
(2012) 07 DEL CK 0279
In the Delhi High Court
Case No : CM (M) 424 of 2011

Rahul Garg

APPELLANT

Vs

Pradeep Kumar Aggarwal

RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10A, Order 7 Rule 11, 10

Citation : (2012) 07 DEL CK 0279

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Aashish Gupta and Mr. A. Garg, for the Appellant; Vinod Kr. Gupta and Mr. Pradeep, for the Respondent

Final Decision : Allowed

Judgement

M.L. Mehta, J.—This petition assails the order dated 10.01.2011 of CCJ/ARC whereby the civil suit being Suit No. 82/10 filed by the petitioner herein against the respondent Pradeep Kumar Aggarwal seeking damages on account of defamation was stayed u/s 10 CPC. The filing of the aforesaid suit for recovery of damages on account of defamation (Suit No. 82/10) by the petitioner herein against the respondent has its genesis in the suit that was filed by the respondent against his (petitioner) sister Deepika Garg @ Deepika Mathur (Suit No. 731/09). This suit being 731/09 was filed by the respondent against Deepika for mandatory injunction and for specific performance and for recovery of Rs. 2,80,600/-. During the pendency of this suit, an application was filed by Deepika (defendant therein) under Order 7 Rule 11 CPC. Simultaneously, an application under Order 7 Rule 10A CPC was also filed by the respondent (plaintiff therein). Vide order dated 21.12.2009, the application under Order 7 Rule 10A of the plaintiff therein i.e. Pradeep Kumar Aggarwal was allowed and the plaint was returned to him. Thereafter, he filed another suit being Suit No. 1/10 against Deepika and present petitioner Rahul Garg seeking the same reliefs. This suit was filed on 12.1.2010.

2. The petitioner had filed the Suit No. 82/2010 for recovery of damages for defamation against the respondent based on the allegations that in suit bearing No. 731/09 respondent had made certain defamatory allegations against him, his sister and father in Para 11 thereof. This suit of the petitioner came to be stayed vide impugned order by the learned CCJ/ARC on the ground that since Suit No. 1/10 filed by the respondent herein was yet to be decided, the suit of the petitioner was prematured.

3. The impugned order has been assailed by the petitioner on the ground that his suit was filed based on the defamatory allegations in the previous suit (Suit No. 731/09) filed by the respondent against his sister and not pending suit (Suit No. 1/10) filed by the respondent against him and his sister Deepika. The impugned order was also assailed on the ground that in any case, the subject matter of the suit for specific performance, mandatory injunction etc. in the Suit No. 1/10 (filed by respondent) could not be said to be same in Suit No. 82/2010 (filed by petitioner) for seeking damages for defamation. In other words, the submission is that both the suits have different cause of actions and different subject matters, raising different issues, the present suit (Suit No. 82/10) could not be stayed u/s 10 CPC.

4. On the other hand, it is the submission of the respondent as also his learned counsel that Suit No. 1/10 came to be filed after Suit No. 731/09 was returned due to lack of pecuniary jurisdiction. It is submitted that the averments in both the suits as contained in Para 11, which allegedly were defamatory, are identical and the second suit being continuation of the first one and being sub-judice, filing of the suit by the petitioner seeking damages for defamation was apparently premature and barred by Section 10 CPC.

5. I have heard learned counsel for the parties and gone through the records.

6. Without going into the controversy as to the allegations which are contained in Para 11 or somewhere else in Suit No. 731/09 or that of Suit No. 1/10 filed by the respondent herein against the petitioner and his sister Deepika, the question for consideration is as to whether the issue that is to be decided in Suit No. 1/10 filed by the respondent herein against the petitioner and his sister seeking specific performance, mandatory injunction, recovery etc. would be the same in the suit of the plaintiff (petitioner) filed for seeking damages for defamation.

7. The law in this regard is well-settled as regard to the applicability of Section 10 CPC. Reference can be made to the judgment of National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara, wherein the Apex Court held as under:

8. The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the -same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit.

The language of Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical.

Having seen the controversy that has been raised by the respondent herein in the suit that was filed vide Suit No. 731/09 and subsequently vide Suit No. 1/10 and the nature of the reliefs claimed by him in those suits, apparently, the issue regarding the averments to be defamatory or not, was not the subject matter of those suits. The suits were filed for recovery, mandatory injunction, specific performance etc. and the averments regarding the defamatory character were not related to the subject matter of the issues and reliefs. Any observations that may be given by the court would be collateral or incidental and not directly to the subject matter of the issues and reliefs sought in those suits. The subject matter of the suit which is filed by the petitioner is based on the allegations which are yet to be tested as to whether they amount to defamation or not. Since both the suits have different subject matters and different issues, it cannot be said that Section 10 of CPC is attracted to the suit (Suit No. 82/10) of the petitioner. The impugned order is apparently not sustainable under law and is hereby set aside. Petition is accordingly allowed.