

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

+ CS(OS) 649/2021, I.As. 16022/2021 (of plaintiff u/O XXXIX R-1&2 CPC for ad-interim injunction) & 16023/2021 (of plaintiff u/S 148 CPC for enhancement/enlargement of time for filing the requisite court fees)

DR. SANJIV BANSALPlaintiff
Through: Mr. Manish Kaushik and Mr. Ajit Singh Joher, Advs.

Versus

DR. MANISH BANSALDefendant
Through: Mr. Maneck Mulla, Ms. Anuja Jhunjunwala, Mr. Priyank Kapadia, Mr. Harsh Thadani, Mr. Ghanshyam Joshi and Mr. Chirag Joshi, Advs.

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

ORDER
% **15.02.2022**
[VIA VIDEO CONFERENCING]

1. The present order has been necessitated on account of the submissions made on behalf of the defendant that the suit was not maintainable under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 ('CPC' in short). Both sides have filed their written submissions along with cited case laws which I have considered in addition to the submissions made by learned counsel.

2. Before proceeding further, it may be noted that the suit has been filed with the following prayers:

“(a) *Pass a decree of permanent injunction restraining the defendant, its agents, servants, employees,*

officers, associates, representatives, attorneys and all acting for and on its behalf from writing, circulating, speaking, publishing or making any demeaning remark/material against the Plaintiff or engaging in any conduct which causes mental pain and agony to the Plaintiff;

- (b) *Pass an order for damages of Rs.3,00,00,000/- (Rupees Three Crores Only), or such further amount as may be ascertained by this Hon'ble Court for causing mental pain, stress, agony, torture and cruelty to the Plaintiff;*
- (c) *Pass an Order directing the Defendant to withdraw the said ex facie demeaning, derogatory, false and wrong allegations made against the Plaintiff in CS (OS) No.287/2021;*
- (d) *Pass a Decree for costs in the proceedings;”*

3. Mr. Manish Kaushik, learned counsel for the plaintiff submitted that the defendant had instituted a suit being CS(OS) No.287/2021 titled ***Dr. Manish Bansal Vs. Dr. Sanjiv Bansal & Ors.***, also impleading M/s RG Scientific Enterprises Limited as defendant No.9. The said suit was filed for perpetual injunction and declaration that the alleged Will and Testament dated 29th December, 2017, purportedly executed by Dr. Bhim Sen Bansal was not genuine and the same had been made in suspicious circumstances. The plaintiff herein claimed that his father, late Dr. B.S. Bansal had bequeathed his estate through a registered Will dated 29th December, 2017 to him. This was not acceptable to the defendant and so he instituted the suit for a share in his father's estate.

4. While doing so, though he was fully aware of the plaintiff having painstakingly built his reputation, he made unacceptable, deliberately

demeaning, derogatory, false, wrong and scandalous allegations in the plaint, knowing fully well that the plaint would also reach the hands of the management and employees of M/s RG Scientific Enterprises Limited and its recent investors. Thus, he had been defamed.

5. Relying on the judgements in *Ram Jethmalani v. Subramaniam Swamy*, 2006 SCC OnLine Del 14, *Dhiro Koch and Ors. v. Gobinda Dev Mishra Bura Satria* 65Ind. Cas.204, *Auguda Ram Shaha v. Nemai Chand Shaha* 12Ind. Dec. (n.s.) 576 and *Rahim Bakhsh v. Bachcha Lal*, 1928 SCC OnLine All 246, the learned counsel submitted that there could be no absolute privilege to averments, specially defamatory statements made in the pleadings. The learned counsel has further relied on several judgments of this court, other High Courts as well as the Supreme Court in *John Thomas v. K. Jagadeesan (Dr)*, (2001) 6 SCC 30 and *Rohini Singh v. State of Gujarat*, 2018 SCC OnLine Guj 10, *Sanjay Mishra v. Govt. (NCT of Delhi)*, 2012 SCC OnLine Del 1779, *Thangavelu Chettiar v. Ponnammal*, 1965 SCC OnLine Mad 248, *Madhuri Mukund Chitnis v. Mukund Martand Chitnis*, 1990 SCC OnLine Bom 410, *Prabhakaran v. Gangadharan*, 2006 SCC OnLine Ker 302 and *Sushma Rani v. H.N. Nagaraja Rao*, 2020 SCC OnLine Kar 1913 to contend that pleadings in a court amount to publication and can be *per se* defamatory.

6. It was submitted that the suit was maintainable, as the plaintiff was entitled to claim damages for injury to his reputation as the right to reputation is envisaged under Article 21 of the Constitution of India. Reliance in this regard has been placed on the judgements of the Supreme Court in *Om Prakash Chautala v. Kanwar Bhan*, (2014) 5 SCC 417,

Subramanian Swamy v. Union of India, (2016) 7 SCC 221, *Kiran Bedi v. Committee of Inquiry*, (1989) 1 SCC 494, *Mehmood Nayyar Azam v. State of Chhattisgarh*, (2012) 8 SCC 1, *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and Ors.* (1893) 1 SCC 124, *Umesh Kumar v. State of Andhra Pradesh* (2013) 10 SCC 591 and *Vishwanath v. Sarla Vishwanath Agrawal* (2012) 7 SCC 288.

7. It was also the submission of the learned counsel for the plaintiff that he had incorporated prayer No.(c) in view of the provisions of Order II Rule 2 of the CPC. Reliance was placed on the judgment of the Supreme Court in *Coffee Board Vs. M/s Ramesh Exports Pvt. Ltd.* (2014) 6 SCC 424, *Deva Ram and Ors. v. Ishwar Chand and Ors.* (1995) 6 SCC 733 and *V. Kalyanaswamy v. L. Bakthavatsalam*, 2020 SCC OnLine SC 584. It was thus submitted that there was no reason to reject the present suit.

8. It was the stand taken by Mr. Maneck Mulla, learned counsel for the defendant that the entire purpose of the suit was to prevent the defendant from pursuing his suit. Since it was a pressure tactic, it interfered with the course of justice and therefore was *per se* contemptuous. It was further submitted by learned counsel for the defendant that there was also no cause of action. It was submitted that one of the reliefs sought is a direction to the defendant to withdraw the so called false and wrong allegations made in CS(OS) No.287/2021. Such a prayer would be silencing the defendant in his suit. The learned counsel has relied on the judgments in *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467, *Pearlite Liners (P) Ltd. v. Manorama Sirsi* (2004) 3 SCC 172, *Rajendra Bajoria v. Hemant Kumar Jalan*, 2021 SCC OnLine SC 764 and *Renu Khullar v. Aaron*, 2018 SCC OnLine Del

9115, in support of his contention that such a frivolous suit ought to be nipped in the bud and rejected at the threshold. The learned counsel submitted that only if the allegations were proved to be false, they could tantamount to be defamatory as the pleas taken by the defendant in his suit reflecting on the conduct of the plaintiff are *ex-facie* not defamatory. To ask the defendant to withdraw those pleas would amount to contempt of court. Thus, the suit was barred by law and no summons ought to be issued. Reliance in this regard has been placed on the judgements in ***Pratap Singh v. Gurbaksh Singh***, 1962 Supp (2) SCR 838, ***Govind Sahai v. State of U.P.***, (1969) 1 SCR 176 and ***Ch. Rajender Singh v. Uma Prasad***, 1934 SCC OnLine All 228.

9. These submissions have been stoutly repelled by the learned counsel for the plaintiff pointing out that scandalous pleadings can be struck off by the court under Order VI Rule 16 of the CPC and therefore, the relief sought cannot be an act of contempt of court. It was submitted that by accusing the plaintiff of plotting and being selfish and being responsible for the death of their brother in 1990, the unfounded and unsubstantiated allegations impacted the reputation of the plaintiff and being circulated to third parties and investors had caused much harm to the plaintiff, including severe mental agony, for which he was entitled to claim damages and therefore, the suit was fully maintainable. The learned counsel has relied on the judgements in ***Organo Chemical Industries and Ors. Vs Union of India and Ors.*** (1979) 4 SCC 573, ***Shobha Rani Vs Madhukar Reddi*** (1988) 1 SCC 105, ***V. Bhagat Vs D. Bhagat*** (1994) 1 SCC 337, ***Spring Meadows Hospitals and Ors. Vs Harjol Ahluwalia through KS Ahluwalia and Ors.*** (1998) 4 SCC 39,

Gananath Pattnaik Vs State of Orissa (2002) 2 SCC 619, *Vijaykumar Ramchandra Bhat v. Neela Vijaykumar Bhat*, (2003) 6 SCC 334, *Jose Phillip Mampillil Vs Premier Automobiles Ltd. and Ors.* (2004) 2 SCC 278, *Ghaziabad Development Authority Vs Balbir Singh* (2004) 5 SCC 65, *A. Jayachandra Vs Aneel Kaur* (2005) 2 SCC 22, *Naveen Kohli v. Neelu Kohli* (2006) 4 SCC 558, *Samar Ghosh Vs Jaya Ghosh* (2007) 4 SCC 511, *K. Srinivas Rao Vs D.A. Deepa* (2013) 5 SCC 226, *Malathi Ravi v. B.V. Ravi* (2014) 7 SCC 640, *Raj Talreja Vs Kavita Talreja* (2017) 14 SCC 194, *Savitri Balchandani v. Mulchand Balchandani*, 1986 SCC OnLine Del 63, *Rajani v. Subramonian*, 1988 SCC OnLine Ker 348, *Boregowda v. C.D. Devaiah*, 1998 SCC OnLine Kar 466, *Padma Joseph v. Rana Joseph*, 2014 SCC OnLine Ker 1706, *Jayanti v. Rakesh Mediratta*, 2016 SCC OnLine Del 5760, *Kirti Nagpal v. Rohit Girdhar*, 2020 SCC OnLine Del 1466, *Thalraj v. Sau. Jyoti*, 2021 SCC OnLine Bom 255, *Sabitha Unnikrishnan v. Vineet Das*, 2021 SCC OnLine Ker 2995 and *Neelam v. Jai Singh* [order dt. 9th November, 2021 in MAT.APP.(F.C.) 106/2021] to support his contentions.

DISCUSSION

10. It is well within the powers of the court on receiving a plaint to determine whether or not to issue summons, while determining whether the suit discloses a cause of action and should be put to trial. This has been held by this Court in *Ashwani Kumar v. Aditya Mannohar Bhide and Ors.*, 2021 SCC OnLine Del 4752, while observing the following-

“6. There is no doubt that the court on receipt of a plaint acts well within its powers to consider whether the summons have to be issued or whether the suit as framed was

maintainable or not. These powers are drawn from Order VII Rule 10 and Rule 11 CPC. A Co-ordinate Bench of this Court has already observed in Tajunissa (supra) that even at the pre-summoning stage, the court could hear both the parties on the question of the maintainability of the suit under Order VII Rule 11 CPC....”

11. But while doing so, the court has to consider the averments in the pleadings and the documents annexed to the plaint. As has been held in the judgements relied upon by the counsel for the plaintiff, including, ***Exphar SA and Ors. Vs Eupharma Laboratories Ltd. and Ors.*** (2004) 3 SCC 688, ***Saleem Bhai and Ors. Vs State of Maharashtra and Ors.*** (2003) 1 SCC 557, ***LT Foods Limited v. Heritage Foods (India) Limited***, 2014 SCC OnLine Del 2918, ***Indovax Pvt. Ltd. v. Merck Animal Health***, 2017 SCC OnLine Del 9393, ***G.D. Foods MFG (India) Pvt. Ltd. v. Zihawa Foods Pvt. Ltd.***, 2017 SCC OnLine Del 8372 etc., averments made in the plaint are to be taken on demurrer and the merits of the case and the defence available to the defendant are irrelevant to decide the question, whether or not to reject the plaint.

12. While considering the averments, the court is also to be cautious of skillful drafting. As observed in ***T. Arivandandam*** (supra):

“5..... 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...”

13. Similarly, with regard to the question, whether a suit is barred under law, as argued by the learned counsel for the defendant, it would be worthwhile to reproduce the observations of the Supreme Court in ***Srihari Hanumandas Totala v. Hemant Vithal Kamat***, (2021) 9 SCC 99:

“17. Order 7 Rule 11(d) CPC provides that the plaint shall be rejected “where the suit appears from the statement in the plaint to be barred by any law”. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case.....

....25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised as follows:

25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to

25.2. The defence made by the defendant in the suit must not be considered while deciding the merits of the application.

25.3. To determine whether a suit is barred by res judicata, it is necessary that (i) the “previous suit” is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally

decided by a court competent to try the subsequent suit.

25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the “previous suit”, such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.”

14. The question in the present case would be whether the plaint discloses a cause of action and whether the prayers made would amount to an act in contempt of the court to be barred by law.

15. Taking the aspect of contempt first. In the case of *Pratap Singh* (supra), relied upon by the defendant, the Supreme Court was dealing with appeals against the High Court finding the appellants guilty of contempt and subjecting them to punishment. The respondent before the Supreme Court had instituted a suit in the court of the Senior Subordinate Judge, Amritsar, Punjab for a declaration that the order of recovery sought to be made from his salary was void and without effect. A stand was taken by the appellants before the Supreme Court that there was a letter of the Chief Secretary dated 25th January, 1953 which required that a government employee had to exhaust departmental remedies before going to the court of law and the respondent/Gurbaksh Singh having failed to do so was liable for disciplinary action. Disciplinary action was also initiated. Then the respondent/Gurbaksh Singh alleged that by doing so, they had committed contempt of court punishable under Section 3 of the Contempt of Courts Act, 1952. He took the plea that the disciplinary proceedings tantamounted to interference with his legal rights to seek redress in a court of law and also amounted to exerting pressure upon him with the intent to restrain him from pressing his

suit. The High Court, as noticed, held the appellants guilty of contempt of court.

16. The Supreme Court affirmed the finding that the conduct of the appellants before it amounted to contempt of court. The facts situation in the present case is vastly different. Nevertheless, it would be of value to note the observations of the Supreme Court in para No.10 which are as follows:

“10. What, after all, is contempt of court? “To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation”. (Oswald's Contempt of Court, 3rd Edn., p. 6). We are concerned in the present case with the second part, namely, “to interfere with or prejudice parties litigant during the litigation”. In the case under our consideration the respondent had instituted a suit in the Court of the Senior Subordinate Judge, Amritsar, in respect of his grievance that a certain sum of money was being illegally deducted from his salary. On behalf of the respondent it was alleged that he had no further departmental remedies to exhaust, inasmuch as the order by which a part of his salary was being deducted was a final order made by the Punjab Government after considering the respondent's explanation. On behalf of the appellants it has been contended that the respondent had still a further remedy by way of an appeal to the Governor.It appears, therefore, that appellant Pratap Singh was not merely content with forwarding the memorandum of the Under-Secretary. He directed his subordinate officer to take action against the respondent. In accordance with that direction a proceeding was drawn up against the respondent and the appellant Bachan Singh was asked to enquire into it. The appellant Bachan Singh then drew up a charge-sheet and in that charge-sheet it was stated that the respondent had gone to a court of law before

exhausting all his departmental remedies. What would be the effect of these proceedings on the suit which was pending in the Court of the Senior Subordinate Judge, Amritsar? From the practical point of view, the institution of the proceedings at a time when the suit in the Court of the Senior Subordinate Judge, Amritsar, was pending could only be to put pressure on the respondent to withdraw his suit, or face the consequences of disciplinary action. This, in our opinion, undoubtedly amounted to contempt of court. There are many ways of obstructing the court and “any conduct by which the course of justice is perverted, either by a party or a stranger, is a contempt; thus the use of threats, by letter or otherwise, to a party while his suit is pending; or abusing a party in letters to persons likely to be witnesses in the cause, have been held to be contempts”. (Oswald's Contempt of Court, 3rd Edn., p. 87). The question is not whether the action in fact interfered, but whether it had a tendency to interfere with the due course of justice. The action taken in this case against the respondent by way of a proceeding against him can, in our opinion, have only one tendency, namely, the tendency to coerce the respondent and force him to withdraw his suit or otherwise not press it. If that be the clear and unmistakable tendency of the proceedings taken against the respondent, then there can be no doubt that in law the appellants have been guilty of contempt of court, even though they were merely carrying out the instructions contained in the circular letter.” (emphasis added)

17. To put it differently, every act cannot amount to contempt of court. The conduct which interferes with or prejudices a party/litigant during the pendency of the suit or proceeding would alone amount to contempt. Though in **Pratap Singh** (supra), the initiation of the disciplinary proceedings was intended to discourage the respondent/Gurbaksh Singh from proceeding with his suit it and amounted to a threat, in the present case, the plaintiff has merely approached the court seeking redressal for damage to

his reputation, the damage having been caused by the defendant making allegations against the plaintiff, namely, of being responsible for the death of their brother. Seeking legal redressal cannot tantamount to interference or obstruction to the course of justice.

18. Disparaging remarks can be expunged under Order VI Rule 16 of the CPC. The same is reproduced below for ready reference:

“16. Striking out pleadings.—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

- (a) which may be unnecessary, scandalous, frivolous or vexatious, of*
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or*
- (c) which is otherwise an abuse of the process of the Court.”*

What can be done by the Trial Court on an application made to it can certainly not take on the character of a threat nor can it tantamount to interference with the course of justice. Thus, seeking such a prayer cannot render this suit barred under law thus requiring the court to reject the plaint under Order VII Rule 11(d) of the CPC.

19. However, the question remains whether the prayer No.(c) can be sought before this Court in a suit. The plaintiff has sought a “direction” to the defendant to “withdraw” demeaning, derogatory, false and wrong allegations made by the defendant against him in CS(OS) No.287/2021. But, as pointed out by the learned counsel for the plaintiff himself, Order VI Rule 16 CPC permits the court, at any stage of the proceedings, to strike out

any matter in the pleading which may be unnecessary, scandalous, frivolous, vexatious or prejudicial or otherwise appears to be an abuse of the process of the court. Nothing prevented the plaintiff to have sought the striking out of such of the pleadings as was felt by him to be scandalous, frivolous, vexatious or prejudicial or an abuse of the process of the court, which are alleged to have been made in paras No.33, 34, 35, & 38 of the plaint in that case. What could possibly have been achieved by moving an application before the Trial Court is sought to be incorporated as a prayer in a suit. Obviously, this suit would require a trial to determine whether the plaintiff is entitled to such a relief and clearly, serves no purpose. This is an example of deft drafting to seek a relief through multiplicity of proceedings with oblique motives that certainly has to be nipped into the bud. Exercising the powers under Order VI Rule 16 CPC, the prayer no.(c) is struck out as being an abuse of the process of the court. However, the plaintiff would be entitled to move the Trial Court in this regard, if so advised. Coming to such a conclusion, however, cannot result in the rejection of the suit as being barred by law.

20. The learned counsel for the plaintiff has argued the question of whether averments in the pleadings entail complete privilege. In the opinion of this Court, determining that issue would need a consideration of the defence that the defendant may likely take in his written statement, including of privilege. However, that stage is yet to come. As noted herein above, reliance has also been placed on a number of judgments to contend that unfair onslaught on personal character amounts to cruelty and the victim is entitled to seek damages. While it would be a question of merit which

would have to be seen in the light of the pleadings and evidence that would come on record, once summons are issued, as to whether the sentences as pointed out in the plaint and stated to have been incorporated in the plaint filed by the defendant, are defamatory and whether the supply of the copies of the plaint to a third party who is not a family member in a case filed by the defendant to determine *inter se* rights of the family members in respect of the estate of their late father, would amount to publication and circulation. It would also be a matter of proof that the plaintiff had indeed suffered mental agony and therefore, would be entitled to seek damages from the defendant.

21. Suffice it to note on the basis of the judgments relied upon by the learned counsel for the plaintiff that a suit may be filed alleging defamation and seeking damages for harm to reputation, if such pleadings have been filed that may reflect on the character of the plaintiff. A cause of action would arise on the basis of which the plaintiff can approach the court. It would definitely be a different matter, whether ultimately the plaintiff succeeds in the suit or not.

22. It is therefore, not found necessary, to refer to the extracts of the plaint in CS(OS) No.287/2021 as reproduced in para No.11 of the plaint, except to consider, whether a cause of action is disclosed. To that extent, it has to be concluded that the suit discloses a cause of action. It may be underlined that such an objection has not been stressed on behalf of the defendant but in view of the detailed submissions urged on behalf of the plaintiff on the issue, an opinion on the same has been given.

23. The suit having been found to be maintainable, the plaint be registered

as a suit.

24. Summons in the suit and notice in the applications be issued to the defendant by all permissible modes including through WhatsApp and email and also through the learned counsel who has appeared on behalf of the defendant in this matter.

25. The written statement to the suit and reply to the applications be filed within thirty days from the date of receipt of summon and notice. The defendant shall also file affidavit of admission/denial of the documents filed by the plaintiff, failing which the written statement shall not be taken on record.

26. The plaintiff is at liberty to file replication to the written statement and rejoinder to the reply filed by the defendant within thirty days of the filing of the written statement/reply. The replication shall be accompanied by affidavit of admission/denial in respect of the documents filed by the defendant, failing which the replication shall not be taken on record.

27. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the time-lines.

28. List before the Joint Registrar on 11th April, 2022 for completion of pleadings.

29. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

FEBRUARY 15, 2022
'bs'