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C.R.P.(PD) No.2274 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.03.2022

Pronounced on : 27.05.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(PD) No.2274 of 2021
and C.M.P.Nos.17245, 17249 of 2021
and C.M.P.Nos.18622 & 18624 of 2021

1.R.Natraj, I.P.S.,
Director General of Police (Retd.,)
2.Nithyaesh Natraj

....Petitioners / Petitioners /Plaintiffs

Vs

1.M.R.Saravanan
2.Dinakaran Newspaper
Represented by its Editor in Chief
No.229, Kutchery Road
Mylapore, Chennai – 600 004.
3.Nakheeran Publications
Represented by its Editor in Chief
No.105, Jani Jhan Khan Road
Royapettah, Chennai – 600 014.
4.Makkal TV
No.12/16, Subba Rao Avenue
First Street, College Road
Chennai – 600 006.

.... Respondents / Respondents / Defendants



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Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the impugned order dated 01.09.2021, in I.A.No.1 of 2019 in O.S.No.5503 of 2019 on the file of the XXI Additional City Civil Court, Chennai insofar as the enhancement of damages is concerned and consequently to allow the amendment application in I.A.No.1 of 2019 in O.S.No.5503/2019.

For Petitioners : Mr.Vaibhav R.Venkatesh

For Respondents : Mr.R.N.Amarnath [R1]
Mr.P.T.Perumal [R3]
Mr.V.Sivaraman for Mr.K.Balu [R4]
R2 – No Appearance

ORDER

The plaintiffs have filed a suit for defamation claiming damages (originally before this Court in C.S.No.5 of 2015) of Rs.25,10,000/- against the first defendant. The defendants 2 to 4 are the Media, and the plaintiffs seek a decree of prohibitory injunction not to publish any defamatory statement about them. Subsequently, they moved the original side of this Court in A.No.2085 of 2019 for amending the plaint, seeking a higher damage of Rs.1,00,10,000/- against the first defendant and also for a relief of mandatory injunction.



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2. While the matter was pending before this Court, the pecuniary jurisdiction of the High Court came to be enhanced and accordingly, the suit came to be transferred to the City Civil Court. The pending application in A.No.2085/2019 was also transferred to the City Civil Court. The suit was taken on file before the XXI Additional City Civil Court, Chennai in O.S.No.5503/2019, and the application came to be taken on record in I.A.No.1/2019. The learned trial Judge heard the matter, and partly allowed the application and permitted amendment of plaint by moulding the prayer for mandatory injunction newly sought into one for prohibitory injunction. As regards payment seeking enhancement of damages, the trial court dismissed it. This part of the order of the trial court is now under challenge in this revision.

3. The line of reasoning of the learned trial judge for dismissing I.A.No.1/2019 is two-fold:

- That the plaintiff had filed the application for amendment in A.No.2085/2019 when the suit was pending before this Court only after the notification changing its pecuniary jurisdiction was made and hence the application is intended to retain the suit before the High Court which according to the trial



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court constituted an abuse of judicial process.

- So far as the allegation of the plaintiffs that amendment seeking enhancement of damages is founded on certain publication made by the defendants are in violation of order of interim injunction passed by this Court etc., is concerned, the trial court delved briefly on the merit and has held that neither the order of this Court, nor that of the Hon'ble Supreme Court in the SLP disclose that there was a finding that the alleged statements are defamatory, and that whether the publications attributed to the defendants and alleged to be constituting defamation could be decided only at the end of the trial.

4.1.Challenging this order in I.A.No.1/2019, the plaintiffs are before this Court in this revision. The learned counsel for the revision petitioners has put forth the following points of arguments as below :

- (a) The amendment to the suit has become necessary due to certain subsequent events that took place during the pendency of the suit. It is on the basis of which, the damages originally sought, was revised. In particular, he added that this Court has passed an order of injunction against the defendants not to publish any defamatory statement against the



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plaintiffs, still they continued to do so.

(b) Indeed, in terms of Order VI Rule 17 CPC., amendment is not permissible after trial has commenced, whereas in the instant case, an application seeking amendment was filed even couple of years prior to the filing of the written statement by any of the defendants.

(c) Thirdly, the learned District Judge did not appreciate that, at any rate he will not have pecuniary jurisdiction to entertain the plaintiffs claim of damages of Rs.1,00,10,000/- Even in the best of circumstances, he can award damages only upto Rs.1.0 crore, but for doing so, he may still have to try a case for a value of Rs.1,00,10,000/-.

(d) The amendment *per se* is not injurious to the right of the first defendant, as he still has the right to file the written statement and contest the suit.

They relied on the ratio in ***Mount Mary Enterprises Vs. Jivratna Medi Treat Private Limited*** [(2015) 4 SCC 182 : 2015 SCC Online SC 84]; ***Lakha Ram***



Sharma Vs. Balar Marketing Private Limited [(2008) 17 SCC 671]; ***Revajeetu Builders and Developers Vs. Narayanaswamy & Sons and Others*** [(2009) 10 SCC 84]; ***Hi.Sheet Industries Vs. Litelon Limited*** [2006 (5) CTC 609], and the judgment of the Hon'ble Delhi Court in ***Eicher Motors Limited Vs. Saurabh Katar &Others*** (Order dated 16.12.2015 in C.S.(OS) No.2998/2015).

4.2 The learned counsel for the first respondent / first defendant argued :

(a) The amendment was a camouflage for forum shopping. The plaintiffs earlier issued a pre-suit notice claiming damages for Rs.1.0 crore, but when he actually raised a suit, he restricted the suit to Rs.25,10,000/- While so, the pecuniary jurisdiction of the High Court came to be enhanced to a value beyond Rs.1.0 crore. It is right at this time, the plaintiffs came up with an application for amending the plaint, enhancing the damages for a value beyond Rs.1.0 crore, only to retain the jurisdiction over the cause of action.

(b) The plaintiffs now claim that the amendment was necessitated due to some subsequent events, but they do not seek any amendment of the body



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of the plaint introducing such subsequent events as may be necessary to sustain the amendment.

(c) Contrary to what the learned counsel for the revision petitioners / plaintiffs contended, the first defendant had filed his written statement even before A.No.2085/2019 was filed before this Court for amendment.

(d) The plaintiffs are father and son duo. Their reputation is independent of each other, and therefore the suit is hit by misjoinder of causes of action. In all cases of misjoinder of causes of action, the Court may have to put the plaintiffs to election and order separate trial. If the matter goes for trial, then the value of the suit vis-a-vis each of the plaintiffs will necessarily go below Rs.1.0 crore and necessarily, only the District Court will have the jurisdiction.

The learned counsel relied on the judgment of *Union of India & Others Vs. Cipla Limited and Another* [(2017) 5 SCC 262].

5.1 The suit is laid for damages for defamation and for other ancillary reliefs.



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Admittedly, the suit is originally laid before this Court, wherein this Court vide an order dated 23.01.2015 in O.A.Nos.78 & 79 of 2015, has passed an order of interim injunction restraining the first defendant from publishing any defamatory statement against the plaintiffs. Pursuant to which, the first respondent / 1st defendant preferred a complaint before the police on 28.11.2014, and also has filed Crl.OP.No.13562/2015, seeking a direction to the statutory authorities to register a case based on his complaint and to investigate the matter. This petition came to be closed vide order dated 10.08.2015. Challenging which, the first respondent preferred an SLP, and the order in Crl.OP.No.13562/2015 was confirmed by the Hon'ble Supreme Court, when it dismissed SLP.(Crl).MP.No.3943/2016, on 08.03.2016.

5.2 The suit in C.S.No.51/2015 indeed was laid seeking damages of Rs.25,10,000/-. Now based on certain subsequent events, which according to the plaintiffs are characterised by the breach of an order of interim injunction passed by this Court, has let them prefer an amendment before this Court in A.No.2085/2019 in C.S.No.51/2015, seeking enhancement of compensation from Rs.25,10,000/- to Rs.1,00,10,000/-. Thereafter, owing to the change in pecuniary jurisdiction, the suit in C.S.No.51/2015, was transferred to City Civil Court, and the same was taken on



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file in O.S.No.5503/2019, and the pending application for amendment of plaint as I.A.No.1/2019. The trial vide its order dated 01.09.2021, has dismissed the said application. But, this Court is not impressed with the line of reasoning of the trial Court for the following reasons :

(a) The trial Court had read too much into the timing of the application filed before this Court in A.No.2085/2019, but it can even be a coincidence. The trial Court's finding that the application was filed only to retain the suit before the High Court, and hence it constitutes an abuse of judicial process, appears to be a hyper-stretched view. After all, here are the plaintiffs who allege that the order of interim injunction has been violated and fresh defamatory statements have been made. That circumstances cannot be overlooked nor can be substituted by certain legislative action concerning pecuniary jurisdiction of civil Courts. In this background, this Court does not consider that the application filed by the plaintiffs would constitute an attempt at forum shopping, and would constitute an abuse of judicial process.

(b) The trial Court's view that the order of interim injunction does not declare that the statements made by the defendants would constitute defamation is



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just to begin the question - “Whether the amendment does not alter the character of the suit as to prejudice the defendants, or is palpably barred by limitation?” Then, the Court is duty bound to grant relief to the ground seeking amendment substantially in the same way that it is required to read the plaint for considering, if it could be taken on record. In either case, the Court is not required to seek proving of the allegation, but only the existence of an allegation, as it may justify the prayer for amendment of plaint.

On both the scores, this Court finds that the plaintiffs have to establish a ground for seeking an amendment of plaint. Necessarily, this Court has to interfere with that portion of the order of the learned trial Judge dismissing the amendment of the plaint vis-a-vis seeking an enhanced damages.

6.1 In the result, this revision is allowed, and the order of XXI Additional City Civil Court, Chennai, dated 01.09.2021 in I.A.No.1 of 2019 in O.S.No.5503 of 2019 is set aside. No costs. Consequently, connected miscellaneous petitions are allowed.

6.2 Allowing this revision would imply that the suit value for the purpose of



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pecuniary jurisdiction will exceed Rs.1.0 crore, and necessarily the suit in O.S.No.5503 of 2019 may have to be transferred to this Court eventually.

Therefore, this Court withdraws this suit to its file. The plaintiff is now required to pay the requisite balance Court fee and also carry out necessary amendment within a period of two weeks, not later than fifteen days, from the date of receipt of the suit papers by this Court, and the Registry is directed to ensure that the suit reaches this Court within fifteen days from today. The defendant is required to file an additional written statement without delay, if he is so desirous.

.05.2022

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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To:

The XXI Additional Judge
City Civil Court
Chennai.



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N.SESHASAYEE.J.,

ds

Pre-delivery Order in
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