
(2018) 05 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 87 of 2018

Dina Nath

APPELLANT

Vs

Amit Kumar & others

RESPONDENT

Date of Decision : 15-05-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 16, Order 22 Rule 3
Constitution of India — Article 227

Citation : (2018) 187 AIC 843

Hon'ble Judges : CHANDER BHUSAN BAROWALIA

Bench : Single Bench

Advocate : Vijay Bhatia

Final Decision : Allowed

Judgement

Chander Bhusan Barowalia, J.

1.The present petition is maintained by the petitioner under Article 227 of the Constitution of India against the order dated 19.01.2018, passed by the

learned Civil Judge (Junior Division) Court No. 3, Ghumarwin, District Bilaspur, in CMA No. 30/6 of 2018 in Civil Suit No. 456/1/17/14, wherein, the

application of the petitioner under Order VI, Rule 16 CPC, for deletion of defamatory and scandalous remarks against the petitioner in the written

statement filed by the respondents/defendants, has been dismissed.

2. Briefly stating facts giving rise to the present petition are that the plaintiff Hardassi (now deceased) maintained the Civil Suit No.

456/1/17/14, titled as Hardassi Devi vs. Amit Kumar & others, on 17.4.2014, before the learned Civil Judge (Junior Division), Ghumarwin, District

Bilaspur, but during the pendency of the said suit, plaintiff Hardassi Devi had died on 25.06.2014. The present petitioner, who is practicing advocate,

on the instructions and directions of her testamentary successor Kamlesh Chand, son of Shri Bhagat Ram, filed an application under Order 22, Rule 3

CPC, for impleading him as plaintiff in place of Hardassi Devi as the deceased Hardassi had executed a valid and registered Will on 06.12.2013 in

favour of Kamlesh Kumar.

3. By filing written statement, respondents /defendants, have levelled allegations against the petitioner, which are defamatory, scandalous, frivolous,

vexatious and are against the rule of pleading and thereby injured the conscience and moral of the present petitioner. Thus, the petitioner maintained

the application under Order VI, Rule 16 CPC, for deletion of defamatory and scandalous allegations levelled against him in the written statement filed

by the respondents/defendants, which was dismissed by the learned Court below vide order dated 19.01.2018. Hence, the petition.

4. Respondents served, but they have neither appeared before this Court on the last date of hearing nor today and the case was heard in their

absence.

5. The learnedÂ counsel for the petitioner has argued that the plea in the suit has been taken as per instructions of the plaintiff, for the benefit of the

plaintiff and not taken on his own by the Advocate, so the allegations against the Advocate that he had instigated the plaintiff-Hardassi, to do the

wrong act, in the written statement, are required to be deleted. He further argued that the petitioner is a professional Advocate and it is his duty to

present the case of the party who engage him and so, the learned Court below has committed illegality in not deleting the defamatory and scandalous

allegations levelled against the petitioner in the written statement.

6. In the written statement filed by the defendants, it is admitted that there was agreement to sell as alleged. It is also admitted that defendant No.1

compromised the matter with the defendants No. 2 & 3 in the previous suit. Plaintiff-Hardassi had received Rs. 10,00000/- (Ten Lac) through power

of attorney defendant No.1, from the defendants No. 2 & 3 and at the time of execution of sale deed, rest amount of 12,00000/- (Twelve Lac) was

also received by the plaintiff-Hardassi, which fact was never denied by her. However, the Advocate D.N. Sharma, had got the thumb impression of

the old lady without telling anything to her and misguided the LRâ??s of Hardassi. It is further the case of the defendants that plaintiff-Hardassif, had

not executed any Will and the alleged Will is the result of fraud, which has also been managed by D.N.Sharma, Advocate and Kamlesh Chand, who

has no relation with late Hardassi, so there was no occasion to execute the Will in favour of Kamlesh Chand and he in connivance of D.N. Sharma,

wants to grab the property of late Hardassi. Defendant No.1.

7. Now as far as the defendants are concerned, they have no knowledge about what has happened inter se, the Hardassi Devi and the Advocate, Mr.

D.N. Sharma, as these are privileged communications. Even, Mr. D.N. Sharma, cannot be asked to disclose about this privileged communication

imparted to him by late Hardassi and being Advocate by profession, it is his duty to represent the case of his client. As is evident that the plaint was

filed and Mr. D.N. Sharma, who was Advocate, of the plaintiff-Hardassi, it cannot be said that, learned Advocate has acted without any instructions

from his client. The relationship of the Advocate and the party is of such a nature that cannot be adjudicated in a lis inter se parties and, therefore, the

allegations as levelled against the Advocate of the plaintiff, are not at controversy, which required to be adjudicated by the learned Court below and

the only dispute which is pending adjudication is with regard to the alleged sale deed of Hardassi by power of attorney defendant No.1 in favour of

defendants No. 2 & 3 and the consideration amount whether paid to late Hardassi or not.

8. In these circumstances, this Court finds that allegations which are against the Advocate in the written statement, are required to be deleted, as they

are not part of the lis under adjudication in the case and so, this Court finds that the learned Court below while dealing with the application of the

learned Advocate, has not exercised the jurisdiction vested in it properly, thus, the order of the learned Court below dated 19.01.2018, is required to be

modified, as far as allegations levelled against Advocate, D.N. Sharma in the written statement are concerned, the same are required to be deleted

from the written statement, as they are not part of the matter which is required to be adjudicated in the civil suit. Further, Advocate is not a party to

the proceedings and so no allegation can be levelled against the Advocate, representing his party, unless and until advocate is a party to any

adjudication personally by name.

9. Further, as stated hereinabove, the communication and consultation inter se

plaintiff and her Advocate is not a matter which can be adjudicated by the learned Court below as that is privileged and further the same is not the lis which is required to be adjudicated by the learned Court below.

10. In these circumstances, the present petition is allowed and the allegations which are levelled against the Advocate D.N. Sharma, in the written statement, are ordered to be deleted from the written statement after modifying and setting aside the order passed by the learned Court below and allowing the application of the petitioner.

11. No order as to costs. The petition stands disposed of, so also pending application (s), if any.