

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

CS No. 244 of 2021

Silver Villa Constructions Pvt. Ltd. & Anr.

Versus

Sri Makhan Karmakar & Ors.

Mr. Rupak Ghosh

Mr. Shantanu Mishra

Mr. Arun Kr. Mishra

... for the plaintiffs.

Hearing Concluded On : 27.08.2024

Judgment on : 19.09.2024

Krishna Rao, J.:

1. The plaintiffs have filed the present suit being C.S. No. 244 of 2021 claiming damages of Rs. 2,00,00,000/- for loss of reputation, loss of business and loss of credential. The plaintiffs also claim for damages of Rs. 30,00,000/- as loss of profit arising out of cancelled agreements and Rs. 50,00,000/- for loss of anticipated profit on other projects which got cancelled or prospective customers never came forward.

- 2.** The plaintiff No.1 is a company carrying on business as a real estate developer of diverse projects in and around Kolkata and West Bengal. The plaintiff no.1 in its usual course of business has acquired goodwill and reputation as a promoter. The plaintiff no. 2 is the Director of the plaintiff no.1 company. Since, the year 2008 till the filing of the suit, the plaintiffs have completed 16 numbers of real estate projects both commercial and residential in and around state of West Bengal. As per the case of the plaintiffs, the annual turnover of the plaintiff no.1 company is Rs.16,00,00,000/-.
- 3.** In the business of real estate, the plaintiffs have acquired substantial goodwill and reputation amongst its customers and the general public. The plaintiffs in their usual course of business, to construct multistoried building on a land measuring an area of about 6 cottah 4 chittack situated at Mouza Dakshindari, being Municipal Premises No. 243, S.K. Deb Road (previously known as 51 S.K. Deb Road), Kolkata – 700048, approached the owners of the said landed property and a Deed of Exchange with regard thereto was registered on 18th March, 2015. By such deed, the said land was transferred by way of exchange in favour of the plaintiffs in lieu of three flats being Flat Nos. 1C, 5B and 5C all measuring about 850 Sq.Ft. each situated at Premises No. 726, Dakshindari Road, Kolkata – 700048 were allotted to the owners of the Premises No. 243, S.K. Deb Road, Kolkata - 700048.

4. After mutation of the said land in favour of the plaintiff no.1, the plaintiffs have obtained sanctioned building plan dated 11th December, 2018 for construction of multi-storied building and the plaintiffs have started construction of building in the said landed property. During construction, the defendant no.4 being the neighbors has started causing unlawful obstruction at the work site and also started threatening the plaintiffs, their men and agents with dire consequences against which the plaintiffs have lodged a complaint before the Lake Town Police Station on 25th March, 2019 and also filed an application under Section 144(2) of the Code of Criminal Procedure. The plaintiffs have also initiated a suit against the defendant no.4 before the Learned Civil Judge (Junior Division) at Bidhannagar being Title Suit No. 76 of 2019 seeking declaration that the plaintiffs are having right, title and interest over the property and allied reliefs.
5. The plaintiffs have also obtained an ad-interim order dated 29th March, 2019 against defendant no.4 restraining from creating any obstruction to the construction work in the land of the plaintiffs. The defendants by suppressing the order of injunction dated 29th March, 2019, have initiated a suit against the plaintiff No.2 being T.S. No. 114 of 2021 without making the plaintiff no.1 as a party to the suit before the Learned Civil Judge, Junior Division at Bidhannagar. The defendants have also obtained an ad-interim order of injunction dated 22nd March, 2021 restraining the plaintiffs from selling / transferring flats.

6. The defendants have also made a paper publication dated 14th August, 2021 in a Daily Bengali News Paper namely “Anandabazar Patrika”, stating that the plaintiffs and its associates by violating the order of injunction have started selling the flats constructed illegally. As per the case of the plaintiffs, paper publication made by the defendants are false, malicious and defamatory as no such order of injunction was passed by the Learned Court.
7. The plaintiffs say that the publication made by the defendants dated 14th August, 2021 means that the plaintiffs have illegally filled up a pond in Dag Nos. 1067 and 1070, the plaintiffs are guilty of acting contrary to Section 2(7) and 4(B) of the West Bengal Land Reforms Act, the plaintiffs have deliberately and with the knowledge violated orders passed by a competent Civil Court and the plaintiffs are guilty of illegal construction and selling of flats which are illegal in terms of the order passed by the Civil Court.
8. The plaintiffs say that due to the false, incorrect and defamatory publication made by the defendants, the reputation of the plaintiffs have been badly damaged. He submits that before the publication was made, the land bearing Dag No.1070 were duly registered in the name of the plaintiffs, which the defendants had knowledge.
9. The plaintiffs have sent a notice to the defendants calling upon the defendants to withdraw the publication which were false, baseless and defamatory but the defendants have not withdrawn the said

publication. The plaintiffs say that in the interim order passed by the Learned Civil Court there was no order restraining the plaintiffs from transferring the property. He submits that the plaintiffs had made construction as per Sanctioned Building Plan issued by the competent authority.

10. The plaintiffs say that due to the publication of false and defamatory statements, the plaintiffs have faced not only financial loss but have faced loss of reputation. The plaintiffs say that many of the customers of the plaintiffs have cancelled their bookings with the plaintiffs' project in the said property due to which the plaintiffs have suffered business loss.
11. It appears from the service report dated 8th July, 2022, issued by the Deputy Sheriff that the original writ of summons along with a copy of plaint were served upon the defendants on 4th March, 2022, and it would also be apparent from a report issued by the Deputy Registrar (Ct. & J.), dated 6th February, 2023, that the defendants nos. 1 to 4 had entered appearance through their Learned Advocate on 20th May, 2022 and another report dated 15th February, 2023, issued by the Deputy Registrar would make it apparent that the defendants have not filed any written statement in the present suit.
12. As the defendants have not filed written statement, by an order 9th May, 2024, this Court, had listed the matter as an "Undefended Suit" and proceeded *ex parte*.

- 13.** The plaintiffs in support of its case had examined one witness, namely, Mr. Sanjay Kansal, the Director of the plaintiff no.1 company, and exhibited a total number of 6 (six) Documents, marked as **“Exhibit – A to Exhibit – F”**.

Exhibit – A: Certified copy of a Deed of Exchange dated 18th March, 2015, between the plaintiff no.1 and Smt. Anju Ghosh Chowdhury, Suman Ghosh Chowdhury, Gouri Mondal, Debi Ghosh Chowdhury and Krishna Ghosh Chowdhury, who were the owners of the land situated at Mouza – Dakshindari, J.L. No. 25, Touzi No. 1298/2833, Khatian No. 244, being Municipal Premises No. 243, S.K. Deb Road, (previously 51, S.K. Deb. Road).

Exhibit – B: Certified copy of an order of the suit, which was filed by the plaintiffs, being T.S. No. 76 of 2019, dated 29th March, 2019.

Exhibit – C: Certified copy of an order of the suit, which was filed by the defendants, being T.S. No. 114 of 2021, dated 22nd March, 2021.

Exhibit – D & D1: Original copy of the purported paper publication dated 14th August, 2021 in Bengali language, along with its English translated copy.

Exhibit – E (Collectively) : Copy of a letter dated 17th August, 2021, issued by Learned Advocate of the plaintiffs to the Learned Advocate of the defendants and copy to the defendants.

Exhibit – F (Collectively) : Copies of Cancellation of Booking letters by the purported purchasers dated 29th August, 2021 and 10th September, 2021, submitted to the plaintiffs.

14. The main issues that the Court needs to deal with are:

- (i) *Whether the publication made in a Daily Bengali Newspaper namely the “Anandabazar Patrika” is defamatory per se in the estimation of the right thinking person?*
- (ii) *Whether the plaintiffs are entitled to general damages and special damages as prayed in the plaint?*

15. Interim order passed by the Learned Civil Judge (Junior Division), Bidhannagar in Title Suit No. 76 of 2019 filed by the plaintiff reads as follows:

“that the temporary injunction petition filed by the plaintiff is allowed on ad interim basis. The defendant is hereby restrained from creating any obstruction in construction work of the plaintiff as per sanction plan over the suit property in any manner whatsoever till 29.04.2019.”

16. Interim order passed by the Learned Civil Judge (Junior Division), Bidhannagar in Title Suit No.114 of 2021 filed by the defendants reads as follows:

“that the temporary injunction petition filed by the plaintiffs is allowed on ad-interim basis. The defendants are hereby restrained from changing

the nature and character of B-schedule property by way of encroaching South-Western Bank i.e. the D-schedule property whatsoever till 20.04.2021.”

- 17.** The publication made by the defendants in the Bangla News Paper dated 14th August, 2021, reads as follows:

“Public are hereby informed that Sri Sanjay Kansal and others, have constructed a pucca building by filling up a pond (Dag No. 1070 and 1067) at No.114B, S.K. Deb Road, P.S. Lake Town, Kolkata – 700048 which is contrary to 2(7) and 4(B) West Bengal Land Reforms Act under this situation Sri Murari Mohan Karmakar and others who are the co-sharer owner of the said pond by initiating title suit No.114/2021 in the Court of Learned Civil Judge (Jr. Division), Salt Lake have obtained and order of injunction and the said injunction order is continuing till this day. Under this situation at present said Sri Sanjay Kansal and others or there associate organization by violating the order of injunction issued by the aforesaid Court which is still in force have started to sell and dispose of the flat constructed illegally in the said manner which is illegal. Under this situation if anyone wants to sell or purchase the said flat/ or enter into any transaction then all the legal liability and responsibility relating to the said property will be entirely on them.”

- 18.** In the publication it was alleged that:

- i) The plaintiff no.2 has constructed a pucca building by filling up of a pond (Dag No. 1070 and 1067) at No.114B S.K. Deb Road in violation of Section 2(7) and 4(B) of the West Bengal Land Reforms Act.*
- ii) The defendants have obtained an order of injunction but the plaintiffs by violating the order of the Court started selling and disposing of flats constructed illegally.*

- 19.** The plaintiffs have made out a case that the plaintiff has obtained Sanction Building Plan from the Municipal Corporation and as per the Building Plan, the plaintiffs have made construction over the land which the plaintiffs have got the same through the Deed of Exchange. The plaintiffs have exhibited altogether six documents but have not exhibited any Sanction Plan on the basis of which the plaintiffs have made construction. The plaintiffs have also not brought on record any documents to prove in which land the plaintiff have made construction or in which land, the plaintiffs have got Sanctioned Building Plan.
- 20.** The Learned Civil Judge (Junior Division) at Bidhannagar in the suit filed by defendants being Title Suit No. 114 of 2021, restrained the plaintiffs from changing the nature and character of the “B” schedule property by way of encroaching South Western Bank i.e. “D” Schedule property whatsoever. The plaintiffs have not exhibited the plaint filed by the defendants to establish about the identification of schedule “B” and schedule “D” property.
- 21.** The suit filed by the defendants before the Learned Civil Judge (Junior Division) at Bidhannagar being Title Suit No. 114 of 2021, the specific case of the defendants that they became the owner of the suit property of T.S. No. 114 of 2021 by virtue of inheritance and presently they are in possession of the property but the defendants (the plaintiffs herein) are trying to change the nature and character of the “B” schedule property by encroaching “D” schedule property.

- 22.** The plaintiffs in the present suit stated that the plaintiffs have filed an application for vacating the interim order but the plaintiffs have also not brought the said application on record to establish what the case was made out by the plaintiffs in the said application.
- 23.** The main contention of the plaintiffs that the defendants have published false and defamatory statement in the Bengali Newspaper due to which the plaintiffs have suffered huge damage of reputation and loss of business. It is also the case of the plaintiffs that the customers of the plaintiffs have cancelled their bookings who are the proposed purchasers of the flats in the multistoried building constructed by the plaintiffs. The plaintiffs have exhibited two letters being Exhibit “F” (Collectively) dated 29th August, 2021 and 10th September, 2021 to establish that the proposed purchasers have cancelled their bookings. In the said letter, it is mentioned that due to loss of goodwill and confidence the proposed purchasers have cancelled their bookings. To prove the said documents, the plaintiffs have not examined the said persons who have issued the said letters. In the said letters, there is no mention whether the plaintiffs entered into any agreement with those persons, what was the total sale consideration of the flats what was the advance amount paid by those proposed purchasers to the plaintiffs, when the bookings were made. In the letter dated 10th September, 2021, it is mentioned that the proposed purchaser has made token amount of Rs. 5000/-but there is no evidence that the plaintiffs have returned the said amount.

24. The plaintiffs have also not produced any details of account that the plaintiffs have suffered any financial loss and the plaintiffs were not able to sell flats in the said multistoried building. It is the case of the plaintiffs that the plaintiffs are having turnover of Rs. 16,00,00,000/- but the plaintiffs have not filed any documents with respect to its turnover. It is also the case of the plaintiffs that the defendants have harassed the plaintiffs and its men and agents due to which the plaintiffs have lodged complaint but no such complaint was exhibited.
25. The plaintiffs have relied upon the judgment in the case of **Pijush Kanti Datta vs. Mangilal Gidia** reported in **AIR 1987 Cal 136**. In the said case, the Coordinate Bench of this Court held that:

“16. It is now well settled that a man commits the tort of defamation when he publishes to third person matter containing an untrue imputation against the reputation of another. The defendant in this case entered appearance but did not file any written statement. Having regard to the provisions of O. 8, R. 5, sub-r. (2) of the Civil P.C. the statement contained in the plaint shall be taken to be admitted. Any imputation which may tend to lower the plaintiff in the estimation of right thinking members of society generally or to expose him to hatred contempt or ridicule is defamatory of him. The publication of words defamatory of plaintiff gives rise to a prima facie cause of action. The law presumes in the plaintiff's favour, as rightly contended by Mr. Mitra that the words are false, unless and until the defendant proves the contrary. The law presumes some damages will follow from the publication of a libel. Defamatory words charging the plaintiff with the commission of any crime, which may subject him to imprisonment or corporal punishment but not where the crime is punishable by fine only are actionable without proof of special damage: see Webb v. Beavan (1883) 11 QBD 609. As indicated earlier the plaintiff was charged with offence which, if proved,

would have subjected him to imprisonment. On the facts and circumstances of this case the plaintiff is entitled to damages.”

In the said case the plaintiffs have proved that due to the publication lower down the reputation of the plaintiffs in the estimation of the general public but in the present case, the plaintiffs have made out a case that due to the publication, the plaintiffs have suffered financial loss but the same is not proved how the plaintiffs suffered damages. No documents such as income tax returns or the flats are still lying vacant and no one has come to purchase the said flats and how much amount is spent in the said construction etc., thus the judgment is distinguishable from the facts and circumstances of this case.

- 26.** The plaintiffs have relied upon the judgment in the case of ***Esbi Hi-Flex Pvt. Ltd. and Anr. vs. Vulkan Technologies Pvt. Ltd.*** reported in ***2015 SCC OnLine Cal 4421***. In the said case, the defendant has issued the email to the certifying agency DNV. While issuing such email as a reasonable person, the defendant is in position to understand that such complaint would be referred to the plaintiffs at the very last. In fact, DNV has referred the email dated 9th July, 2008 to the plaintiffs by the email dated 10th July, 2008. The defamatory words therefore have been repeated. In the present case, the defendants have published the notice about the injunction order passed by the Court but if the injunction passed by the Court is wrongly interpreted by the

defendants cannot constitute defamatory statements and for the said publication how the plaintiffs have suffered is not proved.

27. The plaintiffs have relied upon the case in the case of ***Union Benefit Guarantee Co. Ltd. vs. Thakorlal P. Thakor and Others*** reported in ***1935 SCC OnLine Bom 90*** in the said case, the Hon'ble Bombay High Court held that there is no sufficient evidence to show that the fall was before the date of the filing of the suit. The evidence as to the subsequent fall in the business is also not satisfactory. There must have some fall in the business, but as to how much it was the only verdict can be "not proven". In the present case, the plaintiffs have only stated that they have suffered business loss but have not adduced any evidence to the said loss.

28. The plaintiffs have relied upon the judgment in the case of ***Ogilvie vs. The Punjab Akhbarat and Press Company Limited*** reported in ***ILR (1930) 11 Lah 45*** in the said case, the Hon'ble Court held that :

"In the present case so far as the more serious allegations were concerned a plea of justification was set up. This plea was sought, at the trial, to be proved, and was persisted in up to the moment when Mr. Jagan Nath in his reply to Mr. Noad's opening address took up the portion (B) of the article complained of. A plea of this nature must be proved strictly and it will tend to aggravate the damages if the defendant fails to prove it – (Odgers' Libel and Slander, page 191). On the other hand, the fact that the defendants published what was communicated to them by a correspondent may be taken into consideration as showing that there was no special malice on their part."

In the present, the plaintiffs have made out a case that the publication made by the defendants is defamatory but the plaintiffs have not adduced any evidence to prove that the reputation of the plaintiffs have been lowered down and due the said publication, the flats are lying vacant without sale or sold in a lower prices than the actual price.

- 29.** The case of the plaintiffs is that the defendants have made false publication against the plaintiffs which is defamatory and the plaintiffs have suffered severe financial loss. The paper publication is marked as Exhibit "D". In the publication nowhere it is mentioned that the same was published by the defendants or on the instructions of the defendants. The said publication is made by one Advocate, Shri Amit Das. The notice being Exhibit "E" is issued by the plaintiffs to the said Learned Advocate on 17th August 2021 with the copy to the defendant no.1. The plaintiffs have not made the Learned Advocate as defendant in the said suit. The publication is not made by the defendants, the defendants cannot be made liable for the said paper publication.
- 30.** The plaintiffs have exhibited two letters to prove that the proposed purchasers have cancelled their bookings but the persons were not examined and nothing was brought on record to show that what was the total sale consideration amount of the said flat and subsequent to refusal of the proposed purchaser, the said flats are still lying vacant or it was sold in a lesser amount than the actual amount.

- 31.** The plaintiffs have filed suit for damages suffered due to the publication made by the defendants but the plaintiffs failed to prove that the publication is made by the defendants. The plaintiffs also failed to prove that the publication is defamatory and due to the publication, the reputation of the plaintiffs were lower down and the plaintiffs have suffered financial loss.
- 32.** Considering the above, this Court finds that the plaintiffs have failed to prove the case and thus the plaintiffs are not entitled to get decree as prayed for.
- 33. C.S. No. 244 of 2021 is dismissed.** Decree be drawn accordingly.

(Krishna Rao, J.)