(2001) 11 DEL CK 0079

In the Delhi High Court

Case No : IA No. 3298/95 and Suit No. 760/94

The Punjabi Bagh Cooperative Housing Society Limited APPELLANT

Vs

K.L. Kishwar and Another RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Delhi Co-operative Societies Act, 1972 — Section 32, 60

Citation : (2002) 95 DLT 573 : (2002) 61 DRJ 594

Hon'ble Judges : Om Prakash Dwivedi, J

Bench : Single Bench

Advocate : K.K. Buchhar, for the Appellant; Diwan Naubat Rai, for the Respondent

Judgement

O.P. Dwivedi, J.—This order shall govern the disposal of IA. No. 3298/95, under order 7 Rule 11 CPC, filed by the defendant No. 2 seeking rejection of the pliant under Order 7 Rule 11 (d) CPC on the ground that suit is not maintainable.

2. Briefly stated, the facts leading to this application are that the plaintiffs above named filed this suit for Rs. 10 Lacs as damages for defamation. plaintiff No. 1 is a society registered under the Cooperative Societies Act, plaintiff No. 2 is the President, plaintiff No. 3 is the Vice-President, plaintiff No. 4 is Honorary Secretary and the plaintiff No. 5 is the Treasurer of the plaintiff No. 1 society. The society was formed for settling the refugees who had migrated to India on partition of the country. The land was acquired in the name of the society, plots were carved out and allotted to the members of the society. The defendants were also members of the plaintiffs society. It is alleged that because of some acts of omissions and commissions on the part of the defendants, they were suspended from the membership of the society in accordance with Bylaws after following prescribed procedure and also observing the principles of natural justice. Thereupon, the defendants started defaming the plaintiffs by publication of defamatory remarks. It is pleaded that plaintiff Nos. 2 to 5 were duly elected in

the last election which was held on 26th April, 1992. Some members who had contested the elections and were not declared elected, became inimical to the plaintiffs and such members along with the defendants filed false/frivolous cases against the plaintiff No. 1 society impleading plaintiff Nos. 2 to 5 as the defendants. Particulars of the petitions which were filed by the defendants are given as under:-

1. JR/11/9/HB/92-93/556 entitled Kishori Lal Kishwar v. Refugee Cooperative Housing Society Ltd. u/s 60 of the Delhi Cooperative Societies Act.

2. Petition No. 21 entitled as Kishori Lal Kishwar v. Refugee Cooperative Housing Society Ltd. u/s 32 of the Delhi Cooperative Societies Act.

3. Petition No. 22 entitled as Kishori Lal Kishwar v. Refugee Cooperative Housing Society Ltd. u/s 32 of the Delhi Cooperative Societies Act.

4. Transfer petition filed before Sh. S.R. Sharma, Financial Commissioner Delhi, seeking transfer of the above petition from the Court of the Registrar Cooperative Societies Delhi to some other Court.

3. It is alleged that in all these petitions the defendants have made false, baseless and wild allegations against the plaintiff No. 1 as well as against the plaintiff No. 2 to 5 which has caused mental pain, agony to the plaintiffs and have defamed/lowered their prestige and reputation in the eyes of the members of the society. In para 9 of the pliant one more instance of such publication of libel is given. It is alleged that in one case bearing Arbitration Case No. 9/92 pending before the Joint Registrar, Cooperative Societies, Delhi, the defendants had made the following defamatory allegations against the plaintiffs:-

"In para II it is pointed out that members of the Managing Committee have made an invidious and clandestine and mischievous attempt to get the sanction of huge amounts in order that members of the Managing Committee promote selfish interests of their prot?g?es and darlings and carve out an area of corruption to cater to their unholy ''LOOT OF OUR FUNDS'' at the expense of the Society....."

4. Resides, the defendants are alleged to have made some defamatory statements in various communications, the details of which are as under:

i. Defendant No. 2 in his communication dated 12.12.1992 has averred: "The debris confirms the dishonest intentions and perfidious motives and also proves conclusively that respondents have joined hands in the co-operative loot of funds of the Society". A copy of the said latter issued by defendant No. 2 is filed herewith as Annexure ''C''.

ii. In his communication dated 12.7.1992, defendant No. 2 wrote:- "Apparent, members of Managing Committee have admitted impliedly in their circular letter that they are ineffective, incompetent and corrupt. They further admit that they have no credibility, nor good-will of their own, which commands at attention or respect or carries any weight or conviction with corridors of power." Copy of the said communication dated 12.7.1992 is annexed herewith as annexure "D".

iii. Defendant No. 1 in his communication dated 5.8.92 has stated, inter alia:- (a) "The Society''s present management is functus officio and its continuance is illegitimate. All acts being are irregular, invalid and without any authority/ sanction of law. Respondents are carving out areas of corruption to squander away the funds to benefit their coterie and stooges..... to expose the hollowness and falsity of respondents ridiculous, vain, boastful and false claims to serve the Society or to be acting in cooperative spirit. In glaring contrast, respondents are wasting huge amounts of our Holy Society in printing and publishing frivolous circulars e.g. circular letter No. RCHSL/92 dated 4.7.92; and huge amounts are being spent on litigation, being falsely indulged in to screen them from their own acts of misfeasance. The Society is called upon to submit the exact amounts spent on this litigation, including the exorbitant fees of lawyer..... (b) have ..... have an invidious, clandestine and mischievous attempt to get sanction of huge amounts in order that members of the Managing Committee promote selfish interest of their prot?g?s and darlings and carve out an area of corruption to cater to their unholy LOOT OF OUR FUNDS at the expense of the holy Society. (c) ..... That fraud is being played upon the constitution of the Society and on the residents of Punjabi Bagh, to carve out areas of corruption for their present coterie of members of Managing Committee in order to serve the selfish interest of their proxies and henchmen at the expense of the Society and members who are opposing open plunder of their funds.....(d) With the fraudulent and dishonest object and purpose of retrospectively legalising, illegal and invalid acts of members of Managing Committee, the slip at page II of Society''s Bye-laws has been posted to throw dust in the eyes of the General Body meeting fixed for 23.8.92. (e) Members of the Managing Committee have dishonestly and with ulterior motives, to inter alias perpetuate their tenure has made this item No. 3 of the agenda vague. The entire scheme and structure of this item No. 3 is an index of conspiratorial intention of members of Managing Committee to retrospectively and ex post facto their various acts of misfeasance. Their game is to falsely represent to Hon''ble Court that there is no dispute between the members and Res. Society..... Copy of the said communication is annexed herewith as Annexure (B).

(iv) Defendant No. 1 in his communication dated 15.8.1992 (copy annexed as Annexure ''E'' has stated inter alia: "..... these two impugned orders have been passed by learned Registrar Sh. S.M.S. Chaudhary, in collusion with Respondents and are the result of malafide and dishonest motives; want of impartiality on the part of learned Registrar Sh. S.M.S. Chaudhary to enable the respondents to get post facto approval for their illegal, ultra virus acts performed by them during their term which expired in February 1992, at the General Body meeting fixed for 23rd August, 1992 and get the Bye-law 24(b) and other Bye laws amended surreptitiously and offending rules adopted with retrospective effects."

(v) Non-application of mind of learned Registrar is an index of the collusion existing between him and respondent members of Managing Committee. Had learned Registrar heard the submissions of Petitioner''s counsel, he would have, there an then, passed the orders as to whether there is a dispute and a cause of action, os alleged in the pliant as well as supported in the documentary evidence placed on records and in the material contained in the rejoinder. Ld. Registrar, however, had made up his mind ALREADY, not to pass any orders in respect of matters in issue, but to prolong the proceedings in order to enable respondents to cover up their illegalities in General Body meeting called for 23.8.92.

(vi) Defendant No. 1 in his communication dated 27.6.1992 (Annexed hereto as Annexure ''F'') has stated inter alia: "..... Assets amounting to several crores of rupees owned by respondent No. 1 will be squandered away in the meantime by the so-called trustees, who are managing the Committee & Controlling the funds"..... I apprehend that Respondents Nos. 2 to 9 will transfer the assets and operate the accounts to the detriment of respondents No. 1 by abuse of their membership.

(vii) Defendant No. 1 in his communication dated 6.9.1992 (copy annexed hereto as annexure ''G'') has stated inter alia: Grounds of challenge are reproduce below:

(a) Unfair and improper;

(b) wanting in impartiality; (c) lacking in good faith and being malafide

(d) contrary to principles of natural justice;

(e) conducted for collateral purposes

(f) in collusion with respondents. (b) "This fabrication of proceedings held on 17.8.1992 establishes conclusively the alliance between learned Registrar and Respondents, to keep the proceedings alive to give them an opportunity to revive the dead proceedings against them initiated by learned JR-II in his order dated 21.7.1992, to get item No. 3 of Agenda..... passed at the general body meeting fixed by Respondents on 23.8.1992, to ratify their various acts of misfeasance of squandering away society''s funds and to serve the selfish ends of darlings and stooges of members of Managing Committee."

(viii) Respondent No. 1 and 2 in Therefore letter dated 17.12.1992, have stated inter alia: Sh. S.M.S. Chaudhary has intentionally done this all, with a view to cause undue benefit to the respondent who, in law, are functus official ever since February 1992". Copy of the same is annexure ''H'' hereto.

(ix) Respondent No. 2 in his letter dated 12.12.1992, inter alias stated: "..... A comparative study of these balance sheets prepared by respondents reveals shortage/misappropriation/embezzlement of Rs. 6,59,584.72 paise as per details given in Annexure ''A''. Copy of the same is annexed as Annexure ''I'' hereto.

(x) Again in the "CHART" annexed to his communication dated 22.2.1993, the defendant No. 2 stated as follows:- "Five acts, prejudicial to the Society, committed by Managing Committee, incurring illegal expenditure of several lacs of rupees including embezzlement of lacs and donation of about seven lacs without any authority of law. Complaints made on 10.10.1992 to Registrar, who his hushed them up and has not even issued show cause notice to Managing Committee. Five acts are as follows:- (1) Agenda framed by functus officio Managing Committee includes amendment of all Bye-laws, which it has violated. Amendments are malafide with ulterior motives and dishonest to legalise continuance of Managing Committee, mis-appropriation of lacs and donations of about seven lacs. (2) Embezzlement of Rs. 302002 paise 39 as per details of Annexure II." A copy of the same is annexed as Annexure ''J'' hereto.

5. It is the contention of the plaintiffs that the allegations contained in these communications cast cloud on the integrity, honesty, loyalty, credibility of the plaintiffs. The defendants have gone to the extent of describing the plaintiffs as mafia who have joined hands in a corporate loot of the funds of the society. The defendants even made an allegation against the plaintiffs regarding misappropriation/embezzlement of Rs. 6,59,584.72. plaintiffs contend that these false, baseless and wild allegations have lowered their image in the eyes of the other members of the Society and have caused them great mental pain and agony and hence the suit. In the pliant, it is pleaded that the plaintiffs are entitled to recover general and specific damages but while claiming Rs. 10 lacs as damages for defamation it has not been specified as to whether the plaintiff has suffered any actual damages and if so to what extent.

6. Defamatory statements detailed in para 9 of the petition are contained in various petitions which are pending before the Joint Registrar of the Cooperative Societies and some letters addressed to the plaintiffs. Copies of these petitions/ communications have been filed along with the pliant which are annexed with the pliant as annexures ''A'' to ''J''.

7. Defendant No. 2, Diwan Nobat Rai, who himself is an advocate, has filed this application being IA. No. 3298/95 under Order 7 Rule 11 CPC seeking rejection of the pliant on the ground that such a suit is barred by law. It is contended that all the alleged defamatory statements were made in connection with the affairs of the society and such communications/petitions are privileged communications so no civil action of defamation will lie. There is no communication of the libel/ defendants had some apprehensions and grievances regarding the functioning of the plaintiffs and they voiced their apprehensions in this regard in various communications to the plaintiffs as well as in the petition before the Joint Registrar or some other competent authority to look into the matter. It was the duty of the society to explain the position to the defendants to clear all their doubts in this regard. Defendants never attacked personal reputation of the plaintiffs. They raised questions regarding plaintiffs functioning as office bearers of the society and as such the action for defamation is not maintainable. Besides parties, witnesses, counsels enjoy absolute privilege for words written or spoken

in the course of the proceedings before any Court or Tribunal. Moreover, the defendants have direct interest in the proper functioning of the society and proper utilisation of its funds. This is also in the interest of the plaintiff. It is the duty of the society, its office bearers to look into the grievances of its members. The defendants enjoy at least qualified privilege and, Therefore, whatever was said by the defendants in their communications to the plaintiffs or in their petitions before the Joint Registrar, it is all privileged which cannot be made subject matter of a suit for damages on account of defamation. It is further submitted that defendant No. 2 had also been a counsel for defendant No. 1 in various proceedings and his actions as such are also privileged. It is Therefore contended that under the law the alleged defamatory statements/comments made in the communications to the plaintiffs or in various petitions to the Joint Registrar cannot be made the basis for civil action for defamation and Therefore the suit by itself is not maintainable. So the pliant is liable to be rejected under Order 7 Rule 11 (d) CPC. The application has been contested by the plaintiffs.

8. I have heard learned counsel for the parties and perused the record.

9. At the very outset, learned counsel for the plaintiffs challenged the maintainability of the application under Order 7 Rule 11 CPC on the ground that the pliant as drafted contains various allegations which prima facie make out a case of defamation against the defendants. Learned counsel for the plaintiffs contended that for the purpose of Order 7 Rule 11 CPC Court has only to consider the averments made in the pliant and if on such a reading pliant discloses such facts which give rise to a cause of action in favor of the plaintiffs for approaching the Court with relief claimed, the suit will be maintainable. Submission of the learned counsel for the plaintiffs seems to be that for the purpose of deciding application under Order 7 Rule 11 CPC the Court is not required to consider intricacies of law, only a plain reading of the facts pleaded in the pliant is required to ascertain whether the pliant is liable to be rejected under Order 7 Rule 11 CPC. In order to appreciate this contention of the learned counsel for the plaintiff, if is necessary to refer to Order 7 Rule 11 CPC which reads as under:-

Order vii, Rule 11 CPC The pliant shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the pliant is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the pliant to be barred by any law;

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

10. A plain reading of Order 7 Rule 11 CPC shows under Clause (a) a pliant can be rejected if from its plain reading it does not disclose any cause of action. For the purpose of ascertaining cause of action perhaps a plain formal reading of the pliant will do but when Clause (d) of Order 7 Rule 11 CPC is invoked the Court will have to ascertain and examine the law applicable to the facts as pleaded in the pliant and for this purpose even intricate questions of law may have to be gone into. In the present case the defendants seek rejection of the pliant under Clause (d) of Order 7 Rule 11 CPC. Therefore, this Court will have to examine whether under the law applicable to the facts stated in the pliant the suit is at all maintainable. In the case of T. Arivandandam Vs. T.V. Satyapal and Another, the Supreme Court observed as under:-

".....The learned Munsif must remember that if on a meaningful - not formal - reading of the pliant it is manifestly vexatious, and meritless in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled."

11. In view of these observations made by the Supreme Court, the contention of the plaintiffs that only formal/plain reading of the pliant should suffice to decide application under Order 7 Rule 11 CPC cannot be upheld. If suit appears to be barred by some law even though averments contained in the pliant are taken to be true, the Court must take notice of such law while dealing with the application under Order 7 Rule 11 (d) CPC.

12. It is, Therefore, to be seen whether the alleged defamatory statements contained in the communications between the parties and in the petition/replies filed before the Joint Registrar and other authorities could, can under the law, be made basis of a suit for damages. Some of these objectionable comments have been made against the Joint Registrar also for having not acted independently but Joint Registrar is not a claimant here and Therefore those allegations which are directed against the Joint Registrar or other authorities may be ignored.

13. I have carefully perused the alleged defamatory allegations contained in the letters/petitions copies of which are annexed as annexure A to J to the pliant. The focus of all the alleged accusations is the functioning of plaintiff Nos. 2 to 5 as office bearers of the plaintiff No. 1 society. It seems that defendants were not satisfied with the running of the affairs of the said society by plaintiff Nos. 2 to 5 and they had some doubts'' grievances about the fairness of the office bearers of the society. It is important to note that defendants were also the members of he

society. Obviously they had stakes/interest in the matter. Therefore, they could legitimately ask for clarification of their doubts from the plaintiffs to their satisfaction. They could as well air their grievances before the authorities having control over the Society. This is within their legitimate domain. In Mehtora''s Law of Defamation and Malicious Prosecution (Civil & Criminal) reference has been made to a decision of Madras High Court in the case of Bhanumathi Rajah v. M.S.P. Rajesh 1986 L.W. (Cr.) 16 wherein it was held that if the statements were made only to the authorities having lawful authority over that person with respect to the subject of accusation, they do not constitute defamation. In the present case the Joint Registrar, under the Societies Registration Act has the authority to look into the grievances of the members of the registered society as also the conduct of affairs of the society by its office bearers. Therefore, if any member of the society makes a complaint against the office bearers of the society regarding the affairs of the society and in the process makes some defamatory statements only in regard to the conduct of such office bearers in the management of the aforesaid society such accusation cannot constitute defamation. As already noted in none of the alleged objectionable statements re-produced above, the defendants ever made any remark regarding the personal character of the plaintiffs. Whatever they said was only in regard to the plaintiffs mismanagement of the affairs or the funds of the society. Therefore, in view of the law enunciated in the case of Bhanumathi Rajah (supra) no action for defamation would lie against the defendants. If a member of the society has reasons to believe that some irregularity, illegality is being committed in the running of the affairs of the society, such member of he society is under a duty to bring it to the notice of the office bearer of the society or other authorities having control over the society. Such member will have an obligation cast on him to bring such things to the notice of the society and vice versa office bearers or other such authorities will be under obligation to receive such complaints and look into them. In the case of Pandey Surendra Nath Sinha and Another Vs. Bageshwari Pd., , it was held that if the person who makes the statement has an interest or duty legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has as corresponding interest or duty to receive it such statement commands a privilege and cannot be made the basis of an action for defamation. In the case of Stuart v. Bell (1891) 2 Q.B. 354 and Smythson v. Cramp (1943) 1 All E.R. 326 it was held that the occasion is privileged where the defendant has an interest in making the communication to the third person, and the third person has corresponding interest in receiving it. Reciprocity of interest is essential. In Sullivan''s Law of defamation at page 80 learned author has referred to the case of Hebditch v. MacIlwaine (1894) 2 Q.B. 54 wherein it was observed that the interest must exist in the party to whom the communication is made as well as in the party making it. It is sufficient that the defendants honestly and reasonably believe that the person to whom he made communication had an interest in the subject matter thereof.

14. If one party to the litigation communicates to the opposite party of an

alleged interference with the course of justice it is a privilege occasion because it is in the interest of every litigant and common interest of both the parties to the litigation that there should be no interference with the course of justice. Hines v. Davidson 1935 S.C. 30 .

15. Viewed in this legal perspective, I think the alleged defamatory statements made by the defendants in their various communications/petitions to the plaintiffs or to the Joint Registrar or other authorities having control over the aforesaid Society fall in the category of privileged communications and no action for defamation will be maintainable. The defendants who were members of the Society had the right and duty to complain to the office bearers of the society and concerned authorities under the law against the mismanagement of affairs/ funds of the Society and vice-a-versa, the office bearers and authorities having control over the Society were obliged/entitled to entertain such complaints and look into them. The reciprocity of interest/obligation is thus manifest. Obvious conclusion, Therefore, is that allegation/statement contained in such communications, petitions/complaints are privileged. They can not be made the basis of an action for damages for defamation. This suit, Therefore, is not maintainable, under the law.

16. In the result, IA. No. 3298/95, under Order 7 Rule 11 CPC (d) filed by the defendant No. 2 is allowed and the pliant is rejected as the suit is barred by law as discussed above.

17. Suit as well as the I.A. stand disposed of.

