, an obligation and a collateral security for its performance and successive claims arising under that obligation shall be deemed to constitute but one cause of action. Applying these provisions to the instant case, I am unable to agree with the defendants that the plaintiffs have relinquished the reliefs sought in the present suit by filing Suit No.695 of 2016. Prima facie, the present suit does not include reliefs sought in the first suit. The parties in the present suit are two members of the plaintiff-society. Defendant no.3 is a limited company said to be formed by defendants 1 and 2 and the 4th defendant-company owning the web-portal "Apartment Adda". Defendants 3 and 4 were not parties in the first suit. The present suit seeks damages in respect of these impugned statements. Defendants 1 and 2 are the only common defendants. The first suit is filed

against 16 defendants. The 14 other defendants are not parties of the present suit.

24. One must also note the fact that defendant no.3 appears to have incorporated on 16th September 2016 i.e. after the filing of the first suit. The defendant no.3 therefore was not in existence when the first suit was filed. The present suit and IA specifically seeks relief also against the 4th defendant, which runs the web-portal "Apartment Adda", which is said to have carried the impugned statements. Defendant no.4 has been served and yet has not contested the IA. The reliefs sought in the present suit against defendant no.4 could not have been sought in the earlier suit. In that view of the matter, the defendants' contention that the suit is bad for leave under Order II Rule 2 CPC cannot be sustained. The cause of action in the present suit, in my view, is not the same as that in the first suit, although there may be averments common to both. Similarity of averments or their commonality will not render the suit nugatory. Order II contemplates the frame of the suit which should be such as to afford ground for final decision upon the subject in dispute, so as to prevent further litigation concerning them. It is for this reason that every suit is required to include the whole claim and in respect of that portion, which is not relinquished but no relief is sought, a fresh suit would be barred unless leave of the court has been sought and was granted. The reason being that the defendants should not be faced with splitting of the

claim. Clearly, there is no bar against a second suit being filed on the separate cause of action. In my view, the cause of action against defendants 3 and 4 did not arise in the first suit. Commonality of defendants 1 and 2 and several averments in both the suits would not be reason enough to reject the plaint for want of leave under Order II Rule 2 CPC. As far as Order VII Rule 11(c) is concerned, that would require further investigation and this is an aspect which the plaintiffs will have to consider and satisfy at the time of the plaint being "admitted" post compliance with office objections. Thus, rejection of the plaint for want of leave has to be ruled out. The other plea that the plaint must be rejected under Order VII Rule 11(a) for want of a cause of action also cannot be sustained since, in my view, the cause of action has to be culled out in the pleadings and that the averments in the plaint merely indicates that the cause of action in this case is different from that in the first suit.

25. The next ground for seeking rejection of the plaint is that the suit appears to be barred in view of the statements in the plaint. In my view, there is no warrant for coming to that finding on a mere reading of the plaint as it appears in the present case. Thus, the reliefs sought in the defendants' IA/2/2020 in terms of prayer clauses (b), (c) and (d) cannot be granted. As far as the request of the defendants that the claim of preliminary issue would have to await submission of the plaint would in my view have to await the admission of the plaint, which is yet to be "admitted"; hence, premature. The

only other relief that survives is whether the suit is liable to be rejected or it is barred under Section 3 of the Limitation Act, read with item 75 of the Schedule of the Limitation Act. Part VII of the Schedule dealing with periods of limitation provides that a suit for compensation for libel should be filed within one year. The defendants have proceeded on the basis that the suit is simplicitor a suit seeking compensation but, in fact, the suit seeks specific injunctive relief against the defendants. In my view, therefore, at this stage, the suit is not liable to be rejected as barred by the law of limitation. This would also apply to the plea that the suit is liable for rejection under Order VII Rule 11(d) CPC as barred by law. This sub-rule could be invoked only in case where the plaint itself discloses that the suit is barred. The aspect that the plaintiffs 2 to 13 cannot take advantage of the 1st plaintiff having filed the suit and therefore can file a fresh suit or must pay separate court fees is something that the Taxing Master would consider and in that respect, these are issues which would arise at the time of admission of the plaint. I therefore keep this issue open inasmuch as the rejection of the plaint sought under Order VII Rule 11(d) CPC. In the event of the plaintiffs being found to be liable to pay separate court fees and if they fail to do so, there may be a window for seeking rejection of the plaint and to that extent rights of the defendants to apply can be protected. From the averments in the plaint, prima facie it does appear that the suit cannot be said to be barred. Paragraph 19 sets out the cause of action as having arisen on 6th January 2020. In that view of the matter, I am unable to hold that the suit is liable to be rejected for the reasons set out in IA/2/2020. The defendants therefore cannot succeed in this application. Having come to this conclusion, I am now considering the plaintiffs' IA/1/2020 for injunctive relief.

26. The reliefs sought by the plaintiffs are against all the four defendants. Defendant no.4 and defendant nos.1 and 3 represented by Mr. Bhardwaj have made submissions in common. Defendant no.2 represented by Mr. Jogdeo has adopted those submissions and that leaves defendant no.4, which has chosen not to appear. Affidavits-of-service are on record, which indicates that defendant no.4 is duly served by an e-mail and by postal service. It appears that defendant no.4 is not interested in contesting the IA. No appearance has been entered. Whether or not the defendant no.4 contests, the suit is a matter to be considered after summons are served upon. I will therefore proceed to consider the nature of the statements made. One of the prayers seeks an order temporarily restraining defendant no.4 from allowing its web-portal to be used for defaming the plaintiffs or its managing committee members or auditors. If I am satisfied that the contents are defamatory, then defendant no.4 would invite such an order.

27. The contention of the defendants 1 to 3 that the bundle of facts on which both the suits are placed is identical does not appear correct. Merely

because the published materials are similar and allegedly exposes wrongful acts of plaintiffs 2 to 13, does not mention that the suit contents are on the same bundles of the facts. The causes of action are different though there may be some remotely common element. On the aspect of defamation, however, I find that repeated statements such as ones made in Exhibits M, M1, N, Q to Z and AA to UU (e-mails from defendant no.2) amongst others, though stated to be made out of the deep rooted anger and frustration of the defendants 1 to 3, cannot be countenanced. This is compounded by the fact that even during pendency of the suit and after the matter was taken up for hearing, the 2nd defendant has persisted in sending e-mails to large number of persons including the Deputy Registrar of "K" Ward, several other addresses, which includes at-least some of the plaintiffs and Advocates of the plaintiffs, alleging inter alia that plaintiff-society is "perverting the course of justice" by filing the first suit. It is contended that the co-operative housing society cannot be defamed since it is a non-aided statutory body. The statements found in the compilation of documents filed in this matter then led to issuance of a legal notice to the 2nd defendant by the Advocates for the plaintiffs. While aggressive language may be common place in exchange of correspondence between agitated parties, question is whether the defendants would be justified in using language which is prima facie defamatory? In my view, continuing vituperation has been one of the features of correspondence and that cannot be justified. The language consistently used by the defendants thus in my view is with an intention to cause injury to the plaintiffs in exposing them prospectively and to create an impression that the plaintiffs cannot be trusted, which is evident from a plain reading of the communications; in particular e-mails at Exhibits M, M1, N, Q to Z and AA to UU. This is not a case of infrequent use of invectives.

28. Reliance placed by the defendants upon the decision of the Delhi High Court in *The Punjabi Bagh Cooperative Housing Society Limited Vs. K.L. Kishwar & Ors.*[1] and the decision of *Tata Sons Ltd. Vs. Greenpeace International*[2] are of no avail. The effect of the language used is clearly libelous and meet test while considering an application for injunction / a restraint order. I find that the defamatory statements have been published in writing. The defendants have contended that defamation must be proved in particular. The 2nd defendant has made specific averments to that effect in correspondence and in the affidavit-in-reply (see paragraphs 5 and 11.6). In the affidavit-in-reply, the 2nd defendant denies that he has made any defamatory statements; yet by denying these allegations, he states that he has no intention of defaming anybody and that presenting and spreading the truth of the facts does not amount to defamation. It is the 2nd defendant's contention that defamation must be proved by the plaintiffs but the fact is that the falsity of the charge is accepted as a presumption in favour of the

1 *MANU/DE/1388/2001*

2 *2011 SCC OnLine Del 466*

plaintiffs and the burden of proving that words are false does not rest upon the plaintiffs since defamation of a person/persons in the present circumstances where the defendants are alleged dishonesty, is taken to be untrue unless it is proved to be true. Proceeding on that basis, prima facie it thus appears that the words and language used prima facie with malice by the defendants would expose the plaintiffs and tends to injure the plaintiffs in their business of managing the society. It would also tend to lower the reputation of members of the plaintiff-society's managing committee in the estimation of right thinking members of the society.

29. It is well established that the statements made by the defendants in a suit for defamation must be read as a whole and to be given the ordinary meaning ascribed thereby to ordinary men. The impression created by an ordinary person reading the offensive posts, messages and correspondence posted on "Apartment Adda" would in my view expose the plaintiffs to such injury. The court after reading the statements as a whole is required to consider intention behind those statements. Prima facie, it is evident that the offensive communications referred not only to the plaintiff-society and the managing committee generally but to specific members of the managing committee, in particular, reference is to plaintiff no.2-Prashant Karnik. These are not words that are used innocently. The 4th defendant has facilitated carriage of messages on its web-portal and is responsible for its publication.

At this interim stage, the defendants' use of the words "terrorist group", "criminal gang", "rogues" describe the plaintiffs' managing committee members are conscious acts. They are not inadvertent acts of misdemeanor and under the correspondence, posts filed in the suit and to which my attention has been drawn, clearly indicates that there was sufficient time for premeditation before intemperate use of such language and the attempt of justifying is clearly renders the defendants open to injunctive reliefs being granted against them. One of the aspects Mr. Bhardwaj has submitted is that the plaintiffs have also engaged in using offensive language, but would that justify the defendants' conduct in publishing these posts? In my view, the answer is in negative. It is always open for the defendants to initiate action, if so advised. We are presently concerned with an application for restraining the defendants 1 to 4 and in my view plaintiffs have made out a prima facie case for grant of relief. As a result, I pass the following order :-

(i) IA/1/2020 (now numbered as IA/606/2020) is made absolute in terms of prayer clause (a), excluding bracketed portion, which is reproduced below:-

"(a) that pending the hearing and final disposal of the present suit, the defendants by themselves, their servants, agents and/or any other person claiming through or under them, be restrained by a temporary order and injunction of this Hon'ble Court from defaming the plaintiffs and/or managing committee members of the plaintiff society, its auditors or any other person associated with the plaintiff society *[either directly or indirectly and in any manner whatsoever]*.

(ii) Defendants 1 to 3 are restrained from utilizing the portal "Apartment Adda" to post offensive material such as those which defame the plaintiffs or any of the managing committee members.

(iii) Defendant no.4 is also restrained from publishing any defamatory material against the plaintiffs. It is clarified that this restraint does not prevent defendant no.4 from offering the accounting services that it may offer to the defendants, but is restricted to the facility to post messages on their web-portal pending the disposal of the suit.

(iv) IA/2/2020 (now numbered as IA/1045/2020) is dismissed. Liberty is granted to the defendants to apply afresh for rejection of the plaint in the event the plaintiffs are found liable to pay separate court fees and if they fail to do so.

(v) No costs.

(A.K. MENON, J.)

Sneha A. Dixit Digitally signed by Sneha A. Dixit Date: 2021.01.04 19:48:18 +0530