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

+ CM(M) 380/2022 & CM No.19835/2022, CM No.19836/2022

DR VIMLA MENON AND ANOTHER Petitioner

Through: Mr.J.P. Sengh, Sr.Adv. with
Mr.Bhagat Singh and Ms.Manisha Mehta,
Advs.

versus

GOPINATH MENON Respondent

Through: Mr.Amardeep Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **25.04.2022**

1. The petitioner, as the defendant before the learned Principal District and Sessions Judge (“the learned Pr DSJ”) in CS 204/2019, is aggrieved by order dated 15th March, 2022, passed by the learned Pr DSJ on applications filed by the respondent (the plaintiff before the learned Pr DSJ) under Order X and Order XI Rule 21, of the Code of Civil Procedure, 1908 (“the CPC”).

2. The petitioners are the sisters of the respondent. Their brother, Ravi Menon, died interstate on 29th October, 2015. A partition suit (CS (OS) 6/2016) was instituted by the petitioners against the respondent, in which a preliminary decree came to be passed on 14th December, 2016, followed by a final judgment dated 30th January, 2017.

3. Thereafter, the petitioners are stated to have addressed a communication dated 6th March, 2018, which constituted the provocation for the filing of CS 204/2019 by the respondent against the petitioners. The respondent alleged that the letter dated 6th March, 2018, contained certain assertions which were *ex facie* defamatory *qua* the respondent, in which, *inter alia*, embezzlement of large amounts of money by the respondent was alleged. It was further alleged that the petitioner had circulated the said communication thereby irreparably damaging the reputation of the respondent. Alleging that the petitioners had thereby committed tortious defamation, the respondent, in his suit, claimed damages to the tune of ₹ 75,00,000/- along with *pendente lite* and future interest, and costs.

4. During the course of the proceedings in the aforesaid suit, the petitioner filed an application seeking interrogatories under Order XI Rules 1, 2 and 4, read with Order XI, Rule 12 of the CPC, 1908. The interrogatories framed in the application were the following:

- i.** Did you not issue and address Letter/ representation dated March 6, 2018 written and signed by both of you and/ or on behalf of, Ms. Nalini Menon, addressed to Mr. Rakesh Kumar, Chairman, India Exposition Mart Limited and/ or to India Exposition Mart Limited with the Subject as “Misuse of Mart No. B 02/30 at IEML complex by David John”;
- ii.** Do you not keep a copy of said Letter/ representation dated March 6, 2018 in your custody, power and possession;

- iii.** Did you not receive an acknowledgement stamp of India I Exposition Mart Ltd./ it's official on the said Letter/representation dated March 6, 2018 and did you not keep I the same in your custody, power and possession;
- iv.** Did you, not issue and address Letter/ representation dated February 25, 2018 written and signed by both of you and/ or on behalf of Ms. Nalini Menon, addressed to Mr. Rakesh Kumar, Chairman, India Exposition Mart Limited and/ or to India Exposition Mart Limited;
- v.** Do you not keep a copy of said Letter/ representation dated February 25, 2018 in your custody, power and possession;
- vi.** Did you not receive an acknowledgement stamp of India Exposition Mart Ltd./ it's official on the said Letter/representation dated February 25, 2018 and did you not keep the same in your custody, power and possession;
- vii.** Has not any court of law passed any order to the effect that the Plaintiff has done any embezzlement and that a decree to this effect has also been issued by Hon'ble Chief Justice G. Rohini of the High Court of Delhi.”

5. The petitioners filed affidavits on 25th August, 2021, responding to the aforesaid interrogatories raised by the respondent.

6. The response of the petitioners to the various interrogatories were as under:

“1. In answer to Interrogatory No. (i) it is submitted that deponent has issued a written command, for protection and preservation of her own property from fraudulent activities

which were being undertaken from our space at the India Expo Mart at the behest of Plaintiff in the above named suit. Said written command was issued to a person, who was under an obligation to perform Its duty of protecting the deponent's property.

2. In answer to Interrogatory No. (II) & (III) it is submitted that copy of the written command has been filed before the proceedings which are currently pending before Sh Dinesh Dayal (Court Commissioner)

3. I object to the Interrogatory No.(iv), (v) & (vi) on the ground that no such document has been filed along with above named suit and the above named suit is not based on any such document.

4. In answer to Interrogatory No. (vii) it is submitted that deponent is only aware of judgment & decree which is passed by Hon'ble High Court of Delhi in civil suit no. 6 of 2016 and provides:

“.....It is further ordered that a decree for rendition of accounts is also hereby passed n. favour of the three plaintiffs and against the defendant no. 1 directing the defendant no. 1 to render accounts:

- 1) Full, complete, true and faithful accounts of the movable (including fixed deposits, mutual funds, shares, securities, insurance policies etc) and immovable properties, liabilities and other estate of late Mr. Ravi Menon including the defendant no. 3;*
- 2) Full, complete, true and faithful accounts of the bank accounts, fixed deposits, lockers, loans and liabilities standing in the name of the late Mr, Ravi Menon including the defendant no. 3.... ”*

“.....Since the defendant no. 1 is also to render accounts to the plaintiffs, it is further directed that the sale proceeds of

the share of the share of defendant no. 1 be deposited. in this court, to be disbursed to the defendant no. 1 after the accounts have been rendered and after the monies if any found to be due from defendant no. 1 to the three plaintiffs have been paid or after adjusting the same from the sale proceeds of the share of the defendant no. 1 so deposited in this Court..... "

7. The respondent, thereafter, filed yet another application under Section 165 of the Evidence Act, 1872, and Section 30 and 151 read with Order X, Rule 2 of the CPC, 1908, for recording of the statement of the petitioners under Order X and production of documents on oath.

8. It was alleged, in the said application, that the response of the petitioners, to the interrogatories served by the respondent was evasive and, did not appropriately answer the interrogatories. Alleging that the petitioners were prevaricating in respect of the letter dated 06th March, 2018, as well as an earlier communication dated 25th February, 2018, which was also alleged to be defamatory in nature and the reply thereto dated 09th March, 2018, the respondent asserted that these documents were essential in order to adjudicate the *lis* in controversy. Accordingly, it was prayed that the petitioners be examined on oath by the learned Pr DSJ under Order X of the CPC, on the various issues framed in the prayer in the application.

9. Individual affidavits were filed by the petitioners in response to the aforesaid application, regarding which the respondent sought

recording of the statement of the petitioners under Order X, CPC.

10. The impugned order dated 15th March, 2022, has come to be passed by the learned Pr DSJ on the aforesaid application dated 19th October, 2020 of the respondent. Regarding the three communications dated 25th February, 2018, 6th March, 2018 and 9th March, 2018, with respect to which the respondent alleged that the petitioners were not being candid in their response, the learned Pr DSJ observes that the letter dated 25th February, 2018 was not annexed to the plaint and, therefore, had to be eschewed from consideration. Apropos the communications dated 6th March, 2018 and 9th March, 2018, the learned Pr DSJ queried of the learned Counsel who appeared for the petitioners as to whether the copies of the said communications filed by the respondent with his suit could be exhibited as admitted documents. Learned Counsel for the petitioners answered in the negative.

11. The learned Pr DSJ notes that, in their affidavits dated 25th August, 2021, the petitioners had admitted issuance of the letter dated 6th March, 2018, but had, described the communication as a “written command”. As against this, in their earlier affidavit dated 1st February, 2021, it is noted that the petitioners had sought to contend that the copies of the letters dated 6th March, 2018 and 9th March, 2018, filed by the respondent, were not genuine copies. Thus, observes the learned Pr DSJ, were lacking clarity regarding the letter dated 6th March, 2018, especially as to whether the letter, of which a copy had

been filed by the plaintiffs was the letter which had been admitted by the petitioners in their affidavit dated 25th August, 2021. Apropos the second letter dated 9th March, 2018, of which the respondent sought production by the petitioners in his application, the petitioners' affidavits were silent. In order to ascertain the genuineness and veracity of the letters dated 6th March, 2018 and 9th March, 2018, copies of which had been filed by the respondent, with his plaint, the learned Pr DSJ has deemed it necessary to examine the petitioners on oath under Section 165 of the Evidence Act read with Order X CPC.

12. For these reasons, the petitioners have been directed to personally appear before the learned Pr DSJ for their examination. It is this direction that the petitioners seek to assail in the present petition.

13. Mr. J.P. Sengh, learned Senior Counsel for the petitioners, submits that there was no justification, whatsoever, for the learned Pr DSJ to direct personal appearance of the petitioners or to record their statement under Order X CPC. Essentially, he submits that the effort is to compel the petitioners to admit the letters dated 6th March, 2018 and 9th March, 2018 filed with the plaint.

14. He submits that the affidavit filed by his clients are clear on the fact that they were not admitting the genuineness of the said documents as filed with the plaint. Order X of the C.P.C., he submits, cannot be used as a method to compel a party to, on oath, depose contrary to the averments contained in the affidavit in evidence filed

by the party.

15. Mr. Sengh submits that, if the petitioners were not being candid in their response to the interrogatories served on them, the consequence envisaged by Order XI Rule 21 CPC would follow. Perceived want of clarity in responses provided to interrogatories served on a party could not, he submits, be a justification for recording of the statement of a party under Order X of the CPC.

16. Though Mr. Sengh does not dispute the discretionary power of the learned Pr DSJ to record the statement of his clients under Order X CPC, he submits that this discretion has not been properly exercised in the present case and that there was no requirement, given the contents of the affidavit already filed by his clients before the learned Pr DSJ, to record their statements under Order X of the CPC. The recording of the petitioners' statement under Order X, he submits, would obviously be to compel the petitioners to admit to the correctness of the copies of the letters dated 6th March, 2018 and 9th March, 2018, filed by the respondent with his plaint. This, he submits, is completely impermissible.

17. Having perused the record as well as the impugned order, I am not inclined to agree with the submissions advanced by Mr. Sengh. Order X Rule 2 CPC reads thus:

“2. Oral examination of party, or companion of party.—(1)
At the first hearing of the suit, the Court—

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.”

18. A bare reading of Order X of the CPC makes it apparent that the question of whether any of the parties to the suit is required to be orally examined on any aspect relevant to the controversy is essentially a matter of discretion. Where a court feels that, in order to elucidate matters in controversy in the suit, oral examination of one or more of the parties to the suit is necessary, the court is empowered to so order.

19. Mr. Sengh fairly acknowledged that Order X of the CPC did, indeed, empower the learned Pr DSJ to record the statements of the petitioners orally. His objection is to the justification cited by the learned Pr DSJ to do so in the present case. His contention is that assuming, *arguendo*, that the petitioners were not being candid in their responses to the interrogatories served by the respondents, they exposed themselves to the rigor of Order XI Rule 21 of the CPC which reads thus:

“21. NON-COMPLIANCE WITH ORDER FOR DISCOVERY.

(1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any struck out, and to

be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.

(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.”

20. Lack of clarity in the responses provided to interrogatories served by the opposite party, submits Mr. Singh, cannot be a justification for recording of the oral statement of the parties under Order X, CPC.

21. A reading of the impugned order reveals that the learned Pr DSJ has provided clear and cogent reasons for his decision to orally examine the petitioners under Order X, CPC and it is clearly not for this Court to second guess the decision. The learned Pr DSJ has noted the fact that the various affidavits filed by the petitioners, read conjointly, and juxtaposed with one another, did not reflect a clear stand with respect to the letters dated 6th March, 2018 and 9th March, 2018 on which the respondent sought to place reliance, copies of which had been filed with the plaint. The learned Pr DSJ has noted the fact that Order XI Rule 21 was much more drastic in its application as, in the event of failure of a party to properly respond to interrogatories, the provision permitted for the striking off, of the defence of the prevaricating party. Rather than taking recourse to such

an extreme step, the learned PR DSJ has actually erred, if at all, on the site of fairness, by allowing the petitioners to orally clarify their stand with respect to the communications dated 6th March, 2018 and 9th March, 2018. Given the nature of the *lis* in the plaint filed by the respondent, it is obvious that these letters are pivotal to adjudication of the controversy.

22. I find myself unable to subscribe to the submission of Mr. Sengh that the existence of an alternate course of action under Order XI Rule 21 forecloses a court from declining to orally record the statement of a party under Order X instead of proceeding under Order XI Rule 21.

23. Equally, I find myself unable to share the apprehension expressed by Mr. Sengh that the recording of the statement of the petitioners under Order X is with a view to compelling the petitioners to admit the copies dated 6th March, 2018 and 9th March, 2018 filed by the respondent with his plaint as being genuine and testify as to their veracity. This is, in my mind, a completely imaginary and unfounded assumption. The recording of the statement is by the learned Pr DSJ. It is not the petitioner's case that the learned PR DSJ has any axe to grind against any of the parties – as, indeed, it can hardly be. The learned PR DSJ merely seeks to clarify certain issues which, according to him, are still nebulous in the affidavits filed by the petitioners. Any attempt to predict the questions which may be posed to the petitioners, and the answers that they would provide thereto,

would be an exercise in clairvoyance, which this Court is obviously not inclined to undertake.

24. The peripheries of the jurisdiction of this Court under Article 227 of the Constitution of India are limited, albeit well defined.

25. Within the limited parameters of the jurisdiction vested in this Court under Article 227 of the Constitution of India as set out by the Supreme Court in in *Estralla Rubber v Dass Estate*¹, *Garment Craft v. Prakash Chand Goel*² and *Puri Investment v. Young India*³, this Court does not find any case made out to interfere with the findings of the courts below.

26. The petition is accordingly dismissed.

C. HARI SHANKAR, J

APRIL 26, 2022

SS/kr/dsn

¹ (2001) 8 SCC 97

² 2022 SCC OnLine SC 29

³ 2022 SCC OnLine SC 283