

(2001) 07 DEL CK 0036

In the Delhi High Court

Case No : IA No. 7217/99 in Suit No. 67 of 1999

Sh. Prem Chand Goddodia

APPELLANT

Vs

Sh. Jaswant Rai

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 23 Rule 1, Order 33 Rule 3, Order 7 Rule 11, 151

Citation : (2001) 94 DLT 197

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. S.N. Kumar and Mr. S.K. Gupta, for the Appellant; Mr. Vijay Kishan and Mr. Vikram Jetley, for the Respondent

Judgement

A.K. Sikri, J.—I propose to dispose of this application preferred by the defendant under the provisions of Order VII Rule 11 read with Section 151 CPC as well as Order XIV Rule 2 and Order XXIII Rule 1 CPC. This application is filed by the defendant without filing the written statement. The suit is filed by the plaintiff for recovery of Rs.15 lacs which amount plaintiff is claiming from the defendant as damages for using scurrilous remarks against him thereby defaming the plaintiff. It would be appropriate to first take stock of the averments made in the plaint on the basis of which present suit is filed by the plaintiff. plaintiff who claims to be well-known person enjoying respect in the echelons of the society and belonging to a respectable family is also an honorary president of the Rajasthan Co-operative Group Housing Society Ltd. (for short "society"). The defendant was also a member in this society who happens to be Architect by profession doing the business under the banner of M/s Architectural Innovations. he entered into agreement dated 16th May, 1996 with the society as per which he was appointed as an Architect for the society for construction of dwelling units/flats over the land allotted to the society by DDA, i.e., Plot No.36, Sector-4, Dwarka, New Delhi. He prepared the plans. Society thereafter engaged M/s Associated Builders and Contractors for the construction of the dwelling units and agreement with

the said contractor was entered under the profession recommendation and guidance of the defendant. Without going into detailed averments made in the plaint alleging poor performance of the defendant as Architect, suffice is to state that as per the plaint, when the irregularities, manipulation and misdeeds of the defendant were exposed by the plaintiff who happened to be the president of the society and in that capacity looking after the day to day affairs of the society, the defendant turned offensive and started misbehaving in a most mischievous and unbecoming manner. He by his words spoken on various occasions, imputations made, deliberately used totally false, baseless, derogatory and defamatory remarks/allegations against the plaintiff etc. with specific intention to cause harm and injury of the reputation of the plaintiff to browbeat him so that he could continue his activities of causing financial loss to the society. Specific instance is given in para 11 of the plaint when in the meeting of the managing committee held on 11th July, 1998 defendant insulted and abuse the plaintiff and other persons present there and also made derogatory and defamatory allegations including the following:

"TUM JHUTEY AUR DHOKEBAJ HO; TUMHARI SOCIETY EK FRAUD HAI. TUM LOG ISKA PAISA HARAP KAR RAHEY HO".

2. He allegedly made such defamatory accusations on other occasions also. Based on these allegations present suit is filed claiming damages to the extent of Rs. 15 lacs.

3. That being the background in which the present suit is filed, let us now advert to the averments made by the defendant in this is No. 7217/99 as per which defendant is praying for rejection of the plaint as not maintainable. The genesis of the application is settlement between the parties. According to the defendant Memorandum of Settlement dated 14th May, 1999 was entered into between the defendant and the society which was signed by the plaintiff also as confirming party and as per this settlement, plaintiff agreed to withdraw the present suit in view of their being settlement between the parties. The application discloses that as certain disputes have arisen between the defendant and the society, the defendant file Suit No.1661/98 in this court which was disposed of by this court vide order dated 14th January, 1999. It is stated that the present suit filed by the plaintiff and also another suit filed by one Mr. Lalit Gupta (Suit No.20/99) in the court of Sh. Vinod Goel, Additional District Judge, Tis Hazari, Delhi were counter blasts to the suit No.1661/98 filed by the defendant. However, during the end of February and the beginning of March, 1999 the parties entered into negotiations for settling all pending disputes between the parties which resulted into purported memorandum of Settlement dated 15th April, 1999. As per this settlement, it is, inter alia, agreed that parties shall withdraw the suits filed against each other.

4. Taking Support of this Memorandum of Settlement, the defendant submits that the plaintiff is under obligation to withdraw the instant suit which is not done inspire of assurance given even subsequently. He submits that because of this

settlement, the defendant did not take steps for getting third arbitrator appointed in Suit No. 1661/98. According to him, provisions of Order XXIII Rule 1 CPC clearly applied and the suit is not maintainable at all.

5. Before recording the respective submissions of the parties on this application, it would be appropriate to mention that this settlement is signed by the defendant as well as all the three confirming parties. It is also signed by two witnesses both of whom are advocates. However, significantly the society which was to sign the settlement through MR. Lalit Gupta has not signed the settlement although Mr. Lalit Gupta as a confirming party in his individual capacity has signed this settlement.

6. It is this aspect of not signing the settlement by the society, which was sheet anchor of the submission made by the plaintiff opposing this instant application. Learned counsel for plaintiff submitted that although Mr. Lalit Gupta signed in his individual capacity, but did not sign as secretary of the society because it was agreed by the defendant to give the drawing which he had prepared as architect and as he did not give the drawings, the society did not and could not sign the settlement. Therefore, when the agreement in question was between the society and the defendant and in the absence of the signatures of the society, no settlement in fact was arrived at between the parties and such document could not be relied upon. It was further submitted that the plaintiff signed only as a confirming party which was of no consequence once there was no settlement between the main parties.

7. On the other hand, learned counsel for the defendant pressing the application strenuously argued that even if society had not signed the settlement, the same was of no consequence inasmuch as per the said settlement, the plaintiff had agreed to withdraw the instant suit and as he signed the settlement, the settlement would be binding on the plaintiff. His submission was that the suit for damages on account of defamation is a personal cause and action and the plaintiff had agreed to withdraw the said suit. Therefore, the document could be treated as atleast a settlement having been arrived at between the plaintiff on the one hand and the defendant on the other hand as both the parties had signed the settlement as per which the suit was to be withdrawn. It would not make any difference if the society had not signed the settlement inasmuch as the dispute with the society was totally different from the dispute between the plaintiff and the defendant in the instant suit and by withdrawing this suit, no interest adverse to the society was being affected. Learned counsel relied upon the judgment of this court in the case of Sh. Krishan Mohan Singh Vs. Sri Chand Gupta and others, in support of this plea. He further submitted that after signing the settlement and agreeing to withdraw the suit, the plaintiff was estopped from contending otherwise and principle of estoppel clearly applied. The provisions of Order XXXIII Rule 1 and/or Rule 3 also stood satisfied. It was the right of the defendant to enforce the said settlement qua the plaintiff and consequently the suit should be dismissed forcing the plaintiff to withdraw the same as agreed by

him.

8. The reading of the settlement shows that it is essentially between the society and the defendant whereby these parties proposed to settle the pending disputes. Once they were settling the disputes between themselves, as a package deal confirming parties also agreed to bury the hatchet and plaintiff and Mr. Gupta agreed to withdraw the defamatory suits filed by them which includes the present suit filed by the plaintiff. Afterall the so-called defamatory remarks on the basis of which plaintiff and Mr. Lalit Gupta have filed the defamatory suits were the outburst of the discussions between the parties once the dispute had started between the society and the defendant. Therefore, while the defendant and the society were settling the disputes, inter se, between them, to create a conducive atmosphere and give quietus to all pending litigations, the plaintiff and Mr. Gupta along with Mr. Baijnath Aggarwal became confirming parties to this agreement and also agreed to withdraw the suits filed by the plaintiff and Mr. Gupta. However, for some reason the disputes between the defendant and the society have not been settled because the settlement is not signed by the society. Although plaintiff states that the reasons is that defendant is not parting with the drawings and the defendant denies the same, fact remains that the society has not signed the settlement. There must be some reason because of which Mr. Gupta signed as confirming party in this individual capacity but did not sign the same settlement as secretary of the society. These facts are to be kept in mind while dealing with this application. Afterall the application filed is under Order VII 11(d) CPC. We have to confine ourselves within the scope of this application. The application under Order VII Rule 11 CPC is filed on the basis of this alleged settlement and submitting that plaint does not disclose any cause of action. However, suit was filed before the alleged settlement. It is not denied that as on the date of filing of the suit, the cause of action to file the suit existed. Evidence would be needed to prove that there is a valid and binding settlement in view of the nature of dispute created by the plaintiff with regard to this settlement. Plaint cannot be rejected under Order VII Rule 11 CPC at this state.

9. This application is Therefore dismissed.