



WEB COPY



A.No.501 of 2015 in C.S.No.480 of 2014

A.No.501 of 2015
in C.S.No.480 of 2014

Reserved on : 24.02.2023

Pronounced on : 03.03.2023

N.SESHASAYEE.J.,

The defendants in the suit has filed this application for rejection of plaint under Order VII Rule 11(a) CPC. The broad facts are below :

- The plaintiff has laid the suit for damages on the allegation of defamation by the defendants.
- In the plaint, the plaintiff alleges that he was a member of Indian Officers' Association, that he joined the Society in 1980, that occupied quite a few positions in its Executive Committee, and that he was elected as its Treasurer for two terms of two years each between 02.10.2009 to 01.10.2013.
- Apart from discharging his responsibility as a Treasurer of the Association, he was also attending as many as 58 cases pending across several Courts against various tenants of the Association. Indeed, the plaintiff was very popular among the members of the Association.



A.No.501 of 2015 in C.S.No.480 of 2014

- It is in this circumstances, the first defendant herein hatched a conspiracy and issued a show cause notice dated 25.02.2013 through the second defendant, levelling false and concocted allegations, to which the plaintiff had sent an appropriate reply dated 10.04.2013.
- He also instituted a suit in O.S.No.2350 of 2013 against the defendants seeking to injunct the defendants from publishing anything that might lower his reputation in the Annual General Body Meeting (hereinafter AGM for short) of the Association which was scheduled to be held on 02.10.2013.
- It is in this backdrop, the AGM of the Association took place on 02.10.2013, in which the Annual Report for the year 2012-2013 was circulated among the members who participated in the meeting. In this Annual Report, the charge memo issued by the second defendant to the plaintiff was published. Indeed as many as six acts of irregularities were alleged against the defendants. What is significant in the context of the present suit is that in paragraph No.9 of the plaint, the plaintiff alleges that the Annual Report containing the details of the charge memo issued to the plaintiff were distributed only at the venue of the meeting to the members who attended it. Some



WEB COPY



A.No.501 of 2015 in C.S.No.480 of 2014

discussions also did take place, and the plaintiff though was available outside the hall, was not heard. And the general body of members at the AGM were not informed about the reply given by the plaintiff to the show cause notice. Indeed, there was not even any reference to the plaintiff's reply to the show cause notice in the Annual Report.

2. In the application now taken out by the defendants, it is alleged that the show cause notice issued to the plaintiff was circulated through its publication in the Annual Report for the year 2012-2013, only to the members thereof, and not to the outside world. The members of the General Body of the Association indeed are entitled to know it, and what the defendants have done is that they merely intimated the General Body through the Annual Report, and this publication was confined to the members, and hence, the same is privileged, and consequently, the plaintiff cannot sustain the suit for defamation.

3. The plaintiff has filed his counter resisting it. Heard Mr.Anirudh Krishnan, learned counsel for the defendants and Mr.C.P.Sivamohan, learned counsel for the plaintiff.



A.No.501 of 2015 in C.S.No.480 of 2014

4. The learned counsel for the defendants/applicants made considerable emphasis on the right of the General Body to know the affairs concerning the management of the Association, and correspondingly the officer bearers of the Association, who are in charge of the affairs of the Association, are under an obligation to inform its members of the same. Further, it is not the case of the plaintiff that the defendants had published the alleged defamatory materials to anyone other than the members of Association. This is very candidly admitted by the plaintiff himself. Any such publication as was made by the defendants to the members of the Association was part of their duty and hence it is privileged and cannot provide a cause for the present action. Reliance was placed on the authorities *The Punjabi Bagh Cooperative Housing Society Limited v. K.L.Kishwar and Ors* [(2002) 95 DLT 573 : 2001 SCCOnline Del 1234 : (2002) 61 DRJ 594]; *Vidya Hari Iyer v. Metallic Bellows India Pvt. Ltd.*, [2019 (5) CTC 755] and *R.Poornalingam & others v. Prof. P.Kadhirvel* [Order of this Court dated 24.11.2020 in Crl.OP.No.24105 of 2015].

5. Per contra, the learned counsel for the plaintiff/respondent herein would take this Court to paragraph Nos.7 and 8 of the plaint and submitted that the plaint



A.No.501 of 2015 in C.S.No.480 of 2014

disclosed allegations of malice and vindictiveness on the part of the defendants, and the intent in them to malign the plaintiff. He also took this Court to the institution of O.S.No.2350/2013, and also how the defendants had proceeded to publish the show cause notice in the Annual Report in spite of the institution of the said suit. He argued with considerable emphasis that if at all the defendants were to claim privilege, then they should have done things in good faith and in fairness. If only the defendants have acted with fairness, they would have completed the narration on the show cause notice issued to the plaintiff by publishing the reply given by the latter, or at least refer to it in the Annual Report. The one sided publication of projecting only the show cause notice issued to the plaintiff without reference to that reply of itself indicates that the defendants were determined to bring down the reputation of the plaintiff in the estimate of the right thinking members of the Association. Reliance was placed on *Pandey Surendra Nath Sinha and another v.Bageshwari Pd* [AIR 1961 PATNA 164].

6. In the course of arguments to a pointed query by the Court, the counsel for the defendants submitted that subsequent to the AGM on 02.10.2013, enquiry



A.No.501 of 2015 in C.S.No.480 of 2014

did take place which found that the charges levelled against the plaintiff were not proved, and that in the subsequent AGM, the result of the enquiry too was also notified in the Annual Report. This fact was not disputed by the counsel for the plaintiff.

7. There are two parts to the submissions of the counsel for the plaintiff, one founded on malice behind issuance of a show cause notice, and the other founded on non-publication of the reply in the Annual Report. Turning to law on the aspect (See: *The Punjabi Bagh Cooperative Housing Society Limited v. K.L.Kishwar and Others*), the publication made by the defendants in the AGM of the members of the Association is privileged, and it cannot feed cause of action for a suit for damages for defamation. Secondly, even if the plaintiff at a personal level has suffered any injury, short of suffering a damage to his reputation due to non publication of his reply, yet the fact that he was exonerated of all the charges subsequently and that the result of the enquiry too was published in subsequent AGM itself is adequate reparation for whatever agony he might have suffered. In other words, the member of the Association were informed both the about the contents of the show cause notice, and also



A.No.501 of 2015 in C.S.No.480 of 2014

the outcome of the enquiry. This indeed is what the Executive Committee is expected to do, and it has been done.

8. There is no defamation in law when what is published is what is expected to be published or required to be published by the Executive Committee of the Association to its members. The publication is privileged and this Court finds that the suit is misconceived and is liable to be rejected off the file of this Court.

9. In the result, this Court finds merit in the application and allows the application and rejects the suit. No costs. Connected applications closed.

03.03.2023

ds



WEB COPY



A.No.501 of 2015 in C.S.No.480 of 2014

N.SESHASAYEE.J.,

ds

Pre-delivery order in
A.No.501 of 2015
in C.S.No.480 of 2014

03.03.2023