

A.No.98 of 2019
in
C.S.No.870 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 06.08.2019

ORDER PRONOUNCED ON : .08.2019

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.No.98 of 2019

in

C.S.No.870 of 2017

Dr.Vidyaa Hari Iyer

... Applicant/ Defendant

Vs.

M/s.Metallic Bellows India Pvt Ltd.,
Represented by its Director
Padma Ramesh,
3/136, East Coast Road,
Vettuvankani,
Injambakkam, Chennai - 600 041.

... Respondent/ Plaintiff

PRAYER:- This Application has been filed seeking to reject the plaint in
C.S.No.870 of 2017 pending on the file of this Hon'ble Court.

For Applicant : Mr.T.Mohan

for Mrs.Vijayalakshmi K.Rajaratnam

For Respondent : Mr.P.H.Aravind Pandiyan
assisted by Mr.R.Kumar

ORDER

This Application has been filed by the defendant in the suit seeking rejection of the plaint on the ground that it does not disclose the cause of action.

2. The suit is one for damages for defamation and for costs.

The case of the plaintiff is as follows:-

3. The plaintiff is a Private Limited Company doing business in design and manufacture of Bellows for Space, Aerospace and Defense. The plaintiff is the sole supplier of Bellows to the Indian Space Research Organization. According to the plaintiff, it enjoys a very good reputation having achieved a high level of customer satisfaction by manufacturing and supplying products conforming to International standards. The plaintiff is a ISO 9001:2008 and Aerospace AS 9100 certified Company.

4. The plaintiff is a very closely held Company and the defendant's husband late G.Hari who is the son of the Promoter was holding 2770 equity shares. Apart from being a share holder he was also an employee of the Company. The husband of the defendant G.Hari passed away on 18.09.2015 leaving the defendant as his only surviving legal heir without any issues.

5. After the death of her husband, the defendant became inimically disposed towards the other share holders and the Promoter of the Company. She started addressing various complaints to the Authorities viz., the Registrar of Companies, Central Provident Fund Commissioner and others making false and frivolous allegations against the Company and its Promoters. She also lodged several police complaints with the All Women Police Station, T.Nagar forcing the other share holders, the Company Secretary and Chartered Accountant to appear before the Police. This forced the Directors of the Company to approach this Court seeking a relief of not to harass in Crl.O.P.No.16733 of 2017.

6. The defendant also issued a legal notice on 12.08.2017 to the Promoter of the Company Mr.R.Gopalakrishnan, Mrs.Padma Ramesh, Director, Mr.G.Shankar son of Mr.R.Gopalakrishnan, Mrs.Sujatha, wife of G.Shankar, Mr.G.Ramesh Husband of Mrs.Padma Ramesh, Mr.N.Balachandran, Company Secretary and Mr.S.Sriram, Chartered Accountant putting them on notice about her impending visit to the Company and requiring them to intimate her a day of their convenience before 30.08.2017 so as to enable her to enter the premises of the plaintiff along with her Chartered Accountant and team to inspect the records maintained. The notice also carried a threat to the effect that she will be constrained to approach the regulatory Authorities including Registrar of Companies, Ministry of Corporate Affair, National Company Law Tribunal and other Organizations if she is denied entry.

7. It is also avered in the plaint that the defendant along with certain un-identified persons attempted to gate crash into the plaintiff's premises on 31.08.2017 around 12.30 p.m. This necessitated a visit of the Inspector of Neelankarai Police Station to the plaintiff's premises. Not stopping there,

the defendant also lodged a complaint with the Commissioner of Police, Chennai. The Commissioner of Police advised her to resolve the issue through Court as the matter involved is a civil dispute regarding the transmission of shares in the Company.

8. According to the plaintiff, the above actions of the defendant are with the deliberate and malafide intention to defame the reputation and good will of the Company. It is also the case of the plaintiff that the defendant's letter addressed to the Registrar of Companies dated 08.09.2017 making un-true and false allegations amounted to defamation and the said letter was not written with a genuine intention of redressal of her grievances.

9. The claim that her husband's Provident Fund was not settled is also incorrect. The complaint about the actions of the plaintiff had caused considerable damage to the reputation of the plaintiff apart from affecting its business. Hence, the plaintiff had come forward with the above suit seeking recovery of a sum of Rs.10 Crores as damages.

10. Upon service of notice, the defendant has come up with the application seeking rejection of the plaint as stated above.

11. According to the defendant, the present suit is only an attempt to prevent her from seeking remedy before the appropriate Authorities for the statutory lapse committed by the plaintiff in transmission of the 2770 equity shares held by her husband, non-processing of the EPF and other allied benefits payable to her husband, making illegal attempts to throw the plaintiff out of the matrimonial home and for other reliefs. Pointing out that all her actions were strictly in accordance with law, the defendant would contend that the present suit is bereft of cause of action.

12. The defendant would further contend that all that she has done is to invite the attention of the Authorities to the illegal actions of the plaintiff Company and its Directors in denying her, her rightful share in the estate of her husband. She would also claim that as a share holder of the Company she has a right to inspect the accounts of the Company and the claim of the plaintiff that she attempted to trespass into the Company is nothing but false.

13. Setting out the cause of action pleaded in the plaint, the defendant would submit that none of the allegations, even assuming them to be true, would constitute a cause of action for defamation. It is also contended that the plaintiff being a Company cannot seek damages for loss of reputation. In the absence of any allegations regarding loss of business, according to the defendant, the suit itself is not maintainable.

14. The respondent/ plaintiff has filed a counter to this application contending that a wholesome reading of the complaint would disclose a cause of action. It is also contended that lodging of a complaint in the All Women Police Station with false acquisitions against the Directors of the Company as well as the Company Secretary and the Chartered Accountant would show that the intention of the defendant was to malign the Company and to defame it.

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15. It is further contended that the action of the defendant in writing letters to various Authorities making false and serious allegations of suppression and commission of fraud by the Company would invariably

result in damage to the reputation of the Company and therefore, the action for compensation for damages is perfectly maintainable.

16. From the allegations and counter allegations made in the affidavit and the counter affidavit, the only question that is to be decided is as to whether the plaint discloses the cause of action for the suit?

17. I have heard Mr.T.Mohan, learned counsel appearing for Mrs.Vijayalakshmi K.Rajaratnam for the applicant and Mr.P.H.Arvind Pandiyan, learned Senior Counsel appearing for Mr.R.Kumar for the respondent.

18. While elaborating on the claim for rejection of plaint, Mr.T.Mohan, learned counsel for the applicant/ defendant would contend that all that has been done by the defendant is to espouse her grievance against the Company before the Statutory Authorities like the Registrar of Companies, the Central Provident Fund Commissioner and others who have the duty to see that the Company does not jeopardise the interest of the share holders and its employees. Pointing out that there has been a huge

delay of two years in transmission of shares Mr.T.Mohan would contend that the very delay would justify her actions in approaching the Authorities. On the complaint being lodged with the Registrar of Companies, Mr.T.Mohan would submit that it was the delay in response to her request for transmission of shares which forced her to approach the Authorities.

19. He would also point out that the Employees Provident Fund payable to her husband was not paid for nearly 2 years which again forced her to approach the Provident Fund Authorities seeking redressal. It is the further contention of Mr.T.Mohan that as a share holder of the Company she is entitled to inspect the accounts and only upon being denied permission to inspect the accounts she was forced to visit the Company with her Chartered Accountant. Even then, according to Mr.T.Mohan, the plaintiff and its present Directors were not inclined to allow her inside the Company which resulted in a Police complaint being lodged.

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20. Pointing out that the publication is an essential element for constituting defamation, Mr.T.Mohan would submit that mere writing of letters to the Statutory Authorities that too by person interested as a share

holder would by no means amount to defamation. The sum and substance of the contentions of Mr.T.Mohan is that since there is no publication of the so called defamatory materials, there is no cause of action for the suit.

21. Contending contra Mr.P.H.Arvind Pandiyan, learned Senior Counsel appearing for the respondent/ plaintiff would submit that the request for transmission of shares was received by the plaintiff Company only on 07.09.2017 and the required forms were sent to the defendant even on 21.09.2017 and the shares were eventually transmitted in the name of the defendant on 04.12.2018. Therefore, according to the plaintiff, there has been no delay in the transmission of shares. He would also point out that even on 08.09.2017 i.e., a day after making request for transmission, the defendant has chosen to forward a complaint to the Registrar of Companies complaining about the non-transmission of shares.

22. It is also pointed out that even before the transmission of shares could take place the defendant had attempted to trespass into the Company on 31.08.2017. These actions coupled with the fact that the defendant had lodged a police complaint to the All Women Police Station,

T.Nagar even on 08.08.2017 would according to Mr.P.H.Arvind Pandiyan demonstrate that the intention of the defendant was only to malign and defame the plaintiff to the extent possible.

23. Mr.P.H.Arvind Pandiyan would also point out that the Registrar of Companies had by his letter dated 19.09.2017 required the plaintiff to submit its reply to the complaint made by the defendant on 08.09.2017 and on 25.09.2017, the Company in fact responded to the notice issued by the Registrar of Companies. These actions according to Mr.P.H.Arvind Pandiyan were not spontaneous with the hope of getting the due shares of her husband in the Company. According to him, these actions would themselves constitute defamation and the plaintiff is entitled to maintain the suit for damages.

24. I have considered the rival submissions. The cause of action paragraph in the plaint reads as follows:-

“The plaintiff submits that cause of action for the present suit arose on 12.08.2017 when the defendant issued notice calling upon the plaintiff to intimate within 7 days a day of

convenience before 30.08.2017 to enter the premises, on 30.08.2017 when a reply notice on behalf of plaintiff was sent through their lawyer to the defendant, on 30.08.2017 the defendant by issuing a notice informing the plaintiff that the defendant would enter the premises of the plaintiff along with her appointed auditor Mr.Prabakar, Partner, M/s.M.R.Narain & Co., Chartered Accountants and team will be visiting the plaintiff premises on 31.08.2017 at 12 noon failing which she will be constrained to approach the regulatory authorities including Registrar of Companies, Ministry of Corporate Affairs, National Company Law Tribunal, Serious Fraud Investigation Office and Income tax Authorities, on 31.08.2017 when the defendant along with a group of people visited the plaintiff premises and created a scene, on 08.09.2017 when the defendant issued a letter to Registrar of Companies, Chennai, on 19.09.2017 when the Registrar of Companies issued a notice to furnish parawise reply/ comments and on 25.09.2017 when the plaintiff issued a reply notice to Registrar of Companies, on 21.09.2017 when the defendant marked a

copy of the letter to the Provident Commissioner, and on various subsequent dates when the plaintiff suffered injury and defamation of reputation, morale, pride, integrity, goodwill and dignity of the plaintiff which they had built over the years and enjoying and that the defendant has her residence at T.Nagar, Chennai 600 017 withing the territorial jurisdiction of this Hon'ble Court. Hence, all the cause of action has arisen within the jurisdiction of this Hon'ble Court.”

25. A reading of the cause of action paragraph would show that all that is pleaded as cause of action for the suit is

1. Lodging of a police complaint with W-25, All-Women Police Station on 08.08.2017.

2. Addressing a letter to the plaintiff seeking a date for inspection of the accounts on 12.08.2017.

3. Addressing another letter to the plaintiff on 30.08.2017 signifying the intention to inspect the accounts on 31.08.2017.

4. Visiting the Company on 31.08.2017 accompanied by third persons.

5. Addressing the Registrar of Companies on 08.09.2017 complaining about non-transmission of shares.

6. Show cause notice issued by the Registrar of Companies on 19.09.2017.

7. The reply dated 25.09.2017 by the plaintiff to the Registrar of Companies.

8. Complaint made to the Provident Fund Commissioner on 21.09.2017.

The above actions of the defendant, according to the plaintiff would constitute the cause of action for the suit.

26. It is not in dispute that the plaintiff is a very closely held Company and the share holders are the family members. The husband of the defendant is the son of the Promoter of the Company Mr.R.Gopalakrishnan. The other share holders are the sons and daughter of Mr.R.Gopalakrishnan. The husband of the defendant died on 18.09.2015. After the death of her husband, according to the defendant, the other share holders did not transmit the shares of her husband to her and that she had been put to considerable difficulties because of the attitude of the other share holders and the Promoter towards her.

27. Mr.P.H.Arvind Pandiyan, learned Senior Counsel appearing for the plaintiff/ respondent would strenuously contend that the action of the defendant in writing letters to various authorities without there being any reasonable cause in order to complain would constitute defamation and the plaint cannot be rejected on the ground of non-disclosure of cause of action when it discloses certain cause of action in the form of letters written by the defendant herself to various Authorities.

28. He would also draw my attention to the judgment of the Court of Appeal in *South Hetton Coal Co. Vs. North-Eastern News Association, Ltd., and others* reported in [1891-4] All E.R. Rep. 548 in support of his contention that a Company can maintain a suit for damages for defamation. He would draw my attention to the following observations of the Court of Appeal in support of his contention that a Corporation can maintain a suit for damages for defamation.

“Then, with regard to a firm or a corporation, no exhaustive account can be given of the kinds of statement which are libellous, or are not libellous. The rule of law, however, is the

same as in the case of an individual. If a firm or a corporation carry on a business, they may carry it on in such a way as to lead a person to say that they carried it on in a bad way. Such a statement would be a libel on the business, and the law is the same as in the case of an individual. That statement, if true, would lead an ordinary person to say that they managed their business in so inefficient a way as to lead people to entertain feelings of contempt of ridicule towards them. It follows, therefore, that the law is the same in all respects in the case of a corporation and of an individual. ”

29. Relying upon the above observations of the Court of Appeal Mr.P.H.Arvind Pandiyan, learned Senior Counsel appearing for the respondent/ plaintiff would contend that the rule of law is the same as in the case of individual, insofar as it relates to a suit for damages for defamation by a Company.

30. He would also draw my attention to the judgment of this Court in ***The Dovetone-Corrie Protestant Schools Association Vs. Dr.Prof.***

Geoffery K. Francis reported in **2012 (3) MWN(Cr.) 457**, wherein, this Court had held that the test to be applied is as to whether the person accused of the commission acted in good faith and his accusation was for public good or for protection of his or her interests.

31. My attention is also drawn to another judgment of this Court in *Dr.R.Krishnamurthy Vs. Sun TV Network Limited* reported in **2008 (1) MWN (Cr.) 196** in support of his submission that a Company can maintain a complaint for defamation under Section 499 and 500 of Code of Criminal Procedure.

32. Mr.P.H.Arvind Pandiyan would also rely upon the judgment of the Gujarat High Court in *Housing Development Finance Corporation Ltd and others Vs. Sureshchandra V.Parekh and another* reported in **2014 SCC OnLine Guj 1975**, wherein, the Court again went into the question of maintainability of an action for defamation by a Company.

33. Considerable reliance is placed by Mr.P.H.Arvind Pandiyan on the judgment of the Delhi High Court in *Raj Nath Khosla Vs. Acharya Dr John*

R Biswas and others reported in **197 (2013) DLT 728** to contend that writing of letters to Authorities by a person can also be made a ground for defamation.

34. Mr.T.Mohan, learned counsel appearing for the applicant would rely upon the judgment of the High Court of Rangoon in ***Maung Chit Tay Vs. Maung Tun Nyun*** reported in ***AIR 1935 Rangoon 108*** in support of his contention that unless it is shown that the allegations have been made against the Company, the Company cannot maintain a suit for damages for defamation.

35. Mr.T.Mohan would draw my attention to the observations of the Rangoon High Court which run as follows:-

“Now, as I have said, it is clear that U Chit Tay's pamphlet was an attack not upon the Committee as such, but upon certain members of the Committee personally, and it is not suggested that the Municipality of Paungde has suffered any damage by reason of the publication of this pamphlet. Consequently, the Municipal Committee cannot maintain a

prosecution for defamation against U Chit Tay in respect of the publication of this pamphlet, and therefore the complaint filed by U Tun Nyun on behalf of the Committee ought not to have been entertained, and U Chit Tay should not be called upon to rebut a charge based upon this complaint. Consequently the proceedings pending against the applicant, U Chit Tay in Criminal Regular No.51 of 1934, of the Second Additional Magistrate of Paungde are quashed. ”

36. Relying upon the above observations, Mr.T.Mohan would contend that in the absence of allegations against the Company as such, an action for damages for defamation would not be maintainable. As already stated, the only question that is to be dealt with is as to whether the suit discloses the cause of action. I have set out the cause of action pleaded in the suit supra. The only complaint of the plaintiff is that the defendant had been writing letters to various Authorities apart from lodging a complaint with the jurisdictional Police Station. These actions of the defendant had resulted in loss of reputation of the Company and hence, the defendant is liable for damages.

37. From the available materials and a reading of the plaint, it could be seen that the plaintiff's claim is that the defendant has made several complaints to various statutory Authorities regarding non-compliance with certain statutory requirements by the Company and its Directors. All the complaints have been addressed to the statutory Authorities who under law have an obligation to ensure a proper functioning of the Company.

38. If we are to examine the question of publication strictly, I find that there has been no publication of any defamatory allegations against the Company or its Directors which will have the effect of lowering the reputation of the plaintiff Company in the eyes of the public or other persons.

39. Complaints have been lodged only to the statutory Authorities who have an obligation under law to ensure proper and smooth functioning of the Company. Even in the judgment relied upon by Mr.P.H.Arvind Pandiyan in *Raj Nath Khosla Vs. Acharya Dr John R Biswas and others* reported in **197 (2013) DLT 728**, the Delhi High Court had extracted the

observations of the Patna High Court in *Pandey Surendra Nath Sinha Vs. Bageshwari Pd.* reported in *AIR 1961 Patna 164* which reads as follows:-

“If a person who makes the statements has an interest or duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has as corresponding interest or duty to receive it such statement commands a privilege and cannot be made basis of an action for defamation.”

40. It is also seen that the above principle was reiterated by the Delhi High Court in *The Punjabi Bagh Cooperative Housing Society Limited Vs. K.L.Kishwar and others* reported in *95 (2002) DLT 573*. In *The Punjabi Bagh Cooperative Housing Society Limited Vs. K.L.Kishwar and others* case, the Delhi High Court has also referred to various English judgments which reiterate the above position of law. Therefore, though a Company can maintain an action for defamation it should be shown that the defamatory material was published or it should be shown that the statements made or complaints made to lawful Authorities were made by a person who does not have interest in the Company, in order to constitute the basis for an action for damages for defamation.

41. In the case on hand, the defendant admittedly is the wife of a share holder and upon the death of the share holder, she inherits the interest of the deceased share holder in the Company. Fortunately, the status of the defendant is not disputed by the plaintiff. Therefore, the applicant/ defendant as the wife of the share holder is entitled to shares and as the wife of an employee is entitled to the benefits of the employee on his death.

42. The defendant had a right to complaint to the statutory Authorities about the non-disbursement of the benefits or non transfer of the shares of her husband. May be the action of the defendant in writing letters to various authorities would constitute a cause of action for defamation if it is shown that she had no interest in the Company or its affairs. The same is not the case here. The defendant who is the daughter-in-law of the Promoter of the Company and wife of one of the Directors and employee of the Company, is entitled to transmission of shares that stood in the name of her husband and the benefits that her husband is entitled to as an employee of the Company.

43. In seeking the benefits from the Company, the defendant was undoubtedly entitled to address the statutory Authorities complaining about the non-payment or non-disbursement of the benefits by the plaintiff Company. This action of the defendant in my considered opinion do not in any way constitute cause of action for a suit for damages for defamation. The claim of the plaintiff that its reputation has been lowered in the eyes of the public appears to be illusory.

44. The plaintiff admittedly is a closely held Company wherein only the family members are the share holders. The complaints have been lodged against all the family members. If the plaintiff fails to honour its commitment towards its share holder, it is open to the share holder to approach the Registrar of Companies or other Authorities who have a statutory duty to ensure the payment of benefits to the legal heirs of the share holders or the employees.

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45. In *The Punjabi Bagh Cooperative Housing Society Limited Vs. K.L.Kishwar and others* reported in **95 (2002) DLT 573** referred to supra, the Delhi High Court had held that the allegations made in various

complaints by the members of the Cooperative Society against its Office bearers to the Authorities under law cannot be made a basis for action for damages for defamation. While doing so, the Delhi High Court had observed as follows:-

“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. The defendants who were members of the society had the right and duty to complain to the office bearers of the society and concerned authorities under the law against the mismanagement of affairs/ funds of the Society and vice-a-versa, the office bearers and authorities having control over the Society were obliged/ entitled to entertain such complaints and look into them. The reciprocity of interest/ obligation is thus manifest. Obvious conclusion, Therefore, is that allegation/ statement contained in such communications, petitions/ complaints are privileged. They can not be

made the basis of an action for damages for defamation. This suit, Therefore, is not maintainable, under the law.”

46. The above observations of the Delhi High Court and the observations of the Rangoon High Court in **Maung Chit Tay Vs. Maung Tun Nyun** reported in **AIR 1935 Rangoon 108** read with the observations of the Delhi High court in **Raj Nath Khosla Vs. Acharya Dr John R Biswas and others** reported in **197 (2013) DLT 728** would show that the complaints made to the statutory Authorities by persons interested in the Company cannot be made a cause of action for defamation.

47. As already stated, the entire allegations in the plaint is that by writing letters to various Authorities and by lodging police complaints, the defendant has caused loss of reputation to the plaintiff. Once it is concluded that mere writing of letters by person interested would not amount to defamation, the inevitable consequence is that the suit for damages against the defendant would not be maintainable merely because the defendant chose to complain to the Authorities regarding the inaction or non-action on the part of the plaintiff.

48. I am unable to resist the temptation to observe that this very suit has been brought about only to scuttle the defendant from seeking remedy under law to indicate her rights. These kind of suits for damages are brought about only to prevent the defendants therein from speaking upto their rights or approaching the Authorities seeking redressal. In the domain of public law, such suits were classified as Strategic Law Suits against Public Participation which is described as a strategy adopted by persons who are affected by such publications to terrify the publishers.

49. The Hon'ble Mr. Justice S. Ravindra Bhat of Delhi High Court had an occasion to consider the issue relating to the SLAPP suits in his judgment in ***Tata Sons Limited Vs. Greenpeace International and others*** reported in ***2011 SCC OnLine Delhi 466***. It is not uncommon that persons file such suits claiming phenomenal and substantial damages even though they are aware that they are not going to succeed in their claim only with a view to prevent others from publishing materials which may damage or impair their reputation.

50. Even though this suit is not one against publishers, but it is quite evident that this suit is also an attempt to prevent the defendant from seeking redressal of her grievances through statutory Authorities. I am therefore convinced that this suit does not disclose cause of action and the letters written by the defendant to the Statutory Authorities and the complaint made by her to the Police cannot be construed as publication of defamatory statements.

51. No doubt true, making false and repeated complaints against the Company or a Society or a Public Organization would have the effect of tarnishing its image resulting in damages. At the same time, if a person who has an interest in the Company or Organization complains about its functioning or performance, the same cannot at any stretch of imagination be construed as defamation. I am therefore of the considered opinion that the suit does not disclose cause of action and the cause of action pleaded is only illusory and imaginary. Therefore, the plaint has to be rejected and it is accordingly rejected.

52. In fine, the Application in A.No.98 of 2019 is allowed. The plaint in C.S.No.870 of 2017 will stand rejected. However, in the circumstances there will be no order as to costs.

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Index : Yes/ No

Internet: Yes/ No

Speaking order/ Non-Speaking order

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