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C.R.P.No.130 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM:

THE HONOURABLE Ms.JUSTICE V. BHAVANI SUBBAROYAN

C.R.P.No.130 of 2021

and

C.M.P.No.1201 of 2021

1.A.Muthusamy

2.R.Venkataraman

...Petitioners/Petitioners/1& 13 Defendants

Vs.

M/s.Pollachi Classic Club Resorts
rep. by its Managing Partner,
Mr.A.Kuppuraj,
S/O.Angamuthu Mudaliar,
D.No.15, Round Road,
Mahalingapuram Post,
Pollachi – 642 002.

...Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 17.02.2020 passed by the learned V Additional District Judge, Coimbatore, in I.A.No.744 of 2016 in O.S.No.607 of 2015.



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For Petitioner : Mr.Avinash Wadhavani
for Mr.V.Raghavachari

For Respondent : Ms.Josephine
for Mr.S.V.Pravin Rathinam

ORDER

This Civil Revision Petition has been filed challenging the Fair and Decretal order dated 17.02.2020 passed by the learned V Additional District Judge, Coimbatore, in I.A.No.744 of 2016 in O.S.No.607 of 2015 under Order 7 Rule 11 of the Code of Civil Procedure to reject the Complaint.

2.The petitioners are the defendants 1 and 13 in the suit. The suit in O.S.No.607 of 2015 was filed before the District Court, Coimbatore, directing the defendants 1 to 15 jointly and severally to pay a sum of Rs.15,00,000/- to the plaintiff towards damages for loss of reputation a sum of Rs.15,00,000/- towards loss of Good will.

3.It is the case of the petitioners that the respondent/plaintiff is a Club which has filed a suit claiming damages against the petitioners and other defendants. The respondent/Plaintiff is neither a juristic person nor a human being. Therefore, it has no *locus standi* to file a suit alleging that it has loss its



reputation or goodwill. It is the further case of the petitioners that the Club has no legal entity and it can neither sue nor be sued in its name. Further, the respondent Club is represented by its Managing Partner, however, no where it was pleaded that it is a Partnership Firm registered under the Partnership Act. Therefore, the suit is barred under Section 69(2) of the Partnership Act. The petitioners would further submit that the suit is barred by limitation. Hence, the petitioners have filed an Interlocutory Application before the trial Court to reject the Plaint under Order 7 Rule 11 and Section 151 of the Code of Civil Procedure.

4.The respondent/plaintiff filed a counter statement stating that Section 69 of the Indian Partnership Act, 1932, is not applicable to this case. The respondent/plaintiff contended that the Firm is duly registered under the Limited Liability Partnerships Act, 2000. Therefore, by virtue of Section 4 of the Limited Liability Partnership Act, 2000, the Indian Partnership Act, 1932, shall not be applicable to the respondents who are registered under the Limited Liability Partnership Act. Further, the contention of the petitioners that the suit is not maintainable on the ground of non-registration of Firm cannot be entertained. The respondent/plaintiff contended that the petitioners have caused



great hardship and irreparable damages to the reputation and goodwill of the respondent's Firm and hence, the present suit was filed for damages. The reputation of firm has spoiled to a great extent by means of a wrong publication of news Article in the Media. The respondent submitted that it has all right to sue in its capacity and hence, the suit filed by the respondent/plaintiff is maintainable under Law. Hence, this petition is liable to be dismissed in *limine*.

5.After hearing the arguments adduced on either side, the learned V Additional District Judge, Coimbatore, by his order dated 17.02.2020, dismissed I.A.No.744 of 2016 stating that the Plaintiff Document No.15 is the Certificate of Incorporation issued under Limited Liability Partnership Act for the plaintiff's Partnership Firm, Pollachi Classic Club Resorts LLP. Therefore, once the partnership concern is registered under the Limited Liability Partnership Act, 2008, the Indian Partnership Act, 1932, is not applicable by virtue of Section 4 of Limited Liability Partnership Act, 2008. Hence, the bar under Section 69 of the Indian Partnership Act will not be attracted as against the respondent plaintiff and therefore, the learned Judge dismissed the Interlocutory Application. Challenging the same, the defendants 1 and 13 are before this Court.



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6.The learned counsel appearing for the petitioners would submit that the Court below had failed to appreciate the fact that the entire case of the plaintiff rest on a libel alleged to have been committed by the Publication of a news article dated 26.02.2013. He would submit that the Publisher had not been made as a party to the proceedings. Further, the suit was filed on 16.12.2015 long after a period of limitation as sanctioned under Article 75 of the Limitation Act. He would further submit that the suit is not specific, namely, attributing motive or malicious publication directed individually to any of the defendants and the complaint is vague. He would submit that the plaintiff Firm is not registered and as such, barred under Section 69 of the Partnership Act. Therefore, the said suit is not maintainable.

7.The learned counsel appearing for the petitioners would submit that the Court below had not adverted to any of the facts raised in the affidavit filed in support of the application except holding that the Partnership Act does not apply to the Firm's register under the Limited Liability Partnership Act, 2000. The Court below should have seen that astute drafting of a pleading cannot save a Plaint from being rejected, when it is hopelessly barred by limitation and



on its face discloses, no cause of action. Further, he would submit that the Court below has failed to appreciate that not even a *prima facie* case has been made out and the case had ended in discharge of the accused.

8.The learned counsel appearing for the petitioners would rely upon the the following Judgments:

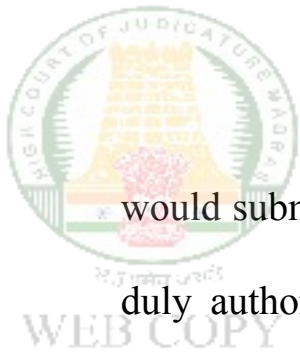
(1)Khawar Butt v. Asif Nazir Mir and others
2013 (139) DRJ 157

(2)Dr.Prof.Ashok Kumar Keshari v. Manika Gupta and others
in I.A.Nos.1742 of 2012 & 2193 of 2013 in C.S.(OS).378 of
2011 dated 24.11.2014

(3)Jeyamma Xavier v. Registrar of Firms
in WP(C).No.25741 of 2020 (P) dated 08.04.2021

(4)Rajinder Kaur v. Darshan Singh Sahi
2014 SCC ONLINE P&H 21744

9.Per contra, the learned counsel appearing for the respondent/plaintiff would submit that the respondent/Club is registered under the Partnership Act and the Certification of Incorporation of the Firm was aslo produced. He



would submit that any Firm or Company managed by a Managing Partner, or a duly authorised person, can institute proceedings before any Court of Law.

The partnership Firm has got all rights to sue and at no point of time, it could not be said that goodwill is always attached only to the organisation and herein it is a partnership firm, which again its goodwill and reputation go along with the Partners who manage the affairs of the Firm. He would further submit that the petitioners have caused great hardship and irreparable damages to the reputation and goodwill of the respondent Firm and to its partners, with an ulterior motive to spread falsehood, hence, this suit was filed. Further, he would submit that the reputation of the Partners of the Firm as well as the Firm has spoiled to a great extent by means of a false news item by way of an interview given by the petitioners in the Media.

10.The learned counsel appearing for the respondent Club would submit that the case is well within the limitation and the contention of the petitioners that the suit is barred under Article 75 of the Limitation Act, is not maintainable. Further, the point of limitation has to be decided only based on the facts pleaded in the Plaint at the time of trial and it is too pre-mature to plead the same at this juncture. The publisher is not required in a suit for slender and they are not the necessary parties to the proceedings. Further, the



statement of the petitioners was defamatory and malicious.

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11.The learned counsel appearing for the respondent would submit that only on 15.08.2015, it came to the knowledge of the plaintiff that the defendants 1 to 15 are again involved in spreading false and defamatory news about plaintiff Club that it is getting involved in illegal activities, such as, running massage Centre with the Club and Discothe to various cross section of the people in the Society, which amounts to slander. The defendants 1 to 15 had caused irreparable damage which is a huge loss in plaintiff's Club and very valuable clients business were lost. Further, the goodwill, review and image of the plaintiff's Club as well that of promoter of the Club has been tarnished by the abovestated slanderous acts of the defendants 1 to 15 on 15.08.2015.

12.The learned counsel appearing for the respondent would rely upon the the following Judgments:

***(1)Nagarajan v. V.K.Palanivelu in CRP.PD.No.1968 of 2017
dated 21.06.2017***

***(2)Ajai Agarwal v. Ibni8 Media & Software Limited in CS
(OS).21/2017 dated 27.05.2020***



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(3) Sri Mohan Singh and others v. Sri R.Venkatramana and others in Appeal Suit No.759 of 2013

(4) Nagarajan v. V.K.Palanivelu in CRP.PD.No.1968 of 2017 dated 21.06.2017

(5) Shakti Bhog Food Industries Limited (S) v. Central Bank of India and another (S) 2020 SCC ONLINE SC 482

(6) G.I.Retail Private Limited v. Goomo Orbit Corporate & Leisure Travels (I) Private Limited and others [MANU/TN/5070/2020]

13. Heard the learned counsels appearing on either side and perused the documents placed on record.

14. On perusal of the records, it is seen that the alleged defamatory article was published in Dinamalar newspaper on 26.02.2013, but the suit was filed only in the year 2015. Further, no evidence was produced to show that there was continuous cause of action. Article 75 of the limitation Act states that the period of limitation for compensation regarding defamation is one year from the date when the defamatory article was published. Hence the present suit is



barred by limitation.

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15.The Hon'ble Supreme Court in **Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by legal representatives [MANU/SC/0367/2019]**, held as follows:

"9.Now, so far as the application on behalf of the original Plaintiff and even the observations made by the learned trial Court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence is concerned, as observed and held by this Court in the cases of Sham Lal alias Kuldip (supra); N.V. Srinivas Murthy (supra) as well as in the case of Ram Prakash Gupta (supra), considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers Under Order 7 Rule 11(d) of the Code of Civil Procedure"

16.In **L. Ramachandran and Ors. vs. K. Ramesh and others [MANU/TN/ 2854/2015]**, the Division Bench of this Court at Para 26 has held as follows:-

"26.In terms of Order 7 Rule 11 (d) CPC, the Plaint shall



be rejected where the suit appears from the statement in the Plaintiff to be barred by any law. The scope of Rule 11 of Order 7 CPC has been explained in various decisions and the legal principle deducible are that, if the Plaintiff does not disclose the cause of action or is barred by law; can be rejected where the litigation was utterly vexatious and abuse of process of Court ; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and where the suit was instituted without proper authority. Thus, the provision of Order 7 Rule 11 PC being procedural is designed and aimed to prevent vexatious and frivolous litigation. The plaintiff is liable to be rejected on the ground of limitation only where the suit appears from the statements in the plaintiff to be barred by any law and the law within the meaning of clause (d) of Order 7 Rule 11 CPC, shall include law of limitation as well."

17. On perusal of the above judgments, it is evident that the plaintiff can be rejected under Order 7 Rule 11(d) of C.P.C., if by considering the averments, it is found that the suit is clearly barred by law of limitation.

18. The learned counsel for the petitioner would submit that the



respondents had not included the publisher as a party to the suit and hence, the plaint is liable to be rejected on the ground of Non-Joinder of necessary parties.

The Hon'ble Supreme Court in ***Moreshar Yadaorao Mahajan vs. Vyankatesh Sitaram Bhedi (D) thr. L.Rs. and Ors. [MANU/SC/1251/2022]***, observed that a suit is liable to be dismissed if a "necessary party" is not impleaded. The Hon'ble Supreme Court at Paras 17 to 20 held as follows:

"17. This Court, in the case of Mumbai International Airport Private Limited (supra), has observed thus:

"15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest



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in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

18. It could thus be seen that a “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a “necessary party” is not impleaded, the suit itself is liable to be dismissed.

.....

20. It can thus be seen that what has been held by this Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party.”

19. In the present case, the alleged defamatory article was published in the Dinamalar Newspaper in Coimbatore edition. The plaintiff in his Plaint averred that the said article was published at the instigation of defendants 1 to 15. Further, they contended that a photocopy of meeting was also published along with the article wherein few of the defendants and their family members



were present. A plaint in a case of defamation ought to allege not only the publication, or set out not only the words, but that they were published or spoken to, at any rate, some named individuals at a particular time and place. The plaintiff herein have not set out the exact words which were spoken by the Petitioners/respondents to the publisher. In order to prove the same the publisher ought to have been impleaded who is a necessary party to the proceedings. In the present case, the plaintiff/Club has not impleaded the publisher as a party to the suit.

20. On perusal of the records, it is seen that the entire case of the plaintiff rest on the news article published on 26.02.2013. However, the suit was filed on 16.12.2015 after a long period of limitation as sanctioned under Article 75 of the Limitation Act. That apart the publisher was also not added as a party to the suit proceedings and the suit is not specific, namely, attributing motive or malicious publication directed individually to any of the defendants and it is vague. Considering the entire facts and circumstances of the case, this Court is inclined to allow this Civil Revision Petition.

21. Accordingly, this Civil Revision Petition is allowed. The order of the



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learned V Additional District Judge, Coimbatore, in I.A.No.744 of 2016 in O.S.No.607 of 2015 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2023

Index :Yes/No

Neutral Citation : Yes/No.

Speaking Order / Non-Speaking Order
mps

To

The V Additional District Judge,
Coimbatore.



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V. BHAVANI SUBBAROYAN, J,

mps

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