

SGPunde

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 75 OF 2022

Chitra Kishor Wagh	... Applicant
<i>Versus</i>	
Mehboob Ibrahim Shaikh	... Respondent

...
Mr. P. R. Katneshwarkar – Advocate for applicant
Mr. G. K. Naik-Thigale – Advocate for respondent
....

CORAM : GAURI GODSE, J.
DATE : 14th FEBRUARY, 2023

PER COURT :

1. This Civil Revision Application is filed by the defendant for challenging rejection of her application filed under Order VII Rule 11(a) of the Code of Civil Procedure 1908 ['CPC']. By the impugned order, the application filed praying for rejection of the plaint on the ground of want of cause of action is rejected by the learned Joint Civil Judge Senior Division, Beed, in Special Civil Suit No. 91 of 2021. The said suit is filed by the respondent for damages on the ground of defamation.

SUBMISSIONS ON BEHALF OF THE APPLICANT:

2. The suit is based on certain statements made by the applicant/defendant from the public platform. The suit for

damages on the ground of defamation is filed only on the basis of the statements, which are quoted in the plaint. The learned counsel for the applicant submitted that a cause of action will be a bundle of facts and the same cannot be pleaded in a casual manner only by referring to certain statements which have been made by the applicant. The plain reading of the statements of the applicant, which are quoted in the plaint, would show that there is no case made out for defamation. Hence, there is no cause of action for filing the suit. The statements that are made by the applicant are gathered from the FIR that was filed against the respondent/plaintiff. Though 'B' summary report was filed, the same was rejected by the learned Magistrate and a chargesheet is filed. The statements quoted in the plaint and alleged to be defamatory are the statements of the applicant which are correct and based on facts.

3. He further submitted that the law with respect to the pleadings as regards the cause of action is well settled. It must be seen whether the cause of action as pleaded is illusory and/or stated to have been untrue by the pleadings in the plaint itself. If the correctness of the statements of the applicant that are quoted in the plaint is not denied in the plaint, it cannot be said that there

is any cause of action for filing the suit. In support of the submissions that are made with respect to the pleadings for cause of action, the learned counsel for the applicant has relied upon the decision of the Hon'ble Supreme Court in the case of *Dahiben Vs Arvindbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives And Others*¹. He specifically relied upon paragraph 24 of the said decision. He submitted that, as interpreted by the Hon'ble Supreme Court in the case of *Dahiben*, the cause of action means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support the right to the judgment by the plaintiff on the basis of those statements. The pleadings with respect to the cause of action would constitute a bundle of material facts which are necessary for the plaintiff to prove to entitle him to get the relief in the suit. The plain reading of the plaint would show that no such cause of action has been pleaded by the respondent – plaintiff. Hence, the suit was required to be rejected for want of cause of action.

4. He further submitted that the correctness of the allegations that are made by the applicant are missing in the pleadings. The

¹ (2020) 7 SCC 366

applicant is a social activist and a political leader. Hence, she has a right to say a fact that has happened in the society and thus make the public at large aware about the happening of the events in the society. The applicant has a right to disclose all the facts and hence being a political leader, she has made the statements in public, which according to her, are true. Hence, for the respondent to file a suit for damages on the ground of defamation, he should have pleaded that the statements made by the applicant are false. Since there are no assertions in the pleadings that the statements made by the applicant being false, it cannot be said that there is a specific cause of action pleaded which is necessary for filing such a suit for damages on the ground of defamation. The suit is in fact premature, as the criminal proceedings are still pending and on that ground also, there is no cause of action for filing the suit as framed by the respondent. There is no specific cause of action pleaded, which is required to be pleaded as has been held by the Hon'ble Supreme Court in the case of *Dahiben*. Hence, the plaint is required to be rejected under Order VII Rule 11(a) of CPC for want of specific cause of action.

5. In support of his submissions, the learned counsel also relied

upon the decision of the Hon'ble Delhi High Court in the case of *Vijay Gulati Vs. Radhika & Ors*². He specifically relied upon paragraph 27 of the said decision, in support of his submission that once a person has a legitimate grievance and he puts criminal law into action, the other side cannot lodge and bring a suit for defamation so as to stop those criminal proceedings. In the present case, the criminal proceedings are still pending and there is no dispute that any such criminal proceedings are pending. Hence, there was no reason for the respondent to file a suit for damages on the ground of defamation, based on the statements made by the applicant. Hence, the suit was premature and was liable to be rejected for want of cause of action.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT:

6. Learned counsel appearing for the respondent submitted that the plain reading of the plaint would show that a cause of action is definitely pleaded in the plaint. The merits of the cause of action cannot be made a subject matter of the proceeding under Order VII Rule 11 of CPC. If truth is to be taken as a defence, then the same would be a question of trial and the suit cannot be rejected

at the threshold. So far as the truth being the defence is concerned, the burden would be upon the defendant and hence the same cannot be said to mean that there is in fact no cause of action. Inclusion of cause of action is sufficient and the merit of the cause of action is not required to be proved at this stage and the same would be a subject matter of trial after leading evidence. In support of his submissions, the learned counsel for the respondent relied upon the decision of this Court in the case of *M/s. Cross Country Hotels Ltd. & Anr. Vs. Shri. Bhupinder Kumar Malhotra & Ors*³. By relying upon the said decision, he submitted that this Court has taken a view that, in the first place, from the perusal of the plaint, if it is found that the cause of action has been disclosed, there would be no question of rejecting the plaint under Order VII Rule 11 (a) for want of cause of action. Thus, by relying upon the said decision, he submitted that the defence of the defendant with respect to the allegations made in the plaint is irrelevant in so far as the decision on an application under Order VII Rule 11 is concerned. Once there is a disclosure of cause of action in the plaint, truthfulness of the cause of action and/or the merits of the cause of action, is a

3 2021(2) ALL MR 687

matter of trial and not a subject matter of rejection of plaint under order VII Rule 11(a) of CPC.

7. The learned counsel for the respondent submitted that the statements made by the applicant as quoted in the pleadings are made in a judgmental manner and after drawing a positive conclusion against the respondent / plaintiff. The applicant is very well aware that the criminal proceedings are still pending and in spite of the pendency of the criminal proceedings, she has drawn a conclusion against the respondent and made those statements against the respondent from a public platform. There are specific disclosures in her statements against the respondent, which are positive and conclusive in nature. Perusal of the plaint would show that there is a specific denial by the respondent with respect to the allegations made by the applicant as quoted in the plaint. He therefore submitted that the learned Trial Judge was right in rejecting the application filed under Order VII Rule 11 of CPC. The learned Trial Judge has taken into consideration the specific pleadings of the plaint and refused to reject the plaint for want of cause of action. He therefore submitted that there is no reason to interfere in the impugned order and the Civil Revision Application deserves to be dismissed.

CONSIDERATION OF THE SUBMISSIONS:

8. I have perused the record of the civil revision application. The plain reading of the plaint shows that in paragraph 2 of the plaint, the respondent has very specifically quoted the statements made by the applicant against the respondent. In the same paragraph, the respondent has also stated that the statements made by the applicant are false in nature and are made with a sole intention to defame the respondent. It is also stated that the applicant made those statements in the vicinity of the place of residence of the respondent and the video clips of her statements were widely circulated and the respondent had to face humiliation from his family members and friends due to the false statements that were made by the applicant against the respondent. Thus, the reading of the plaint would show that the respondent has not only specifically quoted the statements that were made by the applicant but has also denied the truthfulness of those statements. Hence, in view of these averments, it cannot be said that there is no cause of action pleaded by the respondent. With respect to the merits of the cause of action, the same cannot be made a subject matter of an application under Order VII Rule 11 of CPC, as the same would require a trial.

9. I do not find any merit in the submissions made that the suit is premature and hence there is no cause of action. The cause of action for filing the suit for damages on the ground of defamation, is with respect to the actual statements made by the applicant against the respondent. Hence, the reason for filing the suit for damages on the ground of defamation is the statements made by the applicant and not the pendency or outcome of the criminal proceeding. The learned counsel for the applicant is right in submitting that the cause of action is indeed a bundle of facts. However, so far as the present case is concerned, perusal of the plaint would show that all the required facts for the purpose of cause of action are very much pleaded in the plaint. Hence, it cannot be said that the plaint is liable to be rejected for want of cause of action.
10. The Hon'ble Supreme Court in the case of *Dahiben* has interpreted the meaning of cause of action in paragraph 24. As held by the Hon'ble supreme Court, perusal of the plaint in the present case, indeed shows that all the ingredients as required for pleading a cause of action are present in the plaint. The Hon'ble Supreme Court in paragraph 23.5 of its judgment in the case of *Dahiben* has held that the power conferred on the court to

terminate a civil action is a drastic one, and thus, the conditions enumerated in Order 7 Rule 11 of CPC are required to be strictly adhered to. Thus, the Hon'ble Supreme Court has very specifically held that the power under Order VII Rule 11 of CPC for rejecting the plaint cannot be exercised in a casual manner. Hence, there is no question of going into the merits of the cause of action that is pleaded for the purpose of deciding the application under Order VII Rule 11 of CPC. The learned counsel for the respondent has thus rightly relied upon the decision of this Court in the case of *M/s. Cross Country Hotels Ltd.*

11. The reference made by the learned counsel for the applicant to the decision of the Hon'ble Delhi High Court in the case of *Vijay Gulati*, is not be applicable to the facts of the present case. In the case of *Vijay Gulati*, the suit for damages on the ground of defamation was filed by the person against whom the criminal action was initiated by the defendants in the suit. Hence, the observations of the Delhi High Court with respect to the rejection of plaint under Order VII Rule 11(a) of CPC are with reference to the facts of those case, where the defendants had put in action the criminal law against the plaintiff. Thus, it was held

that a suit for defamation cannot be initiated so as to stop those criminal proceedings which were pending. Hence, the suit was considered to be premature. Thus, in facts of that case, it is held that that it lacked cause of action. Hence, the said observations in the said decision in the case of *Vijay Gulati* are not applicable to the present case.

CONCLUSIONS:

12. In the present case, the suit for defamation is filed by the person against whom the criminal proceedings are initiated. However, the criminal proceedings are not initiated by the present applicant/defendant. Filing of criminal proceeding is not pleaded as a cause of action. The suit is based only on the statements made by the applicant against the respondent, which according to the respondent are false and judgmental, as if the respondent is being convicted for the offence. Though the statements were made on the basis of an FIR that was lodged against the respondent, the perusal of the statements as quoted in the plaint shows that the applicant has made statements against the respondent by proceeding as if the respondent is convicted. The respondent has specifically denied the truthfulness of the statements made by the applicant against the respondent. Hence,

the respondent has filed the suit for damages on the ground of defamation. Thus, it cannot be said that there is no cause of action pleaded by the respondent. All the submissions that are made on behalf of the applicant are with respect to the merits of the cause of action as pleaded. It is well established principle of law that the merit of the cause of action cannot be gone into in an application under Order VII Rule 11(a) of CPC and that the merits of the cause of action would be a subject matter of a trial. Hence, I do not find that there is any merit in the submissions made on behalf of the applicant. For the reasons stated above, the Civil Revision Application is dismissed.

[GAURI GODSE]
JUDGE