

(2014) 10 CAL CK 0023
In the Calcutta High Court
Case No : CS No. 296 of 2011

Gardenreach Shipbuilders and Engineers Ltd.

APPELLANT

Vs

Akshat Commercial Pvt. Ltd.

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Right to Information Act, 2005 — Section 19(1), 19(3), 6

Citation : AIR 2015 Cal 103

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Sudip Deb and D. Dutta, Advocate for the Appellant

Judgement

Harish Tandon, J.—The plaintiff has instituted a suit praying a decree for a sum of Rs. 50 Crores as damages for defamation. The plaintiff claims the damages against each of the defendants alleging that by several letters addressed to the plaintiffs and other statutory authorities, the defendants have maligned and tarnished the reputation of the plaintiff Company which is absolutely untrue and baseless.

2. The plaintiffs claim to have acquired reputation and goodwill by dint of productivity, quality and human resource management and acquired a reputation in the economic field being a Dividend paying company. In a meeting of Board of Directors held on 24th August, 2009, it was decided to sale and dispose of the piece and parcel of land measuring 1.25 acres situated at Kantapukur, P.S. South Port, Kolkata-700 001 being a non-performing assets through open tender process. It was further resolved in the said meeting that the valuation of the said property shall be obtained by engaging a Valuer so that reserve price can be fixed with further stipulation to carry out the negotiation with the bidders, if required and to finalize the ultimate deal. The advertisements were published in the various newspapers on 7th November, 2009 inviting the bid from the intending Valuers and M/s. Devcon Engineers and Valuers were entrusted to

value the market price in the sealed envelop.

3. Subsequently a notice was published in the newspaper and also in the official web site of the plaintiff Company inviting the intending buyers to submit their bid. Pursuant to the said notice, eight persons submitted their bids, which were opened in presence them on 16th July, 2010. The highest offer which was received in pursuance of the said notice was from Mr. Intikhab Alam at Rs. 4.55 crores which was below the valuation submitted by the said Valuer. Thereafter, a negotiation was made with the said highest bidder who subsequently raised the price to Rs. 6 Crores which was in tune to the price indicated in the valuation report. The sale was subsequently confirmed in favour of the said highest bidder on 2nd November, 2010. After the confirmation of the sale, a letter dated 30th November, 2010, was issued by the defendant no. 1 to the plaintiff offering to pay 20% higher price than what was agreed by the said highest bidder. The said letter further contains an allegation as to the irregularity in the process by which the said land was sold to the said highest bidder by the plaintiff Company. By subsequent letter dated 5th January, 2011, the defendant no. 1 addressed to the plaintiff as well as the Ministry of Defence signifying their intention to move the High Court under Article 226 of the Constitution of India to set aside the said sell which was not only bad in law but was done by practicing fraud upon the Public Sector of India.

4. On 6th January, 2011, the defendant no. 1 further caused letter, both to the plaintiff and the Ministry of Defence, alleging that the publication of sale notice was a mere eye wash and intended to fill up the gaps. It was further alleged therein that the sale notice did not contain the reserve price and the terms of sale indicated therein reflects the clear fraud committed by the Officers of the plaintiff Company. In further letter dated 21 January, 2011, the defendant no. 1 made a defamatory statement that the Public Information Officer of the plaintiff Company has refused to supply informations and documents under Section 6 of the Right to Information Act, 2005, which gave rise to a presumption of fraud in respect of the sale of the said property. The appeal against the order of the Public Information Officer further stood rejected and the said order is carried to a second appeal under Section 19(3) of the Right to Information Act, 2005 to the Chief Information Commissioner. A fresh application under Right to Information Act was taken out by the defendant no. 2 by supplying the information/ documents and in the said application, it is stated that the delay in supplying the requisite documents is with an object to protect the corrupt and dishonest officers of the plaintiff Company. The plaintiff has further averred in the plaint that an application under Section 19(1) of the said Act addressed to the Appellate Authority of the plaintiff contains the defamatory statement affecting the reputation and the goodwill of the plaintiff Company. The averments proceed further that in a subsequent letter constituting an appeal under Section 19(3) of the said Act, further libelous and defamatory allegations are made despite having known that those are untrue and hardly has any semblance of truth. The plaintiff claims the damages at Rs. 25 crores against each of the defendants for

defamation.

5. Despite the service of summons, the defendants chose not to appear and the suit was, thereafter, posted as undefended suit.

6. Apart from the various letters issued by the respective parties, the annual reports for the year 2006-2007 and 2010-2011 are tendered in evidence and have been exhibited in the suit. One Kanupriya Chattoraj, the General Manager (HR & Administration) in the plaintiff Company stood as a witness. The said witness stated that the plaintiff Company being a Public Sector Undertaking under the Ministry of Defence have acquired good image and reputation in public and such baseless derogatory and libelous allegation made against the Company and its official have not only caused irreparable loss to the Company but also tarnished the reputation in the commercial fraternity. The said witness further stated that the statement regarding the commercial viability of the plaintiff Company i.e. the Loss Making Company is untrue and false and, therefore, damaged the image of the Company in Public. It is, however, stated that the allegations in a proceeding under Right to Information Act, 2005 are not only libelous but defamatory in nature.

7. The learned Advocate for the plaintiff submits that the suit for defamation based on libel should be decreed on proving that the allegations made by the defendants are baseless, untrue and false. He further submits that such allegations, if affects the reputation and goodwill of the Company and its official, the Court should decree the suit awarding the compensation and/or damages. He audaciously submits that the annual report of the plaintiff Company for the year 2006-2007 and 2010-2011 would reveal that it is a Profit Making Company and, therefore, allegation of the defendants that it is a Loss Making Company is absolutely false. To conclude his argument, he submits that the suit should be decreed.

8. It ambits no ambiguity to say that even in undefended suit, the plaintiff has to prove his case by a cogent and reliable evidences. In a suit on libel, a person has right to have his reputation preserved inviolate. It provides for balancing of interest as every person has a freedom of speech. The term "libel" connotes the wrong of defamation committed either by way of writing or its equivalent. The statement should be such to expose a person to hatred, contempt or ridicule or to injure him in his trade, business, profession, calling or office. It is distinct from slander and such distinction is not artificial but real. The real test is whether the words would tend to lower the plaintiff in the estimation of right-thinking members of a society and, therefore, the statement should be read as a whole and be given its natural and ordinary meaning.

9. The plaintiffs have relied upon several letters caused in relation to a proceeding under Right to Information Act. The witness in his evidence have basically relied upon the letter issued under the aforesaid Act stating that a fraud is committed in the sale of the property. It further appears that the defendants

have alleged that because of certain vested interest, the necessary information and documents have not been supplied to him for his future course of action. The statements are made in a legally recognized proceeding which has been taken as a libelous statement in a defamation proceeding. There is no whisper in the evidence adduced by the witness that such libelous statements have caused the reputation and affected the goodwill of the Company. Even the annual turn over of the plaintiff Company during the year 2005-2006 have shown the steep rise in the year 2010-2011. What is said is that, such an allegation may prompt the persons dealing with the plaintiff Company twice but not an iota or piece of evidence is produced by the plaintiff in support thereof. The annual report exhibited in the suit showed the prosperity in the business of the plaintiff Company as the annual turn over has arose considerably between the year 2005-2006 to 2010-2011. Mere using the word "fraud or vested interest" in a legally recognized proceeding does not automatically inculcate the sense of defamation. It does not appear from the evidence or the material produced and/or placed on record that the second appeal under Right to Information Act, 2005 is disposed of.

10. This Court does not find that plaintiff have successfully proved that the statements made by the defendant in the correspondences or the letters are libelous in nature so as to gave rise to a cause of action for defamation.

11. The suit is, thus, dismissed.

12. However, there shall be no order as to costs.

13. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance of all requisite formalities.