

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

CO 172 of 2024

Nripendra Nath Das

Vs.

Thomas Basumatari

For the petitioner : Mr. Bikramaditya Ghosh
Mr. Debanjan Das
Mr. Swarup Das

Heard on : 09.01.2025

Judgment on : 09.01.2025

PARTHA SARATHI SEN, J.:

1. The affidavit-of-service as filed today is taken on record.
2. In this revisional application as filed under Article 227 of the Constitution of India the Order No. 26 dated August 7, 2024 as passed in Money Suit No. 3 of 2019 by the learned Civil Judge (Senior Division), Siliguri is impugned. By the said impugned order learned trial court has been pleased to reject the defendant's application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint. The defendant felt aggrieved and thus preferred the instant revisional application.

3. In course of his argument Mr. Ghosh, learned advocate appearing on behalf of the petitioner at the very outset draws attention of this Court to the copy of the plaint of Money Suit No. 3 of 2019 as filed before the learned trial court. It is submitted by Mr. Ghosh that on perusal of the said plaint it would reveal that the defendant/petitioner herein made some allegations against the plaintiff to some dignitaries being a Minister of Union of India and a Member of Parliament and a copy of which was forwarded to the plaintiff.
4. It is further submitted by Mr. Ghosh that the contents of the said letter bear some allegations against the plaintiff but by no stretch of imagination it can be termed as libel. It is further argued by Mr. Ghosh that within the four corners of the plaint no averment has been made by the plaintiff that the alleged libel as alleged to have been made has been made public which have a tendency to lower down the prestige and reputation of the plaintiff.
5. Mr. Ghosh, learned Advocate for the defendant/petitioner at this stage draws attention of this Court to the provision of Order VII Rule 11 of the Code of Civil Procedure. It is submitted by Mr. Ghosh that since within the four corners of the plaint there is no averment that any publication of any scandalous statement allegedly made by the defendant against the plaintiff has been made, by no

stretch of imagination it can be said that a cause of action at all arises for filing a suit for defamation.

6. Mr. Ghosh in course of his argument requests this Court to peruse Paragraph 17 of the plaint wherein the statement regarding arising of cause of action has been disclosed. It is submitted by Mr. Ghosh that mere issuance of a letter by the defendant to some dignitaries does not constitute a cause of action in a suit for defamation. It is thus submitted that the defendant/petitioner is thus very much justified in filing the petition for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure before the learned trial court and the learned trial court ought not to have rejected the same by passing the impugned order.
7. In course of his argument Mr. Ghosh places his reliance upon a reported decision namely, **S.T.S. Raghavendra Chary vs. Cheguri Venkat Laxman Reddy** reported in **2018 SCC OnLine Hyd 2115**.
8. This Court has meticulously perused the copy of the plaint of Money Suit No. 3 of 2019, the copy of the petition under Order VII Rule 11 of the Code of Civil Procedure as well as the impugned order as passed by the learned trial court. This Court has also gone through the reported judgment of **S.T.S. Raghavendra Chary (supra)** as cited from the side of the defendant/petitioner.
9. For effective adjudication of the instant revisional application the provision of Order VII Rule 11 of the Code of Civil Procedure is

required to be looked into and the same is quoted hereunder in verbatim:

“11. Rejection of plaint – The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9:*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

10. Keeping in mind the proposition of law relating to the rejection of
plaint, this Court now proposes to look to the plaint as filed in
Money Suit No. 3 of 2019. Admittedly, the plaintiff before the
learned trial Court had filed the said suit praying for decree for
damages on account of his alleged defamation on the ground that
the defendant/petitioner herein on 03.08.2018 issued a letter to a
Union Minister and a Member of Parliament wherein some
allegations have been levelled against the plaintiff. It is the further
case of the plaintiff that those allegations are not only delegatory
but also contemptuous and baseless. It is the further plaint case
that such a copy of such letter dated 03.08.2018 was forwarded to
the plaintiff.
11. Before the learned trial Court, the defendant filed the application
for rejection of plaint under Order VII Rule 11 of the Code of Civil
Procedure praying for rejection of the plaint basically on the ground
that the said plaint does not disclose cause of action. It is known to
us that cause of action is not defined in any law. Causes of action
is a bundle of facts which taken with the law applicable to them
gives the plaintiff the right to relief against the defendant. Every
fact which is necessary for the plaintiff to prove to enable him to get
a decree should be set out in clear terms. A cause of action must
include some act done by the defendant since in the absence of
such an act no cause of action can possibly accrue.

12. At this juncture, a question arises as to whether a cause of action at all arose in favour of the plaintiff prior to filing of Money Suit No. 3 of 2019 by the plaintiff before the learned trial Court. At this juncture, this Court proposes to look to the reported decision of **S.T.S. Raghavendra Chary (supra)** as cited from the side of the defendant/petitioner. The relevant portions of the said reported decision are as under:

“20. In B.P. Bhaskar V. B. P. Shiva (3) 1993 Cri LJ 2685, the accused was stated to have incorporated certain scurrilous imputations against the complainant in the notice issued by him. The notice so issued by the accused, it is said, had also been circulated to the friends and relations of the complainant. Consequently, it is said, the good name and fame enjoyed by the complainant was brought down and he was despised and neglected in many social functions by his close relatives and friend circle. But the Madras High court, by placing reliance on the judgment of the Kerala High Court in P.R. Ramakrishnan v. Subbaramma Sastrigal (4) 1988 Ker 18 held that the sending of a communication to an advocate on behalf of his client is virtually a communication made to the client himself, as such there is no publication of the imputation concerning the client.

21.But the respondent contended that issue of reply would not constitute a publication and in the absence of any publication, it would not amount to

libelous statement containing defamatory allegations and thereby, the petitioner is not liable to be proceeded for the offence punishable under Section 500 I.P.C. The Bombay High Court in paragraphs 13 & 14 of the judgment, held as follows:

13. Next, as far as this incident is concerned, on behalf of the accused, it is contended that there was no publication, even if it is considered that para 17 of notice dated 24.7.2004 contained defamatory statements since the said letter was sent by the Advocates of the parents of A1/Smt. Suniti to the Advocate of the complainant. It is further submitted that in the case Advocate Mr. Shrikant Nayak, on behalf of the complainant, chose to show the said letter to his junior of his office staff, A2/Shri Ravi and A3/Smt. Reena cannot be blamed for the same. On behalf of the accused, reliance has been placed on *P.R. Ratnakrishnan v. S. Sastrigal*, [AIR 1988 Ker 18], and also on *[B.P. Bhaskar v. B.P. Shiva]*, wherein the decision in the first case has been followed.

14. As already stated, the said letter dated 24.7.2004 was sent as a reply to the notice dated 28.6.2004 sent on behalf of the complainant demanding from the parents of A1/Smt. Suniti the said sum of Rs. 3,91,253/- and the reply dated 24.7.2004 was sent on behalf of the said parents A2/Shri Ravi and A3/Smt. Reena by their Advocates. In my view, the said letter dated 24.7.2004, assuming it contained defamatory statements of the complainant was sent by the parents

*of A1/Smt. Suniti to the complainant himself, through their respective lawyers. There was no third person involved. In the first case of P.R. Ratnakrishnan v. Sastrigal (supra), it has been stated that sending of a communication to an Advocate on behalf of his client is virtually a communication made to the client himself and as such there is no publication of the imputation concerning the client. It may also be stated that in this case it was also held that a dictation given by a lawyer to his **Clerk and the transcription made by him of a per se libelous matter cannot amount to publication.**"*

13. In considered view of this Court, the proposition of law regarding defamation has been correctly defined in the reported decision of **S.T.S. Raghavendra Chary (supra)**.
14. On further perusal of the copy of the plaint, it appears to this Court that it is the plaint case that the letter of the defendant contained defamatory statement against the plaintiff is baseless which has a tendency to damage the image, goodwill and reputation of the plaintiff to his superior, colleagues, friends, relations and before public in general..
15. As rightly pointed out by Mr. Ghosh that there is practically no averment in the said plaint that the copy of the letter dated 03.08.2018 as issued by the defendant containing defamatory allegations against the plaintiff have been circulated amongst those

persons. For the sake of argument, even if it is accepted that the contents of the letter dated 3.08.2018 as has been issued by the defendants is scandalous but the same has been addressed to two individuals only in the form of an allegation and by no stretch of imagination, it can be said that it would attract a cause of action for filing defamation in absence of any averment regarding circulation of the same with the public at large.

16. This Court thus finds sufficient merit in the instant revisional application.
17. Accordingly, the instant revisional application is hereby allowed. Consequently, the petition under Order VII Rule 11 CPC as filed by the defendant before the learned trial Court in Money Suit No. 3 of 2019 stands hereby allowed.
18. Consequently, the plaint as filed in Money Suit No. 3 of 2019 stands hereby rejected.
19. With the aforementioned observations, the instant revisional application being **CO 172 of 2024** is thus disposed of.
20. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)

Suvayan Ghosh
Sourav Banerjee
A.R. (Court)s