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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
BEFORE
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **RFA 486/2017**

Between: -

SHRI D.V. SINGH,
S/O LATE SHRI TEJ SINGH,
R/O B-13, KALINDI COLONY,
NEW DELHI-110065APPELLANT

(Through: Mr. S. K. Mathur, Advocate)

AND

MRS. USHA JAIN,
W/O LATE SHRI O.P. JAIN,
R/O E-17, KALINDI COLONY,
NEW DELHI-110065RESPONDENT

(Through: Ex-Parte)

% Reserved on: 19.09.2024
Pronounced on: 14.10.2024

J U D G M E N T

This appeal seeks to assail the impugned judgment and decree dated 28.01.2017, passed in Civ DJ No.610191/2016, by the learned Additional District Judge-08 (West), Tis Hazari Courts, Delhi, whereby, a suit for recovery of Rs.10,00,000/- on account of alleged

damages, filed by the appellant-plaintiff against the respondent-defendant has been rejected.

2. The facts of the instant case indicate that the appellant-plaintiff had instituted a Civil Suit against the respondent-defendant, seeking damages due to defamation, stemming from the filing of alleged malicious pleadings before the Office of the Registrar of Societies.

3. The plaint was initially rejected by the Trial Court under Order VII Rule 11 of the Code of Civil Procedure, 1908 [**“CPC”**]. However, upon an appeal filed by the appellant-plaintiff, this Court in RFA 257 of 2011, remitted the matter back to the Trial Court for a decision on merits.

4. Upon examination of the instant case, it is evident that both the appellant-plaintiff and the respondent-defendant are members of the same Society, namely the Swatantra Cooperative House Building Society, which is registered under the Delhi Cooperative Societies Act, 2003.

5. There appears to be a dispute concerning the management of the Society. The appellant-plaintiff had initiated legal proceedings on 06.05.2005 before the Registrar of Societies under Section 70 of the Delhi Cooperative Societies Act, 2003 [**“Act of 2003”**]. The said complaint primarily delineated grievances against the respondent-defendant and other office-bearers, specifically regarding the issuance of notices for meetings of the managing committee. The appellant's grievances are rooted in the allegations of being marginalized as a committee member for various reasons, alongside concerns raised about the financial expenditures of the Society.

6. In the proceedings initiated by the appellant-plaintiff before the Registrar, the respondent-defendant submitted a reply containing

certain averments which, according to the appellant-plaintiff, are defamatory in nature.

7. The Trial Court, in paragraph no.22 of the impugned judgment and decree has reproduced the alleged defamatory statements in respective pleadings. Paragraph no.22 of the impugned judgment and decree, reads as under:-

"22.In the instant case, the plaintiff is aggrieved from the reply filed by the society and adopted by the defendant before the Registrar of cooperative society in the petition no. 472/DR/ARB/05-06/10 titled as "D.V. Singh vs. Dr. R.C. Mangla &ors". Ex PW-2/2 and also the reply filed by the defendant in another case bearing no. 3258/DR/ARB/06/07 titled as "Paresh Nath&ors. vs. V.M. Trehan and others", Ex.PW2/3. It is pertinent to reproduce herein the allegations made against the plaintiff in Ex.PW2/2 and Ex.PW2/3 as under: -

A. Allegations in Ex.PW2/2 :

"the aim of the plaintiff since the inception of the society is to use it as instrument in grabbing the land of the society so as to enrich himself and deprive the Society and its members from its valuable amenities in the shape' of the park etc.".

B. Allegations in Ex.PW2/3:

"the plaintiff had been habitual fault finder and had been dragging the society to all kind of disputes and litigation by filing false and vexatious complaint and petitions. The history of the society will clearly show that Mr. D.V. Singh had been filing complaints against the society since 1979 and onwards till date. He had never cooperated in the affairs of the society and he has been creating problems and difficulties in the smooth functioning of the society". "

8. Upon considering the aforesaid statements, framing the issues and recording the evidence, the Trial Court, *vide* the impugned judgment and decree, dismissed the Civil Suit mainly on two grounds, viz:-

(i) The proceedings before the Registrar of Societies are *quasi-judicial* in nature and therefore, the statements made therein are absolutely privileged;

(ii) The appellant-plaintiff failed to produce any evidence to demonstrate that the alleged defamatory statements were communicated to a third party, and in the absence of such proof, no civil action for defamation can be sustained.

9. Challenging the aforesaid decision of the Trial Court, Mr. S. K. Mathur, learned counsel appearing for the appellant-plaintiff, has advanced the following broad submissions:-

i. The judgment rendered by the Trial Court is in contravention of the explicit directions issued by this Court in R.F.A. No. 257/2011. According to him, this Court had unequivocally directed the Trial Court to adjudicate upon the issue of absolute privilege on its merits, whereas, the Trial Court dismissed the suit on technical grounds.

ii. The impugned judgment and decree is fundamentally flawed in its application of the doctrine of absolute privilege. He submits that the entire judgment is predicated on the fact that the defamatory statements were made before the Office of the Registrar of Cooperative Societies and the Trial Court had erroneously considered the same to be a *quasi-judicial* authority, wherein, the principle of absolute privilege would apply.

iii. In doing so, the Trial Court failed to recognize that, in certain circumstances, if statements are irrelevant, embarrassing, malicious, and not made in the public interest, they may constitute defamation, even if such allegations are made before a judicial or *quasi-judicial* body, where the principle of absolute privilege would ordinarily serve as a defense.

iv. The dispute between the parties centres on the allegations made by the respondent-defendant against the appellant-plaintiff, which, as contended by the appellant-plaintiff, do not pertain to matters serving the public interest. The individuals involved are residents of a housing Society and also the members of its managing committee. He submits that the duties of the members of the Society are confined to the welfare of the Society's members under the Act of 2003 and its accompanying rules. Consequently, learned counsel for the appellant-plaintiff submits that the scope of the dispute is of a private nature, and as such, any defense the respondent-defendant may seek to invoke, such as qualified privilege, can only be applied in a limited manner.

v. He contends that the Registrar of Societies is not a Tribunal with the trappings of a Court under the provisions of CPC.

vi. Learned counsel places reliance on the decisions rendered in the cases of *Daya Shanker Dubey v. Subhas Kumar, D.M. Allahabad*¹, *Thangavelu Chettiar v. Ponnammal*², and *Ram Jethmalani v. Subramaniam Swamy*³.

vii. Furthermore, he distinguishes the facts of the instant case from the facts in the case of *Prof. Imtiaz Ahmad v. Durdana Zamir*⁴, a decision relied upon by the Trial Court.

10. The respondent-defendant has not appeared before this Court and, therefore, they are proceeded *ex parte*.

¹1991 SCC OnLine All 660.

²1965 SCC OnLine Mad 248.

³2006 SCC OnLine Del 14.

⁴2009 SCC OnLine Del 477.

11. I have heard the learned counsel for the appellant-plaintiff at length and perused the record.

12. The first and foremost issue which arises for consideration is whether the statements allegedly made during the proceedings before the Registrar of Cooperative Societies are entitled to absolute privilege, thereby ensuring that such statements are protected under all circumstances.

13. The Trial Court, after considering the decision in ***Punjabi Bagh Cooperative Housing Society Limited v. K.L. Kishwar***⁵, has come to the conclusion that the allegations have been made in connection with the affairs of the Society and, thus, the pleadings are privileged communications and no action for defamation is maintainable. The relevant portion of the said decision reads as under:-

“Therefore, if any member of the society makes a complaint against the office bearers of the society regarding the affairs of the society and in the process makes some defamatory statements only in regard to the conduct of such office bearer in the management of the aforesaid society such accusation cannot constitute defamation. As already noted in none of the alleged objectionable statements re-produced above, the defendants ever made any remark regarding the personal character of the plaintiffs. Whatever they said was only in regard to the plaintiffs mismanagement of the affairs or the funds of the society. Therefore, in view of the law enunciated in the case of Bhanumathi Rajah (supra) no action for defamation would lie against the defendants. If a member of the society has” reasons to believe that some irregularity, illegality is being committed in the running of the affairs of the society, such member of the society is under a duty to bring it to the notice of the office bearer of the society or other authorities having control over the society. Such member will have an obligation cast on him to bring such things to the notice of - the society and vice versa office bearers or other such authorities will be under obligations to receive such complaints and look into them..

⁵ 2001 SCC OnLine Del 1234.

Viewed in this legal perspective. I think the alleged defamatory statements made by the defendants in their various communications/petitions to the plaintiffs or to the Joint Registrar or other authorities having control over the aforesaid Society fall in the category of privileged communications and no action for defamation will be maintainable...”

14. This Court in the case of **Ram Jethmalani**(*supra*),has referred the decision of the High Court of Patna in the case of **Panday Surinder Nath Sinha v. Bageshwari Prasad**⁶, which aptly draws a distinction between absolute and qualified privilege. The relevant portion of the said decision is culled out for reference:-

“(i) In absolute privilege, it is the occasion which is privileged and when once the nature of the occasion is shown, it follows, as a necessary inference, that every communication on that occasion is protected; in qualified privilege, the occasion is not privileged, until the defendant has shown how that occasion was used. It is not enough to have an interest or a duty in making a statement the necessity of the existence of an interest of duty in making the statement complained of, must also be shown.

(ii) In absolute privilege, the defendant gets absolute exemption from liability; in a qualified privilege, the defendant gets a conditional exemption from liability.

(iii) In absolute privilege, the defendant is exempted from liability even when there is malice on his part; in qualified privilege, the defendant is exempted from liability only when there is no malice on his part.

(iv) In absolute privilege, statements are protected in all circumstances, irrespective of the presence of good or bad motives; in qualified privilege, even after a case of qualified privilege has been established by the defendant, it may be met by the plaintiff proving in reply improper or evil motive on the part of the defendant, in which case defence of qualified privilege vanishes and the plaintiff succeeds; and

(v) In absolute privilege as well as in qualified privilege, the defendant has to prove his plea of privilege, but with this difference that in absolute privilege the defence is absolute and irrefutable by plaintiff, whereas in qualified privilege the defence is not absolute but reputable by the plaintiff.”

⁶ AIR 1961 Patna 164.

15. This Court further held that the status of absolute privilege is not amenable to Tribunals not being at par with Courts. Proceedings before Tribunals which had all the trappings of a Court were alone held eligible to be entitled for absolute privilege. Additional reliance was placed on a decision in the case of *Addis v. Crocker & Ors*⁷.

16. In the instant case, admittedly the proceedings were before the Registrar of Societies. As established in the aforementioned decisions, these proceedings are deemed to be absolutely privileged. Consequently, under absolute privilege, the respondent-defendant is exempted from liability even in instances where malice is present. In contrast, under qualified privilege, the exemption from liability applies only when the respondent-defendant demonstrates the absence of malice.

17. Since the instant case falls under the doctrine of absolute privilege, therefore, no damages can be sought in connection with the statements made during the proceedings that are under the sweep of absolute privilege.

18. With respect to the second issue, which the Trial Court has decided against the appellant-plaintiff, it is essential to examine paragraph no. 36 of the Trial Court's judgment, which states as follows:-

“36. Having considered the law laid down by Hon'ble High Court of Delhi, this court is of considered opinion that the plaintiff has even failed to prove that the alleged statements were made known to some person other than the plaintiff and unless that is done, no civil action lies. Communication to the plaintiff himself is not sufficient in the eyes of law because defamation is an injury to the reputation and reputation consist in the estimation in which other holds him and not in ones own opinion. This court is of the considered opinion that the plaintiff is not entitled to claim any

⁷ 1960 (2) All ER 629.

damages from the defendant. Hence, issue no. 3 is decided against the plaintiff. Issue Nos. 4 pertains to interest and has become infructuous in the light of the fact that the issue no.3 is decided against the plaintiff and in favour of the defendant”

19. Though the proceedings have been found to be absolute privilege, the Trial Court has rightly concluded that the appellant-plaintiff has failed to demonstrate that the alleged statements were communicated to any individual other than the appellant-plaintiff himself. Thus, the reasoning assigned in paragraph No.36 are further unassailable.

20. With respect to the reliance of the appellant-plaintiff on the case of ***Daya Shanker Dubey (supra)***, it is seen that in the said decision, the controversy therein pertained to the privileged communication between an advocate and client under Section 126 to Section 129 of the Indian Evidence Act, 1872. In the said decision, the Court held that privilege can be claimed only when the advocate or the clients are asked to disclose any professional communication between them. Such a privilege, however, cannot be claimed in respect of a document which has already come in possession of the opposite party and has been filed on record. Analysing the decision relied upon, the Court is of the considered opinion that the said decision is of limited benefit, if any, to the appellant-plaintiff, as that decision addresses a different set of circumstances altogether, which are not applicable to the facts of the instant case.

21. Regarding the reliance placed on ***Thangavelu Chettiar (supra)***, it is seen that the dispute in that case centered on the signed publication of a document in which a woman was alleged to be the concubine of another party. In contrast, the facts of the present case involve a dispute within a Society where both parties are members.

The allegations made against the appellant-plaintiff pertain

specifically to his role in the administration of the Society. Consequently, the Court is of the opinion that the decision cited is not applicable to the circumstances of the instant case.

22. Learned counsel for the appellant-plaintiff contended that the statements made in the present case are more severe in nature when compared to *Prof. Imtiaz Ahmad (supra)*, where the impugned remarks were not deemed defamatory. However, beyond asserting the greater intensity of the alleged defamatory statements in the current matter, the appellant-plaintiff has not qualitatively differentiated as to how his case differs from the cited decision, given that the principle of law applicable in both cases is largely similar.

23. In light of the aforementioned grounds raised by the appellant-plaintiff, the Court finds no merit in the arguments presented by the learned counsel for the appellant-plaintiff. Accordingly, the instant appeal stands dismissed, alongwith pending application, if any. The costs of the proceedings shall be borne by the respective parties.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 14, 2024/p