IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.04.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.S.(Comm.Div).No.855 of 2014

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M/s.Tamilnad Mercantile Bank Ltd.,
Rep. by its Regional Manager Mr.P.Ravichandran,
Chennai Region, having office at
No.45, Pulla Avenue, Shenoy Nagar,
Chennai-600 030. .. Plaintiff

Vs.

1. M/s.Giriguja Publications Pvt. Ltd.,
Rep. by its Director Mr.S.Sundararaman,
No.56/21, Giriguja Enclave,
Sastri Nagar, First Avenue,
Adyar, Chennai-600 020.

2. Mr.S.Sundararaman,
Printer and Publisher,
No.56/21, Giriguja Enclave,
M/s.giriguja Publications Pvt. Ltd.,
Sastri Nagar, First Avenue,
Adyar, Chennai-600 020.

3. Mr.S.P.Lakshmanan,
Editor, Thamilaga Arasiyal,
56/21, Giriguja Enclave,
Sastri Nagar, First Avenue,
Adyar, Chennai-600 020. .. Defendants

Plaint filed under Order VI Rule 1 of the Code of Civil Procedure read with Order IV Rule 1 of the Original Side Rules of this Court, and the suit numbered and filed to pass judgment and decree in favour of the plaintiff:

(a) to direct the defendants herein to jointly and severally pay a sum of Rs.5,00,00,000/- (Rupees five crores only) towards damages for publication of the defamatory articles in Tamilaga Arasiyal dated 12.07.2014, 06.09.2014, 24.09.2024 and 17.12.2014.

(b) to grant decree for permanent injunction restraining the defendants, agents, their men, servants, editors, sub-editors or any one claiming under them or any one claiming under them from publishing any defamatory articles as against the plaintiff-Bank, its officials, Directors and staff, and

(c) to direct the defendants to pay the costs of the suit.

For plaintiff : Mr.P.Tamilavel

For defendants: Defendants 1 to 3 - set ex-parte on 29.11.2023

JUDGMENT

The suit is filed for defamation. The defendants have published defamatory statement in the magazine "Thamizhaga Arasiyal". The plaintiff is the Bank, namely Tamilnad Mercantile Bank Limited, represented by its Regional Manager.

2. The case of the plaintiff-Bank is as follows:

(i) They are reputed Bank and had got 401 branches with effective persons in 12 States and in 5 Union Territories in the country. It has got 783 Automated Teller Machines (ATM). The financial highlights of the plaintiff-Bank as on 31.03.2014 is as follows: (particulars in Crores):

| | |
|---|---|
| Total deposit | Rs.22,699.98 |
| Total advances | Rs.17,365.69 |
| CASA | Rs.4,319.88 |
| Net Profit | Rs.300.77 |
| CAR - Based II (%) | 15.88% |
| Gross NPA (%) | 2.46% |
| Net NPA (%) | 1.22% |
| Turnover in Forex operations | Rs.18,925.31 |

(ii) The plaintiff-Bank is engaged by various Goverment/Quasi-Government agencies, such as TANGEDCO, Chennai City Municipal Corporation, BSNL for Telephone bills, e-stamping business by Stock Holding Corporation of India, PAN card applications by M/s.UTI Infrastructure Technology and Services Ltd., Pension Payment Accounts etc. Even the recent scheme of Pradhan Mantri's Jahdhan Yojana Scheme of the Prime Minister of India, has been specifically implemented by the plaintiff for the thumping performance by opening as many as 49,795 accounts in various branches in the rural and grassroots level. In the course of the Banking business of the plaintiff, the Thiruvanmiyur Branch has granted the following credit facilities to M/s.Trisakthi Publications Pvt. Ltd., having their Registered Office at Giriguja Enclave, No.56/21, 1st Avenue, Sastri Nagar, Adyar, Chennai-600 020. On the request and application by Mr.S.Sundararaman, who is the Managing Director of the said Company and other Directors of the Company M/s.Nalini Sundararamanm, Mr.Moses and Mr.Madan Chander S.Madumitha :-

(a) Term loan of Rs.108 lakhs for purchase of land for construction of factory building;

(b) Term loan of Rs.244.50 lakhs for construction of factory building;

(c) Term loan of Rs.868.50 lakhs for purchase of machinery, and

(d) CC Limit of Rs.330 lakhs.

The said Company had availed a loan of Rs.180 lakhs on 24.01.2011 for purchase of land for construction of the factory building. Out of 244.50 lakhs which was sanctioned towards construction of factory building, the said Company had availed a sum of Rs.82.50 lakhs on 20.06.2011. It had further availed a sum of Rs.611.17 lakhs out of the sanctioned term loan of Rs.868.50 for purchase of machinery by way of Demand Drafts as follows:

03.02.2011 Rs.431.40 lakhs in favour of M/s.Safire Traders

14.03.2011 Rs.144.15 lakhs in favour of M/s.Safire Traders

14.03.2011 Rs.35.62 lakhs in favour of M/s.Orbit Engineers

(iii) Inspite of having availed the aforesaid loans out of the sanctioned limits, the borrower-Company and its Directors had not used the loan funds for the purpose for which the loan was sanctioned by the plaintiff-Bank. The funds were siphoned off and misappropriated by the Directors of the said Company.

(iv) Even though Rs.82.50 lakhs was availed of on 20.06.2011 for construction of factory building, during internal investigation conducted by the Bank on 25.08.2011 and on 26.08.2011, it was noticed that, only recently, the excavation work itself had been started and the amounts spent there-for would approximately have been Rs.10 lakhs. As such, nearly Rs.72.50 lakhs was siphoned off and misappropriated from and out of the said loan. Prior to that, the amount which was availed towards purchase of machinery, had also been misappropriated as set out below:

The Demand Draft in favour of M/s.Safire Traders have been acknowledged through ICICI Bank Ltd., R.A.Puram Branch, Chennai on 05.02.2011 and 16.03.2011 respectively through Account No.021205006022 in the name of M/s.Safire Traders.

(v) Therefore, since the defendants had misappropriated the funds, the plaintiff has lodged a Police Complaint before the Commissioner of Police, Chennai, on 03.09.2011, which was registered as Crime No.499 of 2011 on the file of the Central Crime Branch Team XIII, Chennai. Subsequently, the second defendant was arrested by Police on 06.02.2012. The bail applications filed by him were dismissed by the Metropolitan Magistrate, Chennai and on 23.11.2013, this Court granted bail to the second defendant with condition to deposit Rs.2 crores. The anticipatory bail application filed by Ms.Nalini Sundararaman (wife of second defendant) and Mr.Madhan Chendar was referred by this Court to the Mediation Centre for settlement and on failure report submitted by the Mediators, the said anticipatory bail was heard and dismissed by this Court on 03.01.2014. Mr.S.Sundararaman, his wife and son have filed a petition before this Court in Crl.O.P.No.1811 of 2014 to quash the FIR registered against him, but the said Crl.O.P. was dismissed by this Court on 22.08.2014, but so far, the wife and son of the second defendant had not been arrested by the Police till the filing of the suit.

(vi) The defendants, as an act to satisfy the ego and vengeance, conceived an idea of tarnishing the image of the plaintiff-Bank by making cheap and false publications by using in their own publication under the name and style of Tamilaga Arasiyal, published by them on behalf of the first defendant and aided by the third defendant. The third defendant, knowing fully well that the publications were being made against the plaintiff-Bank, with mala-fide intention to defame the plaintiff, colluded and conspired with the second defendant and collected the publications The second defendant is the publisher and printer and the third defendant is the Editor of the magazine titled Tamilaga Arasiyal, published twice a week, i.e. on Thursday and Sunday.

(vii) Further, the second defendant,having developed vengeance against the plaintiff-Ban for the criminal complaint which was lodged against him and his family members, with a view to tarnish the image of the plaintiff and the mind of the public and who in collusion with the third defendant, the Editor, had published per-se false, cheap and defamatory articles successfully.

(viii) In the issue on 12.07.2014, with photographs of the Managing Director and Chief Executive Officer of the plaintiff=-Bank and with the photograph of one Rajkumar, an article had been published in the very first page of the issue, in page No.2 under the caption "Mosadi Valakil Mercantile Bank" *(மோசடி வழக்கில் மெர்கண்டைல் பாங்கு)*. The photograph of the Branch of the plaintiff-Bank was also published. The photograph of the former managing Director and Chief Executive Officer KB.Nagendra Moorthy and the photograph of former MD and CEO Mr.A.K.Jaganathan with their names, were also published. It is falsely stated in the publication that in the year 2010, an agreement was executed in favour of M/s.Trisakthi Sundararaman in respect of the land in OMR as belonging to the said Rajkumar for a consideration of Rs.13 crores and Rs.2

crores had been received as advance and for the remaining amount, the said Rajkumar and Nagendrdamoorthy had made arrangements and a loan was granted to enable Trisakthi for payment of Mr.Rajkumar to purchase the property, and ultimately it was found that the property did not belong to Mr.Rajkumar and the legal opinion, valuation report, etc., were doubtful. A complaint in this regard was also lodged by Trisakthi Group, which was registered for the alleged offences under Sections 420, 120-B, 465, 468 and 471 IPC in Crime No.41 of 2014. It was alleged in the complaint that the MD & CEO of the plaintiff-Bank attempted to win over the Police authorities by inviting them to preside over a sports function of the Bank staff and that a sum of Rs.1 lakh was given through an employee of the Bank for getting a copy of the complaint and nearly Rs.30 lakhs was spent fro dropping the action. The team had involved in a scam by granting loan of Rs.17 crores to an Oil Company and loan was granted in similar circumstances in Bangalore and Palani and hence, all the loan which were granted over a period of 5 years, during the tenure of the said MD and CEO should be investigated by the Reserve Bank of India and CBI. Each and every one of the statements contained in the said publication are per-se false without any iota of truth, and the same is baseless and intended only to harm the reputation of the Bank.

(ix) The defendants have published that they have filed Crl.O.P.No.1811 of

2014 in the magazine on 06.09.2014 and 24.09.2014 and also on 17.12.2014, the impugned publications were made by the defendants, and therefore, the plaintiff-Bank incurred loan of Rs.5 crores and therefore, the present suit is filed for damages and also for permanent injunction as stated above.

3. In order to substantiate their case, the plaintiff-Bank's Regional Manager one Mr.T.Earnest Vasiharan was examined as P.W.1 and nine documents were marked as Exs.P-1 to P-9.

4. Learned counsel for the plaintiff submitted that the plaintiff-Bank is a reputed Bank and it has various Branches all over the country and also it has got reputed customers and even some of the Government organisations and allied Department are also customers of the Bank. Since the defendants borrowed money and they did not repay and they have misappropriated the funds and therefore, the plaintiff filed a complaint before the CBI, since it is a Bank fraud, in order to escape from the clutches of law, the defendants have filed counter-complaint, and it is pending for investigation. The defendants, in order to escape from the clutches of law, have also made a publication and defamatory statements and therefore, the plaintiff-Bank is constrained to file the present suit for recovery of Rs.5 crores caused to the Bank and also produced all the publications which contained defamatory statements made and there is no

necessity to prove that they are the recitals in the magazines themselves, and it is proved that the defendants have made defamatory statements. Hence, the plaintiff-Bank has filed the present suit for damages.

5. Though the defendants remained ex-parte, the plaintiff-Bank examined its officer as P.W.1, through whom, Exs.P-1 to P-9 were marked. The plaintiff has not examined any other witness like customers or any person who had read the said magazine. Since it is a suit for damages, it is for the plaintiff to prove their case and in this case, except the Regional Manager of the plaintiff-Bank who was examined as P.W.1, no other witness was examined and this witness has not also spoken about the defamatory statements published in the Branch and incurred loss of Rs.5 crores.

6. It is settled proposition of law that the plaintiff has to plead and prove his/their case and the plaintiff cannot take advantage of the loopholes left by the defendants and the plaintiff cannot shift the onus to prove their case by the defendants. First of all, the fundamental principle is that the plaintiff has to prove its case on his/their strength of the case and therefore, in this case, except the Regional Manager, no other witness was examined and no statement was also obtained from anybody and since already the case was registered against the Bank, is also pending for investigation and unless investigation report is filed and the plaintiff is relieved from this case or in any other manner, and since the

investigation is still pending and since the suit is only for recovery of money on the ground of damages, it is for the plaintiff-Bank to prove that loss has been caused to the Bank. Therefore, there is no evidence to substantiate regarding the loss caused to the plaintiff-Bank and its branches. No other witness was examined to prove the above facts.

7. In the above circumstances, this Court finds that the plaintiff has failed to prove their case. Accordingly, the suit is dismissed. There shall be no order as to costs.

01.04.2024

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P. VELMURUGAN, J

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