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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.07.2024

Pronounced on: 02.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.S.No.378 of 2011

Indian Bank,
Rep. by its Mr.S.Arulselvam,
Deputy General Manager,
Asset Recovery Management Branch Zone,
No.55, Ethiraj Salai, Egmore,
Chennai 600 008.

..Plaintiff

Vs.

- 1.Prof. M.Krishan Paraiyanar,
Editor in chief & Publisher,
M/s.Makkalukkana Neethi Engey.
- 2.M/s.Makkalukkana Neethi Engey,
No.N-147, 5th Main Road,
Kamarajar Nagar (West),
Thiruvanmiyur, Chennai 600 041.
3. MSME & TINY Industries Welfare Union,
No.81, Mogappair Road, Mannurpet, Padi,
Chennai 600 050.
- 4.E.Gnanasambantham
- 5.T.R.Viswanthan
- 6.P.R.Annamalai
- 7.A.Charles
- 8.MagiMahendran
- 9.Tamilazhan. A
- 10.Abdul Razack Usman
- 11.M/s.Semmozhi Tamil Achagam,
Rep. by M.Krishna Paraiyanar,
No.24, Chinnappa Street,
Triplicane, Chennai 600 005.

...Defendants

PRAYER: Complaint filed under Order VII Rule 1 of CPC r/w Order IV Rule



1 of the O.S.Rules, praying to pass judgment in favour of the plaintiff against the defendants,

(a) For a permanent injunction restraining the defendants, their men, agents, servants or any other person or persons claiming through them from publishing any articles in magazines, pasting any posters and holding dharna against the plaintiff which would tarnish the goodwill and reputation of the plaintiff;

(b) Directing the defendants to pay jointly and severally liquidated exemplary damages of Rs.1,00,000,000/- (Rupees One Crore only) for the loss of goodwill and reputation of the plaintiffs for publishing defamatory articles in the monthly magazine M/s.Makkalukkana Neethey Engey and

(c) pay the cost of the suit to the plaintiff.

For Plaintiff : Mr.V.P.Mohammed Moin for
M/s.Aiyar & Dolia

For Defendants : Exparte- D1, D2, D4, D7 to D9, D11
No Appearance for D3, D5, D6 & D10

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JUDGMENT

The plaintiff Bank has instituted the above suit for relief of permanent injunction to restrain the defendants from publishing any articles in magazines, pasting any posters and holding dharna against the plaintiff, which would tarnish the goodwill and reputation of the plaintiff and also to pay liquidated exemplary damages of Rs.1,00,000,000/- (Rupees One Crore only) for the loss of goodwill and reputation of the



plaintiff for publishing defamatory Articles in the monthly magazine

M/s.Makkalukkana Neethi Engey and for costs of the suit.

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2. The plaint in brief:

The plaintiff is a Nationalised Bank and in respect of the account of M/s.Ind Solders & Alloys Private Limited and M/s.Murugan Foundary Private Limited, Hindustan Plastics and Tools, the plaintiff Bank has initiated measures under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), by invoking Section 13 of the said Act and brought the mortgage property to sale, following the procedure enumerated under the Security Interest Enforcement Rules, 2002. It is further submitted that the borrowers litigated upto the Hon'ble Supreme Court and were unsuccessful in all their attempts to prevent the Bank from recovering its legitimate dues.

3. The plaintiff would also submit that before the Hon'ble Supreme Court, a direction was issued to the borrower Company to deposit five crores in two installments which order also was not complied with. Even an attempt to prevent the sale of the property by auction, by filing a Writ Petition was unsuccessful and in fact, the Writ Petition was dismissed



with costs of Rs.50,000/-. At that juncture, the learned counsel for the Writ Petition requested permission to withdraw the writ petition and subsequently, the said Writ Petition was withdrawn.

4. The first defendant is the Editor-in-Chief and Publisher of the second defendant and alongwith defendants 3 and 5, they held dharna near the Collectorate Office which is adjacent to the building of the Head Office of the Plaintiff on 09.05.2011 and according to the plaintiff, the first defendant and few others came in person and submitted a representation dated 09.05.2011 to the plaintiff Bank, referring to a loan account of M/s.Hamosons (Haji Moosa Group) and projected as if the Bank proceeded against them in a prejudicial manner, citing their religious community. The first defendant also has informed the plaintiff Bank that he would self immolate himself, if the Bank proceeds with the auction in respect of M/s.Ind Solders & Alloys Private Limited on 12.05.2011. The plaintiff had lodged a police complaint and had obtained security for its Head Office and Asset Recovery Management Branch to prevent untoward incident.

5. The plaintiff further states that the first defendant, who is the Editor-in-Chief and Publisher of the 2nd defendant has been publishing



Articles in the Magazines and affixing posters in and around the City, especially in front of the Head Office making false and disparaging allegations and remarks against the plaintiff Bank and its officials. The first defendant also published Articles in the Magazine “Makkalukkana Neethi Engey” in the months of April and May, 2011 and the defendants were freely distributing these Magazines near the Bank premises only to malign and defame the good name and reputation of the plaintiff Bank.

6. According to the plaintiff, the articles are highly defamatory and derogatory and made against the Bank and its Officers and was likely to create panic amongst the public and was caused severe damage to the reputation and business of the Plaintiff Bank. The defendants 4 to 7 and 10 are persons who stood as guarantors to the loan accounts availed by the various borrowers who are mentioned in the articles published by the second defendant and the defendants 4 to 7 and 10 are personally in charge of the affairs of the borrowers and these defendants have formed third defendant Union, only for the purposes of tarnishing the image of the Bank and also prevent the Bank from recovering their dues by selling the properties of the Guarantors. In this backdrop, the plaintiff has sought for the relief of permanent injunction and damages.



7. The 6th defendant alone filed a written statement denying the plaintiff's allegations and stating that the allegations levelled against the 6th defendant were imaginary, concocted and without any basis and sought for dismissal of the suit. The Written statement was adopted by the defendants 3, 5 and 10. On 15.03.2024, the defendants 1, 2, 4, 7, 8, 9 & 11 were set exparte by orders of this Court. On 06.10.2016, this Court framed the following issues:-

- “ 1. Whether the plaintiff is entitled to permanent injunction as prayed for in the suit?*
- 2. Whether the plaintiff is entitled to damages for loss of its reputation and goodwill?*
- 3. Whether the plaintiff has discriminated the defendants 4 to 10 while taking recovery proceedings?*
- 4. Whether the contents of May 2011 issue of Makkalukkana Neethi Engay, would amount to defamation?*
- 5. To what other reliefs, the plaintiff is entitled to?”*

8. Despite the matter being posted for trial and the plaintiff examining as P.W.1 and marking Exhibits P1 to P52, neither the 6th defendant who had filed written statement nor defendants 3, 5 and 10 who had adopted the said written statement came forward to cross examine P.W.1 and thereafter, the matter has been listed before this Court, for arguments.

9. The plaintiff has examined one Mrs.A.Manjula, Chief Manager of the Plaintiff Bank as P.W.1, through her proof affidavit, the plaintiff



has narrated the same set of averments and allegations that have been set out in the plaint. Ex.P1 to Ex.P52 have been marked on the side of the plaintiff.

10. In order to show that the defendants have attempted to tarnish the image of the plaintiff Bank, the plaintiff has filed the Police Complaints and also the Magazines published in April and May 2011 Editions. Admittedly, the borrowers have tried every possible way to avoid payment of dues and also the property being sold and the matter has also been taken upto the Hon'ble Supreme Court and it is seen from the various order copies that have been marked as Exhibits that the defendants have never obeyed the orders of this Court and in fact, the plaintiff Bank has taken all steps in accordance with law before bringing the properties of the borrowers to sale in public auction in order to recover their dues. The same is established through the various legal proceedings especially Exhibits P.2 to P.27, P.35 to P.37, P40 & P42. In such circumstances, it was certainly not open to the defendants to indulge in making any derogatory/defamatory remarks against the Plaintiff Bank accusing them of illegality and high handedness. The plaintiff is therefore entitled to the relief of permanent injunction to restrain the defendant as prayed for.



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11. Issue 1, is accordingly answered in favour of the plaintiff.

12. With regard to issue Nos.2 to 4, though the plaintiff has made a claim to the tune of Rs.1 crore for damages, I do not find any independent evidence brought on record to establish any damages suffered by the plaintiff on account of the defamatory statements published by the respondents in Ex.P50 to Ex.P52. Neither the plaintiff Bank, even from the plaint nor P.W.1 in her Chief Examination have been able to demonstrate as to how these defamatory statements by the defendants have resulted in losses being suffered by the Bank. There is nothing on record to show that the business of the Bank has come down because of such defamatory statements made by the defendants. In order to succeed in a claim for damages, it is incumbent upon the plaintiff to prove damages or the fact of actually having suffered because of the defamatory statements made by the defendants. I do not find any evidence whatsoever substantiating the claim for damages, that too capped at Rs.1 crore. Therefore, the plaintiff has clearly failed to prove the claim of damages, much less to the tune of Rs.1 crore and the plaintiff is not entitled to succeed insofar as the claim for damages and issues 2 to 4 are accordingly answered.



13. In fine, the suit is partly decreed and the relief of permanent injunction is allowed as prayed for and insofar as the relief of damages, the suit is dismissed. No costs.

02.08.2024

Index : Yes/No
Speaking/Non-speaking order
rkp

Witnesses examined on the side of the plaintiff:

P.W.1. - Mrs.Manjula

Exhibits produced on the side of the plaintiff:

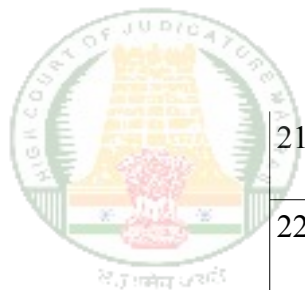
S.No.	Exhibits	Date	Description
1.	P-1	--	Photocopy of the Power of Attorney.
2.	P-2	28.08.2004	Photocopy of the award passed in Lok Adalat in OA No.1881/2001 filed by the Plaintiff against 5 th Defendant.
3.	P-3	14.10.2004	Photocopy of Order copy in OA No.1881/01 passed by Debt Recovery Tribunal II, Chennai filed by the Plaintiff against 5th Defendant
4	P-4	24.02.2005	The photocopy of the Order copy in W.P.M.P.No. 7030 of 2005 in W.P No. 6447 of 2005 filed against the bank.
5	P-5	04.07.2005	The photocopy of the Order copy in W.P No. 17533 of 2005 filed by the 6th defendant against the bank.
6	P-6	02.08.2005	the photocopy of the Order copy in I.A No.64/2004 on O.A No.1371/01 passed by Debt Recovery Tribunal II, Chennai in the matter of M/s. Hamosons.
7	P-7	03.11.2005	The photocopy of the Order copy in CrI M.P No. 4372 of 2005 passed by the Chief



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			Metropolitan Magistrate in the matter of M/s. Hamosons.
8	P-8	12.07.2006	The photocopy of the Order copy in W. A. No. 1715 of 2005 filed by the 6th defendant against the bank.
9	P-9	13.12.2006	The photocopy of the Order copy in W.P.No. 2886 to 2889 of 2006 in the matter of M/s. Hamosons.
10	P-10	16.11.2007	The photocopy of the Order copy in S.A No.37/2007 is passed by the Debt Recovery Tribunal I, Chennai in the matter of M/s. Hamosons
11	P-11	18.11.2008	The photocopy of the Order copy in W.P No. 3958 of 2007(Batch) in the matter of M/s. Hamosons.
12	P-12	29.06.2009	The photocopy of the Objections submitted to the demand notice under SARFAESI by counsel for M/s. Ind Solders Alloys Pvt Ltd.
13	P-13	10.07.2009	the photocopy Reply to the Objection submitted to the demand notice under SARFAESI by counsel for M/s. Ind Solders & Alloys Pvt Ltd
14	P-14	03.11.2009	The photocopy of the Order copy in IN(SA) No.964/2007 passed Debt Recovery Appellate Tribunal, Mumbai in the matter of Shrin Iqbal
15	P-15	03.11.2009	The photocopy of the Order copy in W.P No.22348 of 2009 in the matter of Shrin Iqbal
16	P-16	06.11.2009	The photocopy of the Order copy in IN(SA) No.40/2008 passed Debt Recovery Appellate Tribunal Mumbai, in the matter of M/s. Hamosons Apparels (P) Ltd
17	P-17	30.12.2009	The photocopy of the Sale certificate issued by the bank in the matter of M/s. Hamosons Group
18	P-18	04.03.2010	The photocopy of the Letter from 6 th Defendant to Plaintiff under Right to information Act
19	P-19	22.03.2010	The photocopy of the Reply by the Plaintiff to 6th Defendant
20	P-20	20.04.2010	The photocopy of the Order Copy in W.P.No. 23328 of 2009 in the matter of M/s. Hamosons Apparels Pvt Ltd



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21	P-21	22.04.2010.	The photocopy of the Letter from Advocate Commissioner to the Plaintiff Bank
22	P-22	26.04.2010	The photocopy of the Order copy in W.P No. 8618 of 2010 in the matter of Mrs. Shrin Iqbal
23	P-23	14.05.2010	The photocopy of the Order copy in AIR 964/2007 passed by Debt Recovery Appellate Tribunal Chennai filed against the Bank
24	P-24	20.05.2010	The photocopy of the Order copy in S.A No. 19/2007 passed by the Debt Recovery Tribunal I Chennai filed against the bank
25	P-25	31.08.2010	The photocopy of the Order copy in MA(SA) 125/2010 passed by the Debt Recovery Appellate Tribunal Chennai in the matter of M/s. Ind Solders & Alloys Pvt Ltd
26	P-26	03.09.2010	The photocopy of the Order copy in RA(SA) 141/10 passed by Debt Recovery Appellate Tribunal Chennai in the matter of Mrs. Shrin Iqbal
27	P-27	06.09.2010	The photocopy of the Order copy in S.A No. 208/2010 passed by Debt Recovery Tribunal I Chennai
28	P-28	07.10.2010	the photocopy of the Sale certificate issued by the bank in the matter of M/s. Ind Solders & Alloys Pvt Ltd
29	P-29	20.10.2010	The photocopy of the Letter from the 10 th Defendant to the Plaintiff
30	P-30	26.10.2010	The photocopy of the Letter from the bank addressed to the 10 th Defendant
31	P-31	02.11.2010	The photocopy of the Telegram issued by the 10 th defendant to the Plaintiff
32	P-32	04.11.2010	The photocopy of the Sale certificate issued by the bank in the matter of M/s. Hindustan Plastic and Engineering Tools
33	P-33	10.11.2010	The photocopy of the Letter from the 10 th defendant to the Plaintiff
34	P-34	16.11.2010	The photocopy of the Legal notice issued by the plaintiffs counsel to the 10 th Defendant
35	P-35	01.12.2010	The photocopy of the Order copy in W.P No.23804 of 2010 in the matter of Shirin Iqbal
36	P-36	07.12.2010	The photocopy of the Order copy in



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			MA(SA) 652/2010 passed by Debt Recovery Appellate Tribunal, Chennai filed by the Plaintiff against 5th Defendant
37	P-37	15.12.2010	The photocopy of the Order copy in CMP No. 1365/2010 passed by the Chief Judicial Magistrate, Thiruvallur filed by the bank
38	P-38	23.12.2010	The photocopy of the Letter from the 10 th defendant to the plaintiff
39	P-39	28.12.2010	The photocopy of the Letter from the 10 th defendant to the plaintiff
40	P-40	12.01.2011	The photocopy of the Order copy in CRP (PD) No. 3186 of 2010 passed by Hon'ble High Court Madras in the matter of M/s. Ind Solders & Alloys Pvt Ltd
41	P-41	04.02.2011	The photocopy of the Legal notice issued by the Plaintiffs in the matter of M/s. Hamosons and Hamosons Group of Companies
42	P-42	22.02.2011	The photocopy of the Order copy in SLP (Civil) No.5191 of 2011 passed by the Hon'ble Supreme Court of India
43	P-43	21.04.2011	The photocopy of the Legal notice issued by the Plaintiffs in the matter of M/s. Hamosons and Hamosons Group of Companies
44	P-44	30.04.2011	The photocopy of the Statement of accounts defaulting borrowers mentioned in the 2 nd defendant
45	P-45	04.05.2011	The photocopy of the Letter from 3 rd defendant to plaintiff
46	P-46	09.05.2011	The photocopy of the Mahazar of the 3 rd Defendant
47	P-47	10.05.2011	The photocopy of the Letter from Plaintiff to the Inspector of Police (Law & Order) B1 North Beach Police Station
48	P-48	10.05.2011	The photocopy of the Letter from Plaintiff Bank to Commissioner of Police, Chennai
49	P-49	10.05.2011	the photocopy of the Letter from Plaintiff to Inspector of Police (Law & Order) Egmore Beach Police Station
50	P-50		The original Extract from Makkalukkana Neethi Engey? 2nd Defendant for the month April 2011.
51	P-51		The original Makkalikkana Neethi Engey? 2nd Defendant for the month May 2011.



52

P-52

09.05.2011

the photocopy of the poster

Witnesses examined on the side of the defendants:

Nil.

Documents marked on the side of the defendants:

Nil.

02.08.2024

rkp

P.B.BALAJI,J.

rkp



**Pre-delivery Judgment in
C.S.No.378 of 2011**

02.08.2024