

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

CS/174/2002

NANDLAL RATHI

VS

KAMALALAYA CENTRE & ORS.

For the Petitioner : Mr. S.R. Saha, Adv.

Hearing concluded on : 26/09/2024

Judgment on : 01/10/2024

Sugato Majumdar, J.:

This instant suit is filed claiming *inter alia* damages for defamation, declaration, permanent injunction along with other reliefs.

The Complaint case may be summarized as follows:

- a) The Defendant No. 1 is a society registered under the West Bengal Societies Registrations Act, 1961 having its office at 156A, Lenin Sarani, Kolkata – 700013 within jurisdiction of this Court. The Defendant No. 2 was the Secretary and the Defendant No. 3 was the President of the Defendant No. 1.

- b) The Plaintiff was a founder member, being Executive Member of the Defendant No. 1, on being duly elected in the election held for the year 2000-2001.
- c) After the election was over for the year 2000-2001, a meeting was called by the outgoing Secretary of the Defendant No. 1 Association. In the said meeting some more members were co-opted illegally. This process was done by the outgoing Secretary of the Association in spite of objections of the Plaintiff. Office bearers were appointed from the co-opted members against the rules and bye-laws. Thus one Swarna Kamal Roy Chowdhury was a co-opted member and became the President of the Defendant No. 1 Association. One Uday Shankar Saha was selected as Secretary of the Association.
- d) The new office bearers were at loggerhead with the promoter/lessor of the building Kamalalaya Centre Pvt. Ltd. on the issues of car parking space, use of common space maintenance of the building. These proved to be detrimental to the existence of the Defendant No. 1. The Plaintiff pleaded that the later was collecting car parking fees from the vehicle parked inside the building from the owners of the vehicles except those who had purchased exclusive parking lots. The Plaintiff was assigned car parking space by the promoter of Kamalalaya Centre Pvt. Ltd. for valuable consideration. The Plaintiff had been paying the promoters hiring charges and used to collect parking fee from the vehicle owners, namely, unit holders and

visitors. But the Defendant No. 1 and 2 caused disturbance in such collection resulting in financial losses to the Plaintiff.

- e) There was litigation between the Defendant No. 1 and the promoters. Kamalaya Centre Shop and Office Owners' Association instituted a suit in the City Civil Court of Calcutta against Kamalaya Centre Pvt. Ltd. which was registered as Title Suit No. 1620 of 2000.
- f) On 03/02/2001, the other unit holders showed the Plaintiff a notice pasted on the outer-wall of his shop-room issued by the Defendant No. 1, signed by the Secretary Uday Shankar Saha. The said notice stated that the Plaintiff's membership from the Executive Committee had been ceased to exist and he was debarred from representing the ground floor members in a conspicuous position deliberately so that the other members of the public including the persons of the Plaintiff's acquaintances read the contents of the notice. This, according to the Plaintiff lowered his esteem in the eyes of people, exposed him to hatred, contempt and ridicule. There was no explanation why the Plaintiff's membership ceased to exist. It is a case of the Plaintiff that the Defendants contrived to injure the Plaintiff and its business falsely and maliciously and they terminated the membership of the Plaintiff. It is contended that Plaintiff has been removed from the membership of the Executive Committee of the Defendant without assigning any good valid reason for such removal and without giving any opportunity to the Plaintiff

to show cause or to represent his cause before the Defendant No. 1, violating thereby the principal of natural justice. The notice dated 03/02/2001, is, therefore, bad in law and is liable to be set aside. This is why the Plaintiff seeks for declaration and permanent mandatory injunction in this suit against the Defendants.

- g) The notice dated 03/02/2001 was replied by the Plaintiff's Learned Lawyer refuting the allegations and demanding Rs.10,00,000/- as damages, in terms of the letter dated 15/02/2001. The Plaintiff also faced financial loss to the tune of Rs.5,00,000/- on account of disturbances created by the Defendant no. 1 & 2 in collection of car parking fees.
- h) The Plaintiff instituted, therefore, the instant suit praying for damages of Rs.15,00,000/- for defamation; declaration that the letter dated 03.02.2001 is illegal and bad; permanent injunction restraining the Defendants from giving effect to the said letter along with other prayers.

The Defendants contested the suit by filing written statement. Contentions of the written statement are that the suit is barred by the principle of res judicata, law of limitation; the suit is bad for non-joinder and mis-joinder of parties. The Defendants also took the plea that the suit is hit by law relating to payment of court fees. All other allegations are denied by the Defendant save and except what are the matters of record.

On the basis of the rival pleadings, the following issues were framed:

1. *Whether the suit is maintainable?*
2. *Whether the suit is barred by law of limitation?*
3. *Whether the suit is bad for non-joinder or mis-joinder of party or parties?*
4. *Whether the Plaintiffs' membership was illegally terminated by Defendant no. 1 without any show-cause notice?*
5. *Whether the Defendant nos. 1, 2 and 3 defamed the Plaintiff and whether the Plaintiff was defamed by any act or omission of the Defendant? If so who is liable for the defamation.*
6. *Whether the Plaintiff is entitled to any relief as prayed for? If*
7. *so who is liable to pay damages/compensation to the Plaintiff.*
8. *Whether any other relief or relieves the Plaintiff is entitled to?*

Plaintiff adduced oral as well as documentary evidences. Documentary evidences were exhibited and marked. The defendant, in course of cross-examination, produced documents which were also marked and exhibited.

Issue Nos. 1, 2 and 3 are taken up together.

The instant suit is filed with several prayers. Prayers (a) and (b) are damages for defamation, Prayer (c) is enquiry into damages and compensation suffered by the Plaintiff, Prayer (d) is declaration that the letter dated 3rd February, 2001 is illegal and bad, Prayer (e) is permanent injunction restraining the Defendants from giving

any effect or further effect to the letter dated 3rd February, 2001 and from taking any steps pursuant thereto.

Prayers (a) and (b) relate to damages on account of defamation. Details of defamation are given in para 10 to 15. Genesis of defamation is the letter dated 03/02/2001 which was affixed on the outer wall of the Plaintiff's shop room. Thus, publication of the alleged notice took place on 03/02/2001. Under Article 75 of the Limitation Act, 1963, period of limitation for filing suit for compensation for libel is one year from the date when libel was published. It is neither in pleading nor in evidence that the alleged defamatory notice dated 03/02/2001 was republished. Every publication gives rise to fresh starting point of limitation. It is not a case herein.

Mr. Saha, the Learned Counsel for the Plaintiff argued that cause of action of the suit are continuing, arising day to day. Mr. Saha also referred to the Order of the Division Bench dated 14/07/2014. The Defendant filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 praying for rejection of plaint on the ground that the suit is barred by limitation. Single Judge rejected the contention. The Defendant preferred an appeal in the Division Bench. According to Mr. Saha, the Division Bench finally decided the issue of limitation and dismissed the appeal. Therefore, the issue of limitation no longer exists being barred by the principle of *res judicata*, according to Mr. Saha.

On perusal of the Order passed by the Division Bench, as aforesaid, it is manifest that the Division Bench did not finally decide the issue. It was observed:

“The suit was for special damage as well as injunction. Whether it was barred by law of limitation or not, could be tried as preliminary issue. The

stage has not come to consider such application particularly when the appellant waited for 11 long years to make such application.”

It is, therefore, clear that the Division Bench kept the question of limitation open without deciding the same finally, attracting any way, the principle of *res judicata*.

The instant suit was presented on 08/04/2002 after lapse of the period of limitation. In course of cross examination questions were put to the Plaintiff whether the suit was barred by limitation. The Plaintiff denied the same and stated that correspondences followed after publication of the alleged defamatory notice. Mere correspondences do not extend the period of limitation. Nothing is there in evidence that there was any acknowledgement or other factor extending the period of limitation. Argument of continuity of cause of action hold no good ground. Observation of the Supreme Court of India in **N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123** may be referred to:

“11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to

litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

Therefore, so far as the prayer for compensation on account of libel is concerned, the suit is clearly barred by limitation. However, other prayers cannot be said to be barred by limitation since period of limitation is three years for declaratory decree or permanent injunction. Therefore, the suit is barred by limitation so far as the prayers (a), (b) and (c) are concerned related to publication of alleged libel or defamation.

There is no argument on whether the suit is bad for non-joinder or misjoinder of party or parties. There is no specific averment in the written statement as to who should be joined as a necessary party. In absence of any specific plea, the same need not be considered any further.

Issue Nos. 4 to 7 all these issues are taken up together.

Plea taken by the Plaintiff is that membership was illegally terminated by the Defendant No. 1 without show-cause notice. It is also averred in the plaint that the notice dated 03/02/2001 is defamatory, lowering the esteem of the Plaintiff in the eyes of others and should not be given effect thereto. In course of evidence, the Plaintiff reiterated the same thing.

Ext. No.-C is a letter dated 15th December, 2000 issued by the Honorary General Secretary, namely, Mr. U.S. Saha of Kamalalaya Center Shop and Office Owners Association. The letter contains draft minutes of the Executive Committee meeting held on 10th November, 2000. The said draft minute was circulated among

the members of the Executive Committee in terms of letter dated 15th December, 2000. Para “G” runs as follow:

“Most of the members put on record some activities done by Sri N.L. Rathu which are detrimental to the interest of the Association. The house discussed the matter regarding his activities and decided to issue so-cause notice to Sri N.L. Rathu mentioning his attempt to hamper the image and function of the Association which is undesired and uncalled for. Further to this his behavior makes him liable for explanation to the committee as per provisions of the Articles of Associations. The members took a serious view of the matter and it was decided that the secretary shall call for an explanation from him about the matter.”

It is manifest that the Executive Committee in its meeting considered allegations against the Plaintiff and resolved to issue show-cause notice. This decision was circulated among the members of the Executive Committee. This resolution was not under challenge. The Plaintiff received the said draft minutes and objected to the same in terms of Ext. D being a letter dated 20/12/2000. By the time the notice dated 03/02/2001 being Ext. G was published by way of pasting in some conspicuous part of the shop room of the Plaintiff, he was aware of the allegations labeled against him and also got opportunity to refute the allegation and in fact, he did so. All these are documents produced by the Plaintiff. In the conspectus of facts, it cannot be said that Plaintiff was denied any opportunity to represent his case before the Defendant. This argument and case of the Defendant stands demolished therefore, on the basis of the documents adduced by the Plaintiff himself.

Ext. G, namely, the notice dated 03/02/2001 is the product of a resolution taken in the meeting of a constituted body. This decision to issue show-cause notice was taken in the usual course of business. There is no allegation of any irregularity in the conduct of the proceeding of the meeting. In terms of decision, the committee communicated the Plaintiff its decision by registered post as well as by affixation. Affixation is usual mode of communication action taken or decision taken by a constituted body in regular course of business against a member after giving opportunity to the Plaintiff. It is neither unfair nor opposed to the principle of natural justice. Communication by affixation of the notice dated 03/02/2001 itself is not defamatory, cannot be said to be defamatory, calculated to lower esteemed by the Plaintiff. Such communication is an official mode. It comes within the ambit of qualified privilege and communication was made in course of legal duty for common interest. In one case the defendants had posted circulars in such of their office premises as would be frequented by their employees, stating that a former employee, the claimant, had been dismissed for neglect of duty. In that case it was held that the privilege of common interest extends to such communication [**Hunt vs Great Northern Rly Co. (1891) 2 QB 189**].

“When an occasion of qualified privilege exists a person (provided he is not actuated by malice) is entitled to make defamatory statements about another. The right of freedom of speech prevails over the right of reputation, but only to a limited extent. The statement must be made honestly and without any indirect or improper motive” (**Salmond & Heuston, Law of Torts, 21st Edition**)

According to the authors the statements must be made in performance of a duty, in the protection of an interest. In the case of **Pandey Surendra Nath**

Sinha v. Bageshwari Pd. (AIR 1961 Patna 164), it was held that if the person who makes the statement has an interest or duty legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it such statement commands a privilege and cannot be made the basis of an action for defamation. In the case of **Stuart v. Bell, (1891) 2 Q.B. 354** and **Smythson v. Cramp, (1943) 1 All E.R. 326 (C.A.)** it was held that the occasion is privileged where the defendant has an interest in making the communication to the third person, and the third person has corresponding interest in receiving it. Reciprocity of interest is essential.

In the case in hand, there is no evidence of malice. Rather evidence proves that decisions were taken in course of a meeting of a constituted body. For reasons, as aforesaid, this Court is of opinion that neither the content nor the manner of affixing the notice dated 03/02/2001 should be declared as null and void on the grounds pleaded in the plaint. Therefore, the Plaintiff is not entitled to any relief prayed for, having failed to establish a case.

In nutshell, it is the conclusion that the instant suit fails and stands dismissed.

The instant suit is accordingly disposed of along with all pending applications, if any.

(Sugato Majumdar, J.)