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(2014) 03 CAL CK 0098

In the Calcutta High Court

Case No : C.S. No. 84 of 2002

M/S. Radha Krishna Exports Pvt. Ltd. and Another — APPELLANT

Vs

Pandaul Co-operative Spinning Mills Ltd. and Others — RESPONDENT

Date of Decision : 18-03-2014

Acts Referred:

Citation : (2014) 3 CHN 549

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Satadeep Bhattacharya, for the Appellant;

Judgement

Soumen Sen, J.—The suit is for recovery of damages as compensation for libel. The plaintiff has claimed Rs. 2 crores as compensation for libel made and published by the defendants on 29th January, 2000.

2. The suit was instituted on 22nd February, 2002. The suit appears to be barred by limitation under Article 75 of the Limitation Act, 1963 being instituted after one year of the publication.

3. Since the defendants were not represented in spite of giving repeated opportunities, the plaintiff was permitted to proceed with the suit. The plaintiff has produced two witnesses, namely, Ratan Kumar Kedia and Rajiv Tatia in support of its claim.

4. The sheet anchor of the present action is a notice dated 29th January, 2000, alleged to have been put up in the Notice Board of the defendant No. 1 by the Managing Director which contains the following statements:--

This is for information of all the workers that owing to the nonpayment by the conversion agent of the money needed for running the mill the maintenance work of the mill shall stop with immediate effect. The moment money is given by the party maintenance work production will be gradually started. Until then the mill will remain closed.

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Sd/- illegible K.K. Dutta Managing Director

Ref. No. illegible dt. 29.1.2000

Copy to:- 1. Shri P.K. Jha, Accounts Officer, for information since he resides inside the mill compound. Therefore, it is his personal responsibility that he will get this pasted on the notice-board and inform all the workers of the mill and will make arrangements for protecting all the materials kept inside the mill compound.

5. The plaintiff alleged that the aforesaid statements are false and defamatory since no amount was due and payable by the plaintiff to the defendant on account of conversion charges under the agreement. The defendants have made deliberate misrepresentation in order to malign the plaintiff.

6. The plaintiff has not disputed the existence of the conversion agreement and the various obligations the plaintiff is required to discharge under the said agreement. Some of the clauses of the aforesaid conversion agreement are stated below:--

2) This agreement shall be effective from the 15th May at 1999 shall continue for a minimum period of 1(ONE) year and thereafter renewable for every year at the options of second party. This agreement can be terminated by either party by giving to the other ONE MONTH Notice in writing with suitable reasons.

4) The first party shall provide to the second party within the mill premises an office room and godown space of sufficient capacities free of charge to enable the second party to store there raw material, packing material and the finished products and to carry out office job of receipt of the raw material, dispatch of finished product and supervision the first party carrying out the job work. Such office room and godown spaces shall be under the joint control of both the parties for the purpose of security.

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11.1) The said conversion charges as per Annexure ''A'' shall be payable by the second party to the first party against Conversion bill in the 5th to 10th of every month against conversion bill submitted by the first party.

11.3) As against the payments to be made by the second party to the first party, the first party shall first have the following payments made.

A) Salaries and wages of the staffs and labours at Mills and Head Office & statutory dues of the Govt.

B) The electricity charges.

C) The day to day maintenance expenses of the plan and machinery, generator and other tools and equipments for the smooth.

D) The working expenses.

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11.4) All surplus conversion charges after meeting the aforesaid expenses shall be utilized by the first party in the manner they at their discretion think fit and proper.

11.5) The creditor and/or claimant of the first party shall have no right either to stop production process in the said order to stop movement of the same materials, products, waste and left over goods and articles.

7. Interestingly, after the said notice was made and published the defendant No. 1 issued a letter on 31st March, 2000, demanding a sum of Rs. 2,17,930/-. The defendant contended in the said letter that such amount was due and payable under the conversion agreement. The plaintiff admits that following the issuance of the said letter some payments have been made after 31st March, 2000. In view of such admitted position, it cannot be said that the contents of the said letter have been motivatedly made by the defendants to ridicule and disrepute the plaintiff.

8. In my view, the payments made subsequent to the notice dated 29th January, 2000 and letter dated March 31, 2000 shows that the defendants had some justification for issuance of the said letter. The evidence of the plaintiff in this regard cannot be accepted. The plaintiff has relied upon a letter from Mr. Satyanarayan Karak, who claims himself to be a business man and he used to frequently visit the establishment of the plaintiff. The said person in an alleged communication to the plaintiff dated 24th March, 2001 contended that he had recently come across a notice on the Notice Board of the defendant No. 1 dated 29th January, 2000 and after going through the contents thereof he had completely changed his opinion about the plaintiff. The said letter was alleged to have been received by the plaintiff on May 29, 2001. Mr. Satyanarayan Karak was not produced as a witness in this proceedings. The said letter seems to have been procured to extend the period of limitation and in an attempt to justify the claim made in the suit. The evidence does not show that the plaintiff had any dealings and transactions with Satyanarayan Karak. The introduction of Mr. Karak in the arena is abrupt and the purpose for which a letter alleged to have been written by Mr. Karak is something more than what meets the eyes. Mr. Rajiv Tatia in his evidence stated that in June, 2001, he received a pamphlet which seems to be a notice dated 29th January, 2000 at his shop delivered by some persons. Mr. Tatia in his deposition stated that after he received the pamphlet sometimes in June, 2001 which is in the nature of a notice, he immediately informed the plaintiff about the said notice. His evidence does not come to any assistance in favour of the plaintiff.

9. The statement is defamatory when it has a tendency to injure a person''s reputation. The concern of the law of defamation is to protect the reputation of an individual. A man''s reputation is his property. Thus, any statement or representation which exposes a person to contempt, hatred or ridicule, tends to injure him in his profession or trade or causes him to be shunned or avoided by neighbours is defamatory. (Pratten v. Labour Daily; (1926) VLR 122, Parmitter v

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Coupland; (1840) 6 M & W 105, 151 ER 340; Capital and Counties Bank v. George Henty & Sons (1882) 7 App Cas 741 , HL Mitha Rustomji Murzban Vs. Nusserwanji Nowroji Engineer, . See also Youssoupoff v. Metro-Goldwyn-Mayer Pictures Ltd (1934) 50 TLR 581, CA.)

10. The question as to whether a statement is defamatory includes the question as to whether a "right thinking person" would see the statement as such. In order to found an action for libel, the statement complained off should be false in a written form and should contain defamatory content and should be published. The desire to injure must be the dominated motive for the defamatory publication to defeat any defence of privilege or justification. In a civil action for defamation truth of the defamatory matter is a complete defence. The principle is that "the law will not permit a man to recover damages in respect of an injury to a character which he either does not or ought not to possess". The burden of proof, however, rests on the defendant to prove that the statement is true, and though it is not necessary that the statement is literally true, he must prove it is as a whole substantially true.

11. The pleading and the evidence are to be considered in the background of what has been stated above. The contents of the notice, in my opinion, do not contain any defamatory words. All that it states is that owing to non-payment by conversion agent of the money needed for running the mill, the maintenance work has stopped. This statement with the evidence-on-record does not show that the defendants have issued the said notice with any ulterior motive. The fact remains that the conversion agent would be required to pay such amounts under the conversion agreement which was initially for a period of one year. In fact, documents disclosed by the plaintiff would show that payments were made subsequent to the said notice. The plaintiff was required to make payment under the agreement for maintenance cannot be denied. The plaintiff in the suit has not sought for any adjudication as to whether the plaintiff, in fact, has carried out all its obligations and the defendants had failed to perform its obligation. The plea of defamation can succeed under the facts and circumstances provided that the plaintiff could establish at the trial that the statements contained in the said notice is false made deliberately to lower the plaintiff in the estimation of right thinking members of the society generally or tends to make them shun or avoid the plaintiff.

12. Apart from the aforesaid, it is unbelievable that the plaintiff was not aware of the contents of the said notice until the plaintiff was told by Mr. Karak or by Mr. Tatia. In absence of any republication of the said notice assumed to contain defamatory words or statement the period of limitation would commence from the date of publication, i.e., 29th January, 2000 and expires on January, 2001. That the plaintiff did not have knowledge of such publication is difficult to believe. It is unbelievable that the plaintiff could only set the information of the notice dated 29th January, 2000 from the communication received from Mr. Karak in May, 2001. The plaintiff was, in fact, allotted a space in the factory

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compound of the defendant and the parties were constantly interacting with each other. The correspondence disclosed in this proceeding would support this inference. The suit has been filed after the expiry of the period of limitation.

13. In this regard reference may be made to the following decisions where it has been clearly held that when the statement is defamatory, the plaintiff would be required to file the suit within one year from the date of publication:--

1) Brig. B.C. Rana (RETD.) Vs. Ms. Seema Katoch and Others,

2) Dr. Vijay Pahwa Vs. Bratati Mukherjee,

3) Prem Peyara Vs. Kamla Sinha Alias Kamala Prem and Another,

4) RFA No. 757 of 2010 (N.N.S. Rana v. Union of India & Ors.)

14. The plaintiff has also not been able to show any prejudice or damage being suffered by the plaintiff on the basis of the said notice made and published by the defendant and put up on the Notice Board on 29th January, 2000. Moreover, there is no republication of such alleged notice containing any defamatory statements.

15. Apart from the fact that the statement contained in the notice cannot be said to be defamatory, the suit also is barred by the laws of limitation when it is assumed to contain defamatory words.

16. In view of the aforesaid, the suit stands dismissed.

17. There shall be no order as to costs.

18. The department is directed to draw up the decree as expeditiously as possible. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

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