



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 12.01.2024
Judgment pronounced on: 05.02.2024

+ **FAO 326/2017**

M/S GAV DEVELOPERS PVT. LTD.

... Appellant

Through: **Mr.Piyush Kaushik and Ms. Aparajita Jha, Advs.**

versus

THE PUBLISHERS DAINIK JAGRAN & ORS

...Respondents

Through: **Mr.J.K. Bhola, Ms.Kimmi Barara and Mr.Mohit Mittal, Advs. for R2 to 5.**

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The Appellant is aggrieved by the impugned order dated 31.03.2017 vide which the Learned Additional District Judge, Shahdara District, Karkardooma, Delhi ("Learned Trial Court") in civil suit bearing number C.S. No. 1985/2016 titled as "*M/s GAV Developers Pvt Ltd. vs. The Publishers, The Dainik Jagran Newspapers and Ors.*" returned the plaint of the Appellant under Order VII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") on an application moved by the Respondents No. 2 to No. 5 herein under Order VII and Rule 11 of CPC seeking rejection of the plaint of the Appellant herein. The Learned Trial Court further held that the Court in Dehradun has the territorial jurisdiction to entertain the civil suit filed by the Appellant herein and the same be filed there. Thus, the Appellant through its duly authorized representative Sh.



Rajnish Gupta vide board resolution dated 10.04.2016, has filed the present appeal under Order XLIII Rule 1(a) CPC.

2. For the adjudication of the present appeal, it is pertinent to elucidate the background of the case at hand. The Appellant is a company registered under the Companies Act, 1956 vide the Certificate of Incorporation No. 55-91824 of 1997-98 on 21.01.1998 with its registered office located in Yojna Vihar, Delhi and is engaged in the business of building and developing residential colonies and other housing projects since 1998 and 2004 in Delhi NCR and Dehradun, Uttarakhand, respectively.

3. During the course of business, the company changed its name from Grah Awas Vikas Private Limited to GAV Developers Private Limited w.e.f. 11.03.2015 vide the Certification of Incorporation dated 11.03.2015.

4. The Respondent No. 1 is a local Hindi Newspaper, Dainik Jagran corporation which has publication in form of print-media in the area of Dehradun, Uttarakhand & stated to also be available to read on internet/public domain and Respondents No. 2 to 5 are the residents and customers of the Green View Apartments, Dehradun (Respondents No. 2 to 5 hereinafter referred to as “Resident Respondents”).

5. It is the case of Appellant that since the incorporation of its company, it has built several projects across Delhi NCR as well as in Dehradun & Mussoorie and one such project is “Green View Apartment” in Dehradun, Uttarakhand. The Appellant constructed the aforesaid project and stated to have delivered physical possession of the flats in the year 2009-2011 except to a few customers.

6. In May, 2014, the Appellant had begun to develop another project called “Green View Blossom” in the vicinity of the Green View



Apartment. It is the case of the Appellant that the Resident Respondents allegedly made illegal demands and when the Appellant did not accede to same, Respondents allegedly with a view to extract money from the Appellant, conspired and published the defamatory news article against the Appellant on 26.09.2014 in the Respondent No.1's newspaper Dainik Jagran.

7. Thereafter, when the Appellant approached the Respondent No. 1, it was confirmed that the alleged defamatory news published were on the basis of the statements made by the Resident Respondents. The Respondent No. 1 tendered an apology after being apprised by the Appellant with the true facts and assured the same will not be repeated in future.

8. On 10.06.2015, the Respondent No. 1 at the instance of Resident Respondents published an alleged defamatory news article in its newspaper in the terms of print media as well as e-paper, bearing a headline "*95 LAKH LEKAR BUILDER NE KIYA KINARA*" to disrepute and injure the Appellant's image in the eyes of the public at large as it was read throughout the territory of India, including Delhi in particular. It was also stated that the false imputations by the Respondents have adversely affected the Appellant's business since the units/flats have not been booked yet as against prior to the incident where all units would be booked as soon as the construction of a project started.

9. Consequent to publication of the alleged defamatory news in question, the Appellant served a legal notice dated 06.04.2016 on Respondents through the speed post on their address. The Respondents did not reply to the aforesaid issued legal notice which demanded them to tender a public apology along with payment of Rs. 30.25 lakhs as



compensation with litigation cost for issuance of notice, to be paid within 15 days.

10. Failure of the Respondents to comply with the legal notice, the Appellant filed a civil suit for defamation before the Learned Trial Court in Delhi, against all the Respondents herein claiming damages for defamation to the tune of Rs. 1.5 Crore on account of loss of reputation in the eyes of public at large and loss of business.

11. The Appellant in its plaint submitted with regards to the territorial jurisdiction that the cause of action has arisen not only in Dehradun, Uttarakhand but also throughout India and worldwide where the newspaper is circulated, disseminated and read by people at large both in forms of print-media and e-paper on the internet, including the territory of Delhi, hence there is territorial jurisdiction vested with the Court in Delhi.

12. Thereafter, the Learned Trial Court proceeded to issue summons in the suit vide order dated 13.05.2016 and on 16.07.2016 the Resident Respondents entered appearance and filed an application under Order VII Rule 11 CPC for rejection of the Plaint, challenging the territorial jurisdiction of the court on the grounds that there is no cause of action to file the Plaint in terms of Section 19 CPC. Further, stated in the aforesaid application that Appellant/Plaintiff has not made an averment with regards to e-circulation of the newspaper being read, published or seen by the Appellant/Plaintiff at any other place and inter alia, and relied on the judgment in case of *Dhartipakar vs. Rajiv Gandhi* AIR 1987 SC 1577. It was submitted that if the court is satisfied that the petition does not make out a cause of action, the court need not wait for filing of the written



statement and instead proceed to hear the preliminary objection and reject the petition under Order VII Rule 11 of the CPC.

13. Subsequent thereto, the Respondent No. 1 filed belated written statement along with an application for condonation of delay of 82 days in filing the same. The respondent no. 1 raised various averments in the written statement, apart from challenging the pecuniary jurisdiction of the court claiming that there was no basis of computation of the damages as claimed by the Appellant, the Respondent No. 1 also questioned the territorial jurisdiction of the Courts in Delhi. All in all, the Respondent No. 1 in essence submitted that the plaint did not disclose any cause of action to invoke jurisdiction of the Court in Delhi since the circulation of the Dehradun edition of newspaper is confined to only Dehradun.

14. Thereafter, on 20.03.2017, the Learned Trial Court heard the arguments on the application for rejection of plaint filed by the Resident Respondents and vide its impugned order dated 31.03.2017 returned the plaint of Appellant herein under Order VII Rule 10 CPC on grounds that there is no averment in the entire plaint about the e-circulation being read, published, or seen by the Appellant at any other place other than Dehradun and also keeping in view that the answering Respondents are resident of Dehradun and the alleged publication has also taken place at Dehradun. Thus, the Court at Dehradun shall have the territorial jurisdiction to entertain the suit filed by the Appellant/Plaintiff.

15. Aggrieved by the return of plaint, the Appellant has preferred the present appeal.

16. The Learned Counsel for the Appellant submitted that the Learned Trial Court erred in holding contrary to the provisions of Section 19 of



CPC in not appreciating that the plaint has to be read in totality in order to ascertain the real nature and character of the plaint, same is specifically averred in paragraph 20 to submit that the impugned publication is also available to public at large through print-media and e-paper on the internet, hence it is within the jurisdiction of the court in Delhi since the cause of action has also arisen in this territorial jurisdiction.

17. Further submitted that in light of the above, the relief sought by the Appellant is legally permissible and anything contrary to the claim of the Appellant could only be established by way of leading evidence and not otherwise, thus, the impugned order dated 31.03.2017 is liable to be set aside and the Appellant be permitted to prove its claim before the Learned Trial Court.

18. Conversely, it was submitted by the Resident Respondents that the Appellant has filed a false and frivolous suit against the Respondents herein in order to harass and blackmail the residents who raised their voices against the Appellant's wrong doings and have also filed a consumer complaint before the National Consumer Disputes Redressal Commission, New Delhi highlighting the deficiency in services of the Appellant in providing the services/flats to the residents/customers.

19. Further submitted that there is no averment in the entire plaint regarding the e-circulation being read, published or seen by the Appellant at any other place outside Dehradun.

Reasons and Conclusions:

20. The scope of enquiry under Order VII Rule 10 of CPC is to be seen only from the averments made in the Plaint and the documents filed



therewith. In **RSPL Ltd. Vs. Mukesh Sharma & Ors.** (MANU/DE/1862/2016), the Division Bench of this Court held as under:

“10. It must be stated that it is a settled proposition of law that the objection to territorial jurisdiction in an application under Order 7 Rule 10 CPC is by way of a demurrer. This means that the objection to territorial jurisdiction has to be construed after taking all the averments in the plaint to be correct. In Exphar SA and Another v. Eupharma Laboratories Limited and Another: MANU/SC/0148/2004 : (2004) 3 SCC 688, the Supreme Court observed that when an objection to jurisdiction is raised by way of demurrer and not at the trial, the objection must proceed on the basis that the facts, as pleaded by the initiator of the impugned procedure, are true. The Supreme Court further observed that the objection as to jurisdiction in order to succeed must demonstrate that granted those facts, the Court does not have jurisdiction as a matter of law. It is also a settled proposition of law that while considering a plaint from the standpoint of Order 7 Rule 10 CPC, it is only the plaint and the documents filed along with it, that need to be seen. The written statement is not to be looked into at all.”

21. A Co-ordinate Bench of this Court in the case of **M/s Frankfinn Management Consultants vs. Mr. Subhash Motwani & Ors.** (2008) SCC Online Del 1049, while interpreting the scope of Section 19 of the CPC observed:

“17. The wrong within the meaning of Section 19 of the CPC in an action for defamation is done by the publication. The defendants are confusing publication in the sense of printing, with publication as in the case of libel. The publication in the sense of a libel is not the mechanical act of printing of the magazine but is of communication of the libelous article to at least one person other than the plaintiff or the defendant. In this regard also see Aley Ahmed Abdi v Tribhuvan Nath Seth 1979 All. LJ 542. If the magazine, as aforesaid, has a circulation at Delhi, then it cannot be said that the wrong would not be done to the plaintiff at Delhi and thus the courts at Delhi would have jurisdiction under Section 19 of the Act. A Division Bench in T.N.Seshan v All India Dravida Munnetira Kazhagam 1996 AlHC 4283(AP) has taken the same view. Even if the test of Section 20 of the CPC were to be applied, even then the cause



of action in part at least would accrue in Delhi. A Single Judge of the High Court of Bombay in the The State of Maharashtra v. Sarvodaya Industries AIR 1975 Bombay 197 has held that the phrase wrong done in Section 19 would clearly take in not only the initial action complained of but its result and effect also and Section 19 is wide enough to take in those places where the plaintiff actually suffered the loss because of the alleged wrongful act. It was further held that the court within whose local jurisdiction damage was caused or suffered or sustained, would clearly answer the requirements of Section 19 for the purposes of the suits mentioned therein. I respectfully concur with the said view and unless Section 19 of the CPC is so interpreted, the purpose thereof would be defeated. Similarly, State of Meghalaya & Ors v Jyotsna Das AIR 1991 Gauhati 96 also held that wrong done includes and covers the effect of the act.”

22. In “**Millenium and Copethrone International Ltd. Vs. Aryan Plaza Services Pvt. Ltd. & Ors.**” (MANU/DE/1854/2018), it was held by the Hon’ble Supreme Court:

“28. Section 19, as aforesaid, permits a suit for compensation for wrong done to the person or to the movable property to be instituted either within the local limits of the jurisdiction of the Court where the wrong was done or within the local limits of the Court where the defendant resides or carries on business or personally works for gain…….”

“…… and the plaintiff is also entitled under Section 19 supra to sue where wrong is done, all that the plaintiff is required to plead is these ingredients, howsoever miniscule they may be…….”

23. From the aforesaid decisions, it is manifest that in case of defamation, it is not the publication itself but the communication of the alleged libelous material is relevant. If the newspaper, has circulated at Delhi, then it cannot be said that the wrong would not be done to the appellant at Delhi and thus, the Court at Delhi would have jurisdiction under Section 19 of the CPC. The appellant could file suit for defamation



against the newspaper either in Delhi where the publication has been circulated or the place where the newspaper is published or respondent resides or works for gain.

24. In the Complaint, in para 19, cause of action is pleaded as under:-

19. That the cause of action arose in the favour of the Plaintiff and against the Defendants when on 26.09.2014, when in pursuance of the criminal conspiracy against the Plaintiff, the Defendants got a false news published in the aforesaid News-Paper's circulation of Dehradun dated 26.09.2014, concerning the Plaintiff under its objection alongwith the disclosure of truth by it to the Defendant No. 1, the Defendant No. 1, tendered apology assuring that this would never be recurred/repeated in future. It further arose on 10.06.2015, in the aforesaid News-Paper's circulation of Dehradun dated 10.06.2015, when the Defendants had willingly, voluntarily, intentionally and knowingly published a highly false, tortuous, lopsided, and factually-distorted and perverse news reportage under head-note, "95 LAKH LEKAR BUILDER NE KIYA KINARA" concerning the Plaintiff false and defamatory statements, assertions and imputations concerning / against the Plaintiff intending to harm its reputation and to lower its image in the estimation of the society, friends, relatives, neighbours, acquaints and public at large and the imputations had harmed directly its image and reputation in the estimation of others and society, lowered its moral & intellectual character, its credit and caused it to be believed that its company is disgraceful. It again arose on 06.04.2016 when the Plaintiffs Legal-Notice Dated 06.04.2016 issued and served upon the Defendants. It is still subsisting.

25. In para 20, the appellant has further pleaded as under:-

20. That the Cause of action has arisen not only in the throughout the territory of India [including in the throughout the territory of Delhi inclusive its Shahdara District] but in the worldwide wherein the aforesaid News-Paper's circulation of Dehradun is circulated, carried, disseminated and read by the public at large both in the forms of print-media and e-paper on internet/public domain and also within the jurisdiction of this Hon'ble Court, hence this Hon'ble Court has jurisdiction to entertain and decide this suit.



26. As is apparent from the pleadings made out in the plaint, it is clear that according to the appellant, the alleged libelous article is published in Dehradun edition, there is nothing pleaded in the Plaint as to when and how Dehradun edition has circulation in Delhi. There is not even a single averment in the Plaint that the appellant has either bought or someone has bought this Dehradun edition in Delhi. Similarly, there is no averment in the Plaint nor any document placed on record that the Dehradun edition is available in e-paper and that the appellant had read and taken a printout in Delhi. The document being the newspaper item is in Dehradun edition having circulation in Dehradun, the respondents' work for gain in Dehradun, the legal notice issued by the appellant addressed to the respondents was at Dehradun.

27. Thus, the Plaint is silent on that the wrong is done within the territorial jurisdiction of Shahdara District in Delhi, so as to give right to the appellant to choose the jurisdiction of the Courts at Shahdara District to file the Suit.

28. In view of the above discussion, no infirmity is found in the impugned order, consequently, the appeal is dismissed.

SHALINDER KAUR, J.

FEBRUARY 05, 2024/ss