

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 30th March, 2022**

+ **CS(OS) 609/2019**

MANSI GUPTA

..... Plaintiff

Through: Mr. Mandeep Singh Vinaik, Ms. Anjali Sharma, Ms. Ragini Vinaik and Mr. Pavan Kumar Dhiman, Adv.

Versus

PREM AMAR & ANR.

....Defendants

Through: Mr. Mohit Chaudhary, Mr. Kunal Sachdeva and Ms. Anubha Surana, Adv.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

I.A.10114/2020 (of defendants under Order VII Rule 11 read with Section 151 CPC for rejection of plaint)

1. This order will dispose of the application moved under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC' for short) on behalf of the defendants, with the following prayers :

"A. Allow the present application and reject the present suit plaint qua the Defendant and/or

B. Pass such other order or orders as this Hon'ble Court may deem just and fit in the facts and circumstances of the case."

2. Before proceeding with the merits of the application, it may be noted that the suit has been filed for recovery of a sum of Rs.5 crores, by the plaintiff, who is the daughter-in-law of the defendants. Her case is that the

defendants had, by their words and actions, including a press-conference addressed by them, openly accused the plaintiff of being guilty of and conniving and conspiring to have her husband murdered. On account of the wide publicity of this statement, including in the print-media, the plaintiff submitted that her reputation had been shattered and being a businesswoman, was also maligned through wrongful impressions being created not only with the general public, but also with her business associates. Her social life had also been negatively impacted and she and her family were suffering from acute anxiety and depression.

3. By means of the present application, the defendants have contended that the plaint did not disclose any cause of action and since the defendants had only one thought in their mind, which was the apprehension of the true murderer of their one and only son and malice could not be attributed to them and therefore, the plaint was liable to be rejected.

4. A reply has been filed by the plaintiff to submit that the questions raised in the application were of such a nature that required determination at trial and hence the application was liable to be dismissed.

5. Mr. Mohit Chaudhary, learned counsel for the applicants/defendants, submitted that it was important to consider the fact situation in the present case to determine, whether the plaint disclosed a cause of action. According to the learned counsel, the answers given by the defendants were in response to questions put to them by the media on the conduct of the plaintiff. Their statements taken in entirety, were clearly not plaintiff centric. Furthermore, it was submitted that the plaintiff has not made any

avermment in the plaint, as to how her reputation had been harmed. Thus, material facts have not been pleaded, justifying a claim of Rs.5 crores.

6. It was further submitted that this Court had no jurisdiction to try the suit, as the cause of action had not arisen in Delhi. The interview was given in Faridabad, Haryana. The defendants were residing in Faridabad. No details of the URLs have been given and in any case, the uploading of the video was never done at the instance of the defendants. Moreover, the pecuniary jurisdiction was also indeterminate, since damages have not been quantified for this purpose. Reliance has been placed on the decision of the Supreme Court in *Dahiben Vs. Arvindbhai Kalyanji Bhanusali (D) thr. L.Rs. and Ors.* (2020) 7 SCC 366.

7. Mr. Mandeep Singh Vinaik, learned counsel, arguing on behalf of the plaintiff, submitted that this Court had jurisdiction vested in it under Sections 19 and 20 of the CPC. It was submitted that the plaintiff resided in Delhi and the impact on her reputation was suffered by her at Delhi, as a consequence of the statements of the defendants. These averments were made in para No.21 of the plaint. Thus, on neither ground could the plaint be rejected. The learned counsel also submitted that the plaintiff had explained why she was claiming Rs.5 crores in para No.22, 23 and 26. Reliance has been placed on the judgment of the Supreme Court in *Aravali Infrapower Ltd V. R.B. Gupta*, 2015 SCC OnLine 7264 and *GMR Infrastructure Limited v. Associated Broadcasting Company Pvt. Ltd. & Ors.*, (2018) SCC OnLine Del 6866 in support of the contention that this Court had the jurisdiction to try the case.

8. It was further argued that, it was clear that what the defendants have sought to do was to introduce their defence which cannot form the reason for rejection of a plaint. The learned counsel took the Court through the application pointing out that all pleas taken in the application could be determined only through trial, as they were all factual in nature. It was submitted that though the defendants have lost their only son, it was not as if the plaintiff had not suffered, including unjustly at the hands of the police as she had voluntarily agreed to brain-mapping and lie-detector test only on account of the accusations of the defendants.

9. It was further submitted that in para No.10 of the plaint, all links of the URLs have been given. Moreover, the reports showed defamatory statements, accusing the plaintiff of having an illicit relationship. The defendants as parents could claim no special privilege to make this kind of slanderous allegations against the plaintiff. Therefore, malice was writ large in the actions of the defendants. Finally, merit was not to be considered as it would be a matter to be determined on evidence and could not be a consideration for rejection of the plaint. Reliance has been placed on the judgment in *Ram Jethmalani v. Subramaniam Swamy* 2006 SCC OnLine Del 14. Hence, learned counsel submitted that the application was liable to be dismissed.

10. At the outset, it may be noticed that though reference has been made to the jurisdiction, or rather the lack of it, in this Court to try the suit, the application is only under Order VII Rule 11 CPC, which reads as under: -

“11. Rejection of plaint. - The plaint 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 plaint is returned 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 plaint to be barred by any law :*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9:*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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 from 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.”

11. The question of jurisdiction is to be considered under Order VII Rule 10 CPC, which is as follows: -

“10. Return of plaint.- (1) Subject to the provisions of rule 10A, the plaint shall at any state of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation.-For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after

setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint.--On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.”

12. The reliefs are also different, as under Order VII Rule 10 CPC, the plaint cannot be rejected by the court not having jurisdiction and the same has to be returned for purposes of filing before the jurisdictional court. However, in the present application, rejection alone has been sought. In the circumstances, considering that the nature of relief under both provisions are different from each other, this Court deems it appropriate to consider the instant application only as one under Order VII Rule 11 CPC i.e., whether or not the suit has to be rejected on any of the grounds mentioned thereunder.

13. In umpteen number of cases, the Apex Court and the High Courts have held that while dealing with an application under Order VII Rule 11 CPC, the court can only consider the averments in the plaint and documents relied upon by the plaintiff. However, the stand of the defendant is irrelevant. If, on a demurer, a cause of action is disclosed or the averments appear to be such that none of the grounds under Order VII Rule 11 CPC are found applicable, there can be no question of the rejection of the plaint. It has been reiterated in ***Dahiben (supra)***:-

‘23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would

the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941]

14. Order VII Rule 11(a) CPC deals with a situation where the plaint does not disclose a cause of action. What is a cause of action has been defined in *Swamy Atmananda Vs. Sri Ramakrishna Tapovanam* (2005) 10 SCC 51 and has been reiterated in *Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust* (2012) 8 SCC 706, as being a bundle of facts that are material and relevant for the decision of the case and which are required to be proved by the plaintiff to be entitled for reliefs claimed in the suit. In *T.*

Arivandandam Vs. T.V. Satyapal (1977) 4 SCC 467, also reiterated in *Dahiben (supra)*, trial courts were advised to not allow clever drafting to raise an illusion of a cause of action. In the words of the Supreme Court—

“5. ... The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them....”

15. This Court has in *Puja Aggarwal Vs. Pravesh Narula* [order dated 29th March, 2022 in CM(M)-IPD 1/2022], taken the following view :

“17.....Thus, the Trial Court would be justified in putting an end to vexatious, frivolous, meaningless and sham litigation. But this power may be exercised only where the plaint clearly discloses no cause of action or any of the other grounds contained in Order VII Rule 11 CPC are made out and not otherwise. This is so as the consequences of such exercise of power are immediate and decisive and shuts the door of the court firmly upon a plaintiff who ostensibly approached it for legal remedy.”

16. In the present case, a perusal of the application itself would reveal the frivolous nature of the application. While claiming that the plaint did not disclose a cause of action, in actual fact, the defendants have pleaded

justification, lack of malice, privilege, freedom of speech and fair comment, as the grounds for rejection. Clearly, these are the defences that are normally raised by defendants to a suit for damages on account of defamatory and slanderous words having been allegedly used by the defendants. The contentions that the plaintiff has not justified how she has claimed Rs.5 crores, is again extraneous to the determination of whether the plaint is to be rejected. The existence of the cause of action cannot be equated with the merits of the suit filed. It will be only after trial and on evidence produced that it could be determined whether the defendants were justified in making the statements they did to the media, whether there was any privilege involved in it and whether the plaintiff was entitled to damages of at least Rs.5 crores, as claimed. These are all questions of fact and require evidence to be adduced during trial.

17. Again the question, whether or not the defendants were prompted by malice while making their statements, would also be determined on the proof of surrounding circumstances from which their intention can be inferred.

18. In the light of the foregoing discussion, therefore, there being no merit in the instant application, the same is dismissed, with costs of Rs.10,000/-.

19. The application stands disposed of.

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20. List before the Roster Bench on 11th April, 2022, for further proceedings.

21. The order be uploaded on the website forthwith.

**(ASHA MENON)
JUDGE**

MARCH 30, 2022

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