THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.03.2021

CORAM:
THE HONOURABLE MR.JUSTICE **R. PONGIAPPAN**

C.S.No.287 of 2018

M/s. Chemplast Sanmar Limited .. Plaintiff

vs.

A. Vikram Suthakar .. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant.

a) for a Permanent Injunction restraining the Defendant, his men, servants, agents and/or any person/persons claiming any right through and/or under him from in any from in any manner writing and/or publishing any letters either in print and /or in electronic form to any Authority and/or persons(s) which are per se false and/or defamatory as against the Plaintiff and/or its Directors and/or employees;

b) to pay as damages of a sum of Rs.5,00,00,000

(Rupees Five Crores only) as compensation to the Plaintiff for loss suffered by the Plaintiff due to irreparable damage caused to the Plaintiff's name, reputation and goodwill on account of the Defendant's wilful act of making and publishing per se false and defamatory allegations against the Plaintiff.

(c) to pay the Plaintiff the costs of this Suit

For Plaintiff	: Mr. Sharanya Vaidhyanathan for Mr.S. Raghunathan
For defendant	: No appearance Defendant set exparte

JUDGMENT

The suit is filed for directing the Defendant for a Permanent Injunction restraining the Defendant, his men claiming any right in any manner writing and/or publishing any letters either in print and /or in electronic form to any Authority and/or persons(s) which are per se false and/or defamatory as against the Plaintiff and/or its Directors and/or employees; direct the defendant to pay damages of a sum of Rs.5,00,00,000

(Rupees Five Crores only) as compensation to the Plaintiff for loss suffered by the Plaintiff due to irreparable damage caused to his name, reputation and goodwill on account of the Defendant's willful act of making and publishing per se false and defamatory allegations against the Plaintiff with costs.

2.The brief facts of the case of the plaintiff are as follows:

2(a) The Plaintiff is a Public Limited Company and carries on business inter alia as one of the leading manufacturers of PVC resins, caustic soda, Chloro chemicals and refrigerant gases and during the course of which over a period of time it has garnered immense goodwill and reputation, both nationally as well as world wide owing to the high quality of said products manufactured by it, and by maintaining the highest standards of business ethics in all its business dealings vis-a-vis its employees, customers, suppliers and shareholders. The manufacturing facilities are located in India at Mettur in Tamil Nadu and Karaikal in Puducherry and provides gainful employment to around 2500 persons. It had an annual turnover of around Rs.3,125 Crores, for the year ending 31st March 2018.

2(b) Due to constant improvements, innovations and rationalisation inter-alia by adopting and implement new technologies, the Plaintiff has earned a good and valuable reputation not only among its customers but also from all its stakeholders including raw material suppliers in India and abroad. The Plaintiff has also built up an excellent track record in financial market. It is therefore vital that its name and/or reputation is not tarnished or sullied in any manner, as this could have serious repercussions by prejudicially affecting the Plaintiff's name and reputation in industrial and business circles and amongst the public.

2(c) The Defendant continuously publish wholly false and per se defamatory allegations against the Plaintiff and continuous to cause the Plaintiff's name and reputation inter alia by lowering its image not only in the eyes of the Plaintiff and its Associate companies senior management personnel, but also the general public and Government officials. The

Defendant has been making these per se highly false, defamatory and disparaging publications against the plaintiff deliberately with the knowledge and intent to cause incalculable damage to the Plaintiff's name and reputation and it is with this unlawful intent and despite being fully aware of these repercussions, the Defendant is persisting in publishing these wholly false and defamatory allegations against the plaintiff.

2(d) The Defendant firm was carrying on business in Erode in the purchase and sale of Chemicals and allied products and it was originally a dealer of the Plaintiff's predecessor-in-interest for the marketing and sale of caustic soda Lye and Caustic Soda Flakes and other allied produces. The Defendant's firm the dealer of the Plaintiff was engaged in trading in few of the products manufactured by the Plaintiff by buying the same from the Plaintiff and selling it in the market. The plaintiff was a listed company. It had around 29000 public shareholders. During March 2009, the Plaintiff came out with a right issue offering 31,98,79,627 Equity shares of Rs.1/- each, for cash, at a price of Rs.5/- per share to its shareholders. This Rights issue was made in compliance with the provisions of the Companies Act, 1956, SEBI Regulations and other applicable laws. The Plaintiff's Holding Company, M/s. Sanmar Holdings Limited, Chenai, had along with its promoters at all times, held 75%of the Plaintiff's total paid up equity shares capital and the remaining 5% was held by the public, which was being traded in the Stock Exchanges. Mr.V.N.Ayyadurai, the Parter of the Defendant firm had in his personal capacity participated in the said Right issues and subscribed for and was allotted 60,00,000 Equity Shares at the rate of Rs.1/- per equity share at a premium of Rs.4/- per equity share ans for which he paid a sum of Rs.3.00 Crores as consideration.

2(e) After a lapse of 3 years, the Plaintiff's Holding Company M/s.Sanmar Holdings Ltd., as well as the Plaintiff resolved to delist the Plaintiff's shares from the Stock Exchanges in accordance with the provisions contained in the Securities and Exchange Board of India (SEBI) (Delisting of Equity Shares) Regulations 2009. These regulations provided for a mechanism by which the promoters of the Plaintiff could buy the shares held by the public. This offer was made in an around April 2012 to the then existing shareholders of the Plaintiff. The rationale for the terms on which the Delisting offer, as mentioned in the Offer letter dated 28.3.2012 issued by the Holding Company to the share holders to the plaintiff. This offer for delisting of shares of the Plaintiff was made in the interest of the public shareholders by providing them with an opportunity to exit at a fair price. It was to be implemented as per the norms contained in the Delisting Regulations laid down by SEBI. In terms of the said Regulations the shareholders of the Plaintiff were provided with an opportunity to bid for the sale of their respective shareholdings in the Plaintiff to Sanmar Holdings Limited, the Plaintiff's Holding company,during the period 12.4.2012 upto 18.4.2012. The said V.N.Ayyadurai had of its own volition participated in the Delisting Offer by agreeing to sell the shares held by him in the Plaintiff to M/s. Sanmar Holdings Ltd., at the rate of Rs.7.20 per Equity share having nominal value of Rs.1/- per share. The Shares that were held and surrendered by V.N.Ayyadurai were in his personal name and as such nothing to do with M/s.V.N.Ayyadurai, The Said Firm in Erode.

2(f) During the period when the Plaintiff was supplying the Said Products to the Said Firm, a part of the supplies were being desptached from the Plaintiff's Kariakkal Plant, in Puducherry, it was treated as an inter-state sale. The Said Firm was therefore required to furnish the Plaintiff with Form-C. Such transaction were based on the Dealer's instructions either re-directed and or delivered directly to the Dealer's customers, without the Dealer taking physical delivery of the said products are classified as E-1 transaction under Sales Tax Act. In these instances, upon the Dealer furnishing to the Plaintiff Form C along with other supporting documents, the Plaintiff would furnish E-1 to the Dealers. Since the said Firm had admittedly failed to furnish these documents fro some of the transactions, in the manner as mandated in the Sales Tax Act, in spite of the Plaintiff repeatedly calling upon the Said Firm to furnish the same vide emails/letters, to enable the Plaintiff to issue the E-1 forms, the said Firm had failed and neglected to do so. Due to the Said Firm's negligence in furnishing the said documents the plaintiff was unable to furnish Form E-1 to the Said Firm. This obviously resulted in the Sales Tax Authorities levying a penalty of Rs.51.38 Lakhs on the Said Firm. These facts would clearly establish that there was no lapse on the Plaintiff's part.

2(g) It was only upon receiving the aforementioned notice/assessment orders from the Sales Tax Authorities, with regard to the levy of penalty, that the Defendant had sine 03.06.2017 began writing to the Sales Tax Authorities leveling false and per se defamatory allegations against the Plaintiff inter alia holding the Plaintiff Responsible for the levy of the penalty and accused the Plaintiff as having indulged in insider trading activities of its shares.

2(h) Mr.V.N.Ayyadurai as the Plaintiff's Shareholder would not fall under the definition of Specified Persons as per the Code of Conduct in force. He was also not a person associated with the Plaintiff. He also did not have any access to unpublished price sensitive information nor did he trade in shares of the Plaintiff at any time other than by subscribing to the Rights shares as per the Letter of Offer issued to the Shareholders and while surrendering the Said Shares by participating in the Scheme for delisting. Despite this, and not being involved in this transaction, the Defendant had with an ulterior motive, chosen to level these serious per se highly defamatory allegations against the Plaintiff as though it had violated the insider trading regulations and published these statements to third parties/government officials, etc., causing irreparable damage to the Plaintiff's name and reputation. The defendant was at no point in time a shareholder of the Plaintiff, nor was he ever expressly authorised by the said V.N.Ayyadurai in to act on his behalf, even though he was his son, with regard to the transaction that had admittedly taken plea over 5years ago.

2(i) The Defendant had thereafter with the obvious malafide intent to cause disrepute to the Plaintiff's name and reputation, had on 12.09.2017 made highly defamatory allegations against the Plaintiff to the Indo-Japan Chamber of Commerce, an NGO, in which Mr.N. Kumar was an officer. The only obvious reason for the Defendant to have chosen to address this defamatory notice to the said NGO was due to Mr.N.Kumar belonging to the Plaintiff's promoters family.

2(j) On 12.09.2017 the Defendant wrote to Mr.Visweswaran a Director in M/s.Sanmar Engineering Technologies Ltd., which is the Plaintiff's Associate Company alleging that the Plaintiff was involved in insider trading and in so doing had carried on unlawful activities which needless to state is not only false but also per se defamatory. Copies of the said letter containing these per se false and defamatory allegations against the Plaintiff were marked to Ms.Madhurika Sankar, Mrs.Bhavani Kumar, Mrs. Madhura Kumar Visweswaran and Mrs. Mayra Kumar Sarathy all of whom belong to families of the Plaintiff's Promoters and all of whom are in no way involved with the day to day management and operation of the Plaintiff nor with regard to the transaction referred to the defendant, since the plaintiff was and continues to be a professionally managed company.

2(k) On 17.10.2017 when the Plaintiff's counsel issued a notice to the Defendant as instructed by the Plaintiff; on 13.11.2017 when the Defendant's counsel replied to the Plaintiff Counsel's notice by reiterating the said false and defamatory allegations against the Plaintiff; on 18.12.2017 when the Plaintiff's counsel issued a rejoinder to the Defendant's counsel stating that on account of such unlawful publication of per se false and defamatory allegations; on several dates based on the defamatory publications made by the Defendant in Chennai where the Plaintiff has been put to irreparable loss and grave prejudice, which loss though incalculable in monetary terms, as been quantified at Rs.5,00,00,000/-(Rupees five crores only); where the Plaintiff continues to suffer irreparable damage and prejudice on the account of publication of false and defamatory allegations against the Plaintiff, the Plaintiff pray for Permanent Injunction restraining the Defendant from writing or publishing any defamatory as against the Plaintiff and or its Directors and employees and to impose damage of a sum of Rs.5 Crores as compensation to the Plaintiff for the loss suffered by the plaintiff due to irreparable damage caused to the Plaintiff's name, reputation and goodwill on account of the Defendant's willful acts of making and publishing per se false and defamatory allegations against the plaintiff with costs.

3. Though several opportunities were given to the Defendant to file written statement, neither the Defendant nor his counsel filed the written statement. Hence, the matter is posted under the caption Undefended Board. Even after also the Defendant side has not filed the written statement and hence the defendant was set exparte on 10.09.2020 and the

suit was referred to the Learned Master for recording Evidence.

4. On the side of the Plaintiff, the Authorised Signatory Mr.M. Raman was examined as P.W.1 and marked Ex.P.1 to P.25. The exhibits marked on the side of the Plaintiff are as follows:-

Plaintiff's side Exhibits:

S.No.	Exhibits	Date	Description
1.	P-1	03.03.2018	Original Board resolution issued by the Plaitniff
2.	P-2	01.04.2006	Photocopy of Partnership Deed of M/s.V.N.Ayyadurai, Partnership firm
3.	P-3	01.04.2009	Photo copy of the Del Credere Agency Agreement between the Plaintiff and M/s.V.N.Ayyadurai Parnership firm
4.	P-4	01.04.2010	Original Del Credere Agency Agreement between the Plaintiff and M/s.V.N.Ayyadurai Parnership firm
5.	P-5	13.03.2009	Photo copy of extracts from the letter of offer issued by the Plaitniff to its shareholders for rights issue of shares.
6.	P-6	09.04.2009	Photo copy of renunciation of shares in favour of Mr.V.N.Ayyadurain in his

S.No.	Exhibits	Date	Description
			individual name
7.	P-7	27.04.2009	Photo copy of the allottement of shares in favour of Mr.V.N.Ayyadurai in his name along with share certificate.
8.	P-8	27.03.2012	Photo copy of Public announcement for delisting of shares issued by Sanmar Holdings Ltd.,
9.	P-9	28.03.2012	Photo copy of offer letter delsiting/bid forms issued to public shareholders.
10.	P-10	20.04.2012	Photo copy of Post Officer Public Announcement.
11	P-11	20.04.2012	Photocopy of the Report of Integrated Enterprises Ltd., Registrar to the Office issued to Manager to the Officer
12	P-12	25.04.2012	Photo copy of the Payment instructions by Inga Capital Pvt. Ltd.,
13	P-13	28.04.2012	Photo copy of the payment made in favour of Mr.V.N.Ayyadurai – Statemet of Bank Account of Chemplast Shareholders' Benefit Trust showing the debit.
14	P-14	31.03.2016	Copy of e-mail addressed by ICICI Bank to the plaintiff reg.defeault in payment by Mr.V.N.Annadurai
15	P-15	08.06.2017	Photo copy of letter dated 08.06.2017 from the Plaintiff to

S.No.	Exhibits	Date	Description
			M/s.V.N.Ayyadurai, Partnership firm along with the statement calling for detail for E1 forms
16	P-16	29.07.2017	Photo copy of the letter from the Plaintiff to M/s.V.N.Ayyadurai, Partnership firm calling for documents to furnish E1 forms.
17	P-17	03.06.2017	Photo copy of letter from M/s.V.N.Ayyadurai, Partnership firm to the Asst. Commr.of Sales Tax, Erode.
18	P-18	---	Photo copy of the code of conduct for prevention of insider trading in the shares in compliance with SEBI (Prohibition of Insider Trading) Regulations, 1992.
19	P-19	10.07.2017	Photo copy of the letter from M/s.V.N.Ayyadurai's legal counsel to Asst. Commr.of Sales Tax Erode.
20	P-20	12.09.2017	Photo copy of letter from Defendant to the family members of the Promoters of Plaintiff, Chamber of Commerce, NGO, etc.,
21	P-21	17.10.2017	Photo copy of Notice dated from the Plaintiff counsel to the Defendant.
22	P-22	13.11.2017	Photo copy of the Reply notice from defendant's counsel to the plaintiff's counsel.
23	P-23	18.12.2017	Photo copy of the Rejoinder from

S.No.	Exhibits	Date	Description
			the Plaintiff's counsel to the Defendant's counsel.
24	P-24	03.01.2018	Photo copy of the Reply dated 03.01.2018 to rejoinder from defendant's counsel to the plaintifff's counsel
25	P-25	---	Extract from books of accounts of the Plaintiff – Accounts of M/s.V.N.Ayyadurai, Erode.

Plaintiff's side witness: P.W.1. - Mr.M. Raman

5. Heard the learned counsel for the plaintiff and perused the records.

6. On going through the evidence given by the P.W.1 would disclose that the Defendant continuously publishing wholly false and per se defamatory allegations against the Plaintiff, and causing damages to the Plaintiff's name and reputation and lowering its image in the eyes of statutory authorities, public bodies, its service employees etc., From the Plaint, evidence given by P.W.1 and documents exhibited on the side of the Plaintiff are proved the case of the Plaintiff that the Defendant made defamatory allegations continuously against the Plaintiff. Therefore, the Plaintiff is entitled for the permanent injunction and damages.

7. With regard to damages the Plaintiff prayed for Rs.5,00,00,000/- (Rupees Five Crores) in view of this Court it is on the higher side. Considering the defamatory statements made by the Defendant continuously against the Plaintiff and caused damages to the Plaintiff's name, reputation and goodwill, this Court is of the view that Rs.50,00,000/- (Rupees Fifty Lakhs only) compensation would be a reasonable amount.

8. Accordingly, the suit is partly allowed and the decree is passed as follows:

(a) Granted Permanent Injunction restraining the Defendant, his men, servants, agents and/or any person/persons claiming any right through and/or under him from in any from in any manner writing and/or publishing any letters either in print and /or in electronic form to any Authority and/or persons(s) which are per se false and/or defamatory as against the Plaintiff and/or its Directors and/or employees;

b) Defendant to pay as damages of a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as compensation to the Plaintiff for loss suffered by the Plaintiff due to irreparable damage caused to the Plaintiff's name, reputation and goodwill on account of the Defendant's wilful act of making and publishing per se false and defamatory allegations against the Plaintiff.

c) Defendant to pay the Plaintiff the costs of the Suit.

10. In the result, the Suit is Partly allowed with costs.

04.03.2021

Index : yes/no
Internet: yes
Speaking/Non-speaking order
ggs

R. PONGIAPPAN,J.

ggs

Judgment in:
C.S.No.287 of 2018

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