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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 9 OF 2023

DNYANESH MAHARAO & 4 ORS. ... APPLICANTS

Versus

SANATAN SANSTHA, THR.
MANAGING TRUSTEE & 3 ORS. ... RESPONDENTS

Mr. Somnath Karpe with Ms. Samiksha Vaigankar,
Advocates for the Applicants.

Mr. Nagesh Joshi, Advocate for Respondent No. 1.

Mr. Hanumant D. Naik with Mr. Aditya D. Naik, Advocates
for Respondent No. 2.

CORAM: B.P. DESHPANDE, J.

RESERVED ON: 20th JULY 2023

PRONOUNCED ON: 3rd AUGUST 2023

ORDER:

1. Heard learned Counsel Mr. Karpe, who appears along with Ms. Vaigankar for the Applicants, Mr. Joshi for Respondent No. 1 and Mr. Hanumant Naik, who appears along with Mr. Aditya Naik for Respondent No. 2.

2. With the consent of the learned Counsel for the respective parties, the present Revision was taken up for final disposal at the stage of admission itself as the point involved in the matter is regarding refusal to reject the plaint under Order VII Rule 11 of CPC, filed on behalf of Defendant Nos. 1 and 2.

3. Learned Counsel Mr. Karpe appearing for the Applicants/ original Defendants submitted that the plaint in Special Civil Suit No. 67 of 2008 pending on the file of Senior Civil Judge, Panaji, needs to be rejected under Order VII Rule 11 of CPC for want of cause of action qua the Plaintiff. He would submit that the suit is filed for defamation and damages by the Plaintiff who had no connection at all with the alleged publication. Mr. Karpe would submit that all articles published in Chitralkha magazine are in connection with some other Organization which is operating in Pune and Thane. It is submitted that the Plaintiff though has a similar name of its Trust, the Trustees are different and that there are no averments in the plaint that the Plaintiff is having any connection with such Organization operating in Thane and other parts of the Country. He would further submit that there is no reference to the Plaintiff's Trust or Organization, even though the Plaintiff may be operating in Goa in the same name. He then claimed that the Plaintiff's Trust was created in the year 1999

whereas the Trust or the Organization referred to in the articles was created in the year 1990. He therefore submitted that there is absolutely no cause of action for the Plaintiff or in other words no right to sue in favour of the Plaintiff accrues and hence, the plaint needs to be rejected.

4. Mr. Karpe placed reliance on the following decisions:

- (i) *T. Arivandandam Vs. T.V. Satyapal & Others*, (1977) 4 SCC 467;
- (ii) *Shrawan Kumar Jaipuriyar Vs. Krishna Nandan Singh & Another*, (2020) 16 SCC 594;
- (iii) *Rajendra Bajoria & Others Vs. Hemant Kumar Jalan & Others*, (2022) 12 SCC 641.
- (iv) *Crop. Care Federation of India Vs. Rajasthan Patrika (P) Ltd. & Others* [CS (SO) No. 531/2005 decided on 27.11.2009 by Delhi High Court].

5. Per contra, Mr. Nagesh Joshi appearing for Respondent No. 1/Plaintiff would submit that first of all the suit was filed in the year 2008 wherein a written statement has been filed and even issues are framed. He then would submit that the Plaintiff in the plaint categorically pleaded that articles published in 'Chitralkha'

are prejudicially affecting the Plaintiff and its members and therefore, such publication is against the Plaintiff and its reputation. He invited attention to specific paragraphs in the plaint and claimed that there are specific pleadings showing cause of action and therefore, once there are pleadings, the plaint cannot be rejected under Order VII Rule 11(a) of CPC.

6. Mr. Joshi would then submit that apart from the Trust, which is operating in Goa, there are activities carried out by the same Trust in different parts including Maharashtra, Karnataka etc. and there are many followers of the Plaintiff's Organization. The publication speaks about the Plaintiff and its other Organizations operating in different parts of the Country, which was originally created by Dr. Jayant Athavale. He then invited attention to the English translation of the publication and more particularly, page 30 wherein there is reference to Goa Ashram. He would then submit that a legal notice was sent by the Plaintiff to the Defendants with specific allegations. However, there was no response. He then claimed that now the matter is for evidence and therefore, at this stage, the order passed by the Trial Court need not be interfered with. Finally, he claimed that Dr. Jayant Athavale is the founder of the Sanatan Sanstha and therefore, such

publications directly defamed the said Sanstha, for which the suit is filed.

7. The rival contentions fall for determination as under:

8. In the case of **T. Arivandandam** (supra), the Hon'ble Apex Court held that if the plaint is manifestly vexatious, meritless and groundless, in the sense that it does not disclose a clear right to sue, it would be right and proper to exercise power under Order VII Rule 11 of CPC. A mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not be sufficient to hold that the plaint discloses a cause of action.

9. In the case of **Crop. Care Federation of India** (supra), the Hon'ble Apex Court referred to the decision in the case of **Knupffer Vs. London Express Newspaper Ltd., (1944) AC 116**, wherein Lord Atkin observed thus:

“The only relevant rule is that in order to be actionable the defamatory words must be understood to be published of and concerning the plaintiff.”

10. Thus, the Hon'ble Apex Court in the case of **Crop. Care Federation of India** (supra) held that these observations are relevant for the purpose of ascertaining the right to sue qua pleaded in the plaint. For a civil remedy to lie against defamation the following ingredients must be fulfilled:-

1. The statements must be false and defamatory
2. They must refer to the Plaintiff and
3. The statements must be published by the Defendant.

11. Order VII Rule 11(a) of CPC deals with the cause of action to be disclosed in the plaint. In other words, it means that there must be averments which, when read as a whole or in the sense of a bundle of facts, disclose the cause of action. Such cause of action would necessarily mean that the averments/ingredients satisfy the pleadings. The plaint must contain the pleadings that satisfy the essential for an action of defamation which includes the cause of action. For this purpose, a meaningful reading of the plaint is a must. Similarly, a question needs to be answered as to whether the real cause of action has been set out or something purely illusory has been stated with a view to get out of the rigours of Order VII Rule 11(a) of CPC by clever drafting. In other words, a clear right to sue must be shown in the plaint.

12. In the case of **Rajendra Bajoria** (supra), the Hon'ble Apex Court while relying on the earlier decision in **T. Arivandandam** (supra) observed in paragraph 15 that the reading of averments made in the plaint should not only be formal but also meaningful as clever drafting could create the illusory cause of action. If the plaint is read meaningfully, it would show that the pleadings are supporting the real cause of action or illusory cause of action and whether it shows a clear right to sue or otherwise. Similarly, in paragraph 20, the Hon'ble Apex Court observed that the power conferred on the Court to terminate a civil action is a drastic one and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. While doing so, a duty is cast upon the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon. On a meaningful reading of such plaint and documents relied thereon, if the Court comes to the conclusion that it does not disclose a clear cause of action or clear right to sue, it would not permit the Plaintiff to unnecessarily protract the proceedings and to put an end to such litigation so that further judicial time should not be wasted.

13. In the case of the **Church of Christ Charitable Trust and Educational Society Vs. Ponniamman Educational**

Trust, (2012) 8 SCC 706, the Hon'ble Apex Court observed that a cause of action means every fact which, if traversed, it would be necessary for the Plaintiff to prove in order to seek a decree and relief against the Defendant. The cause of action requires infringement of the right or breach of an obligation and comprises all material facts on which the right and claim for breach is founded i.e. some act done by the Defendant to infringe and violate the right or breach an obligation.

14. With this settled proposition, a meaningful reading of the plaint and the documents relied on in the plaint, is necessary.

15. Respondent No. 1/Plaintiff is a Public Charitable Trust registered at Ponda, Goa having its office at Ramnathi, which through its Managing Trustee filed a suit for defamation and damages against the Defendants. It is the contention of the Plaintiff that the Trust is established to educate people about the science of spirituality by organizing seminars, workshops, courses etc. and to encourage people in the society to be seekers and guide them for their individual spiritual development. It is then claimed that the Plaintiff has thousands of satsangs throughout the State of Maharashtra, Goa, Karnataka etc. in India and abroad. There are thousands of seekers who have faith in the Plaintiff as it is devoted

to spiritual development irrespective of caste, creed and religion. The Plaintiff accordingly, earned a high reputation in society in general and in thousands of seekers in particular.

16. The plaint further shows that Defendant No. 1 being the Editor, Defendant No. 2 being the owner and Defendant No. 3 being the Publisher and Printer of Marathi Weekly known as 'Chitralekha', published defamatory articles of Defendant Nos. 4, 5 and 6 whereas Defendant Nos. 7 and 8 contributed by writing defamatory matters on the said cover page articles. Such publication was only with the intention to defame the Plaintiff and its founder Dr. Jayant Athavale.

17. Apart from giving further details, it is contended by the Plaintiff in the plaint that such defamatory articles contain imputations against the Plaintiff and that such Weekly was widely circulated in Goa and especially to the seekers with an intention to defame the Plaintiff. There are further pleadings in the plaint that such articles and their contents are absolutely false and per se defamatory against the Plaintiff.

18. Paragraph 7 of the plaint discloses the cause of action for filing the suit which arose on 07.07.2008 when the Defendants

published the defamatory articles against the Plaintiff and circulated it to the public. Again, cause of action arose when a legal notice was issued on 19.07.2008, by which, the Defendants were called upon to pay the damages. Paragraph 8 of the plaint shows that such defamatory articles were circulated in Panaji and within the jurisdiction of the Trial Court and therefore, the Court has jurisdiction.

19. Apart from such pleadings, the Weekly in which such articles were published in Marathi are also produced together with the English translation. The learned Trial Court while rejecting such an Application observed that there is cause of action as some articles published in the said Weekly referred to the Plaintiff and its Organization.

20. Both the learned Counsel appearing for the respective parties extensively referred to the publication in the Weekly i.e. the Marathi version as well as the English translation.

21. First of all, the said Weekly refers to Sanatan Sanstha and its Trustee, namely, Dr. Jayant Athavale. There are different articles wherein the name, 'Sanatan Sanstha' operating throughout India is referred. Though the learned Trial Court has

placed reliance on specific references, there is also a specific reference to Dr. Jayant Athavale being the founder of Sanatan Bhartiya Sanskruti Sanstha in the year 1990. Similarly, there is a reference in the article wherein a question was asked to the Government as to when the Government will investigate in respect of the founder Dr. Jayant Athavale who stays in the Sanstha's Ashram in Goa. This shows that the author, of said article claims that the Ashram at Ponda was also formed by Dr. Jayant Athavale.

22. It is no doubt true that the Plaintiff's Trust was founded on 22.03.1999 having its office at Dhavali, Ponda, Goa with the names of Trustees managing therein. Admittedly, the name of Dr. Jayant Athavale is not referred to anywhere in the Trust Deed. The fact remains that it is a religious Trust, established for the purpose of educating the people regarding spirituality published in books, journals, newsletters etc., which has been referred to in the articles published in the Weekly Chitrlekha. The reference of Ponda Ashram which admittedly belongs to the Plaintiff is found mentioned in the said Weekly and therefore, there are clear pleadings wherein the Plaintiff has made averments that by publishing such articles, the Trust of the Plaintiff is being defamed. It is not necessary to read each and every article to cull out the right to sue as it is sufficient to show the connection of the

Plaintiff with the articles published wherein there is some reference of the Plaintiff and its Organization.

23. Therefore, applying the above principles, the plaint clearly discloses specific averments, cause of action and the right to sue and therefore, the Application filed by Defendants under Order VII Rule 11(a) of the CPC must fail. Hence, the following order:

O R D E R

The Civil Revision Application stands rejected.
Parties shall bear their own costs.

24. The Civil Revision Application stands disposed of.

B.P. DESHPANDE, J.

VAIGANKAR
ESHA SAINATH

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