

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FA 70 of 2023
IA No: CAN 1 of 2023

Ashok Kumar Paul
Vs.
Subramania Kumar, M.D. & C.E.O and others

For the appellant : Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray

Heard on : 22.05.2025

Judgment on : 22.05.2025

Sabyasachi Bhattacharyya, J.:-

1. At the time of call, none appears to represent the respondents.
2. We find from our order dated March 12, 2025 that an adjournment had been sought on behalf of the respondents on the said date as well.
3. We had recorded in the said order that in view of the short conspectus of the appeal, as enumerated therein, the appeal would be heard on the papers already on record without filing formal paper books.
4. Since the respondents choose to abstain from the hearing even today, we take up the appeal for hearing in the absence of the respondents.

5. The appeal has been preferred on a very short point. In a suit for defamation filed by the plaintiff/appellant, an application challenging the maintainability of the same was filed on behalf of the defendant/respondent no.4, on the ground that the matter pertains to a commercial dispute and, as such, should be heard by the Commercial Court and not the regular Civil Court.
6. By the impugned judgment and decree, an issue as to maintainability was, *inter alia*, framed by the learned Trial Judge and the learned Trial Judge dismissed the suit as not maintainable.
7. Learned counsel appearing for the appellant argues that a suit for defamation cannot be classified as a commercial dispute from any perspective. Even otherwise, the date on which the suit was dismissed was fixed for hearing on the issue of maintainability and not for hearing of the suit.
8. It is pointed out that the suit is maintainable in all respects.
9. Upon a careful perusal of the materials on record, we find that in the application under Section 151 challenging the maintainability of the suit, it was merely pointed out that the amount as claimed by the plaintiff is beyond the pecuniary jurisdiction of the court in terms of Section 3(1) of the Commercial Courts Act, 2015 (for short “the 2015 Act”). The learned Trial Judge, without advertent to the meat of the matter or even without advertent to the definition of “commercial dispute” in the 2015 Act, by a one-liner, held that he was of the opinion that the plaintiff failed to *prima facie* prove maintainability of

the suit or having sufficient cause of action and, as such, decided both the preliminary issues, as to maintainability and cause of action, against the plaintiff and dismissed the suit.

10. We are rather shocked by the above approach of the learned Trial Judge. Insofar as the dismissal of the suit is concerned, in any event the learned Trial Judge went *de hors* the law in dismissing the suit on the ground that the plaintiff did not have sufficient cause of action at the threshold, by framing a preliminary issue thereon, without permitting the parties to adduce evidence in connection with the suit. Even in the impugned judgment, the learned Trial Judge records that such findings were *prima facie*. Thus, the learned Trial Judge could not have dismissed the suit itself on such *prima facie* findings.
11. The question as to whether the plaintiff has sufficient cause of action can only be decided upon a regular trial, upon considering the evidence adduced by the parties, and not at the outset, as opposed to a situation where a plaint can be rejected if no cause of action is *disclosed*. The learned Trial Judge did not find that no cause of action was disclosed but framed a preliminary issue on the question as to whether there was sufficient cause of action to suit.
12. Apart from the fact that such issue could not be formulated within the contemplation of Order XIV Rule 2 of the Code of Civil Procedure as a preliminary issue, since mixed questions of fact and law were involved, the said issue was also decided erroneously, on the basis of

mere *prima facie* findings, without granting any opportunity to the parties to adduce evidence.

13. The learned Trial Judge acted with palpable illegality on the other issue of maintainability as well.
14. The Commercial Courts Act, 2015, in Section 2(1)(c), specifically defines a “commercial dispute”.
15. A suit for defamation does not come within the purview of such disputes at all, there being no commercial element involved. The learned Trial Judge proceeded on an erroneous premise that merely if the valuation of the suit was above the “Specified Value”, as defined in Section 2(1)(i) of the 2015 Act, the same would be captioned as a commercial dispute.
16. On a careful perusal of the plaint, we find that the cause of action of the suit, as disclosed in the plaint, entirely revolves around the allegation of defamation of the appellant by his clients, the respondents, and there is no element of commercial transaction at all.
17. A claim for defamation cannot, under any stretch of imagination, be held to be a commercial dispute as such.
18. Thus, we are of the considered opinion that the learned Trial Judge erred in law in dismissing the suit as being barred by law since it was a commercial dispute in his perception.
19. Accordingly, FA 70 of 2023 is allowed *ex parte* against the respondents, thereby setting aside the impugned judgment and decree dated December 16, 2022 passed by the learned Civil Judge (Senior

Division), Second Court at Paschim Medinipur, District: Paschim Medinipur in Money Suit No. 62 of 2019 and remanding the matter to the learned Trial Judge for adjudication of the suit on a full-fledged trial on merits, upon giving adequate opportunity to both sides to adduce evidence and advance arguments.

20. It is expected that the disposal of the suit shall be completed as expeditiously as possible, preferably within a year from the date of communication of this judgment to the learned Trial Judge.
21. There will be no order as to costs.
22. IA No: CAN 1 of 2023 is disposed of consequentially as well.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)