

(1988) 03 OHC CK 0006
In the Orissa High Court
Case No : Misc. Case No. 48 of 1987

J.B. Patnaik

APPELLANT

Vs

Bennett Coleman and Co. Ltd. and Others

RESPONDENT

Date of Decision : 09-03-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 14

Citation : AIR 1989 Ori 9 : (1988) 66 CLT 26

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : B.M. Patnaik, for the Appellant; R. Mohanty, for the Respondent

Judgement

K.P. Mohapatra, J.—This is a petition by the plaintiff under Order 11, Rule 14 of the Civil P.C. ("Code" for short).

2. It is stated in the petition that according to the plaint case, defendant 2 is an employee under defendant 1. Both defendants 1 and 2 are joint tort feasons for having published a nd printed the defamatory article in the Illustrated Weekly of India giving rise to the suit for damages. In order to determine the question of the extent of liability of defendant 1 and the authority given by it to defendant 2 as the Editor, Publisher and Printer of the Magazine so as to bind and make him liable for torts, it is necessary that defendant 1 should produce letter(s), document(s) and record(s) relating to engagement/employment/appointment of defendant 2 along with the terms and conditions thereof required for just decision of this suit.

3. In the counter, it is stated by defendants 1, 2 and 3 that in their pleadings they have specifically stated that defendant 2 is the publisher of the offending articles in the Illustrated Weekly of India and so the document(s) called for are not really necessary for the purpose of this suit. Further,-the terms and conditions of employment cannot be made public as the same will violate journalistic ethics and commercial confidentiality. The document(s) relating to

the appointment of defendant 2 include salary and perks.

4. According to the provisions of Order 11, Rule 14, the Court at any time during pendency of any suit can order production by any party thereto upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right. After the documents are produced the Court may deal with such documents in such manner as shall appear just. In view of the aforesaid provisions of the Code, it is necessary to find out if the documents required by the plaintiff are relevant for the purpose of just decision of, the suit.

5. Defendant 1 is the proprietor of the Illustrated Weekly of India represented by its Chairman Shri A. K. Jain and defendant 2 is the Editor, Publisher and Printer thereof. It is stated in para 2 of the plaint that the defendants are joint tortfeasors and are jointly and severally liable to pay damages. Mr. B. M. Patnaik, learned counsel for the plaintiff, submitted that defendant 1 is also vicariously liable for damages. In order to determine the question of its liability it is necessary to determine the nature of authority given by it to defendant 2 in. the documents of agreement and appointment. He also made reference to the facts stated in paras 9 and 10 of the written statement filed by defendant 1 where responsibility for publication of the offending articles and liability as joint tortfeasors have been denied. He further referred to para 36(d) of the written statement of defendants 2 and 3 in which they have also denied the liability of defendant 1 as joint tortfeasor. In the context of these facts, one of the questions which will arise for consideration under issues Nos. 14 and 15 is whether defendant 1 is or is not liable for the publication of the offending articles by defendant 2 and the nature of authority given by the former to the latter for publication of the same. For these reasons the documents called for are relevant for just decision of the suit.

6. Accordingly, defendant 1 is directed to produce upon oath letter(s), document(s) and record(s) relating to engagement/ employment/appointment of defendant 2 by it along with the terms and conditions thereof in a sealed cover to be kept in safe custody of the Deputy Registrar (Judicial) within a fortnight.