

IN THE HIGH COURT OF DELHI AT NEW DELHI
I.A. No. _____ of 2020
IN
CS(OS) No. 337 of 2020

In the matter of:

The Film & Television Producers
Guild of India Ltd. &Ors.

...Plaintiffs

VERSUS

ARG Outlier Media Pvt. Ltd. & Ors.

...Defendants

APPLICATION FILED ON BEHALF OF BENNETT, COLEMAN & CO. LTD. (DEFENDANT NO. 5), MR. RAHUL SHIVSHANKAR (DEFENDANT NO. 6) AND MS. NAVIKA KUMAR (DEFENDANT NO. 7) UNDER ORDER VII RULE 10, READ WITH ORDER 7 RULE 11(a) and (d) OF THE CODE OF CIVIL PROCEDURE, 1908 READ WITH SECTION 151 CPC.

MOST RESPECTFULLY SHOWETH:

1. That the present suit for perpetual and mandatory injunction, has been filed by the Plaintiff, contents of which are not repeated herein for the sake of brevity. However, the same may be treated as part and parcel of this application and be read at the time of the final disposal of this Application. The present suit has been filed on the following purported ground of:-
 - i. Defamation/Injury allegedly caused by the Defendant(s) herein and other News Channels, upon the reputation of the Plaintiff(s).
 - ii. Violation of the provisions of the Programme Code as prescribed under the Cable Television Networks Rules, 1994 by the Defendant(s) herein.

- iii. Interference with the right to privacy of persons associated with any one or more of Bollywood, the Plaintiff(s), members and office bearers of Plaintiffs No. 1 to 4, and the directors, shareholders, partners and proprietors of Plaintiff(s) No. 6 to 38
 - iv. Allegations of 'Media trial' and 'Parallel investigation' against the Defendant(s) with respect to the coverage of the Sushant Singh Rajput death case and related investigation.
2. That the present application is filed by the Applicant/Defendants herein, under Order VII Rule 11(a) and (d) of CPC seeking rejection of plaint on the ground
- (i) that the Hon'ble Court has no territorial jurisdiction to entertain the present suit filed against the Defendant(s);
 - (ii) Improper valuation for the purposes of maintaining the present suit and court fees
 - (iii) No cause of action has arisen in favor of the Plaintiff(s) and against the Defendant(s) considering that the Plaintiff(s) allegedly complains of defamation of un-identifiable group of persons and as such, defamation is not made out;
 - (iv) That there cannot be any defamation of a corporation, incorporated in accordance with law;

- (v) That the Plaintiff seeks to join different and distinct causes of action i.e. mis-joinder of causes of action and mis-joinder of parties
 - (vi) That the Plaintiff suffers from non-joinder of necessary and proper parties;
3. Even otherwise, no defamatory content has been published by the Defendant(s) herein against the Plaintiff(s) or any statement made by the Defendant(s) against the Plaintiff(s) which amounts to Defamation as alleged or otherwise or at all. Hence, the present suit is not maintainable and as such, the present suit is liable to be dismissed.

NO TERRITORIAL JURISDICTION TO ENTERTAIN THE SUIT

4. That this Hon'ble Court does not have the necessary territorial jurisdiction to entertain the present plaintiff. It is stated that the Plaintiff(s) is obligated to prove beyond doubt that the wrong was done to the Plaintiff(s) within the territorial jurisdiction of this Hon'ble Court. In the case in hand, the Plaintiff(s), in their plaint, in para 24 states that 'the Hindi film industry based in Mumbai known as 'Bollywood' constitutes a cogent and identifiable class by itself...' and in para 45 and 48 as under:

"...45. The cause of action for filing the present Civil Suit arose when the Defendants from late June 2020 have been broadcasting increasingly irresponsible and derogatory reports, programmes and communications attributing guilt in the Sushant Singh Rajput case to various persons forming part of the Plaintiffs' associations. The narrative has

changed over time and is now focused on alleged drug usage and dealing across Bollywood in general and some persons associated with Bollywood in particular. The cause of action has recurred and is recurring every day as the Defendants have continued broadcasting and publishing such irresponsible, false and malicious content in violation of laws repeatedly on their news channels and online platforms, repeatedly implicating by name as well as by association with Bollywood multiple members of the industry and behaving as though they are a parallel investigating agency, prosecutor and judge. As such, the cause of action is continuous, alive and subsisting. Therefore, no part of Plaintiffs' claim is barred by period of limitation.

48. The defamatory content was broadcasted by the Defendant Nos. 1 to 7 and 17 to 30 and viewed by people all over the country, including New Delhi. The nature of TV broadcasts is such that the programmes of the Defendants are telecast into almost every home and viewed by households through the length and breadth of New Delhi. Delhi, being the national capital, is amongst the largest markets for consumption of the programmes of the channels 'Republic TV' 'Republic Bharat' 'Times Now' ABP News, AajTak, TV9 Bharatvarsh and Zee News which are news channels. Since Bollywood is focused on creating films in Hindi, New Delhi is also a large market for the business of the Plaintiffs, their members, office bearers, directors, partners, and proprietors (as the case may be), being one of the largest cities in India that is largely Hindi-speaking. The Plaintiffs, their members, office bearers, directors, partners, and proprietors (as the case may be), have a market and a reputation among their Delhi audiences that is being harmed every day by the broadcasts of the Defendants. The Plaintiffs state that the said posts, shows and videos broadcast/published by Defendants No. 1 to 8 are also available on the social media platforms/ account of Defendant Nos. 9 to 16 and are being accessed and seen by many people in India as well as abroad including within the jurisdiction of this Hon'ble Court. The impact of the wrongs

of the Defendants is felt prominently in New Delhi. A substantial part of the cause of action has therefore arisen in Delhi. The Defendant No. 5 also has a major corporate and operations office at 7, Bahadur Shah Zafar Marg, New Delhi. Defendant Nos. 6 and 7 are also residents of Delhi, within the jurisdiction of this Hon'ble Court. The Defendant Nos. 21 to 24 also have their offices within the jurisdiction of this Hon'ble Court. Therefore, this Hon'ble Court- has the requisite territorial jurisdiction to try and entertain the present Civil Suit..."

It is stated that the above paragraphs do not meet the ingredients of Section 19 of the Civil Procedure Code. It is necessary to show or atleast allege / plead that wrong was done to the person, which must include the particulars of publication, and the particulars of persons in whose esteem the Plaintiff(s) claims to have fallen or lowered in image or reputation. In the paragraphs reproduced or the entire plaint, there is nothing to show that the Plaint contains such pleadings. Hence, the present Plaint is liable to returned to be filed in the court of appropriate jurisdiction.

5. It is further stated that all the plaintiffs reside within the territorial jurisdiction of Mumbai. Substantially, the defendants also reside within the territorial jurisdiction of Mumbai.
6. From a plain reading of the plaint, it can be seen that the Plaintiff(s) have failed to provide any reason/justification as to how the cause of action, in whole or in part, as alleged or otherwise or at all has arisen in favour of the Plaintiff(s) and against the Defendant(s) within the territorial jurisdiction of this Hon'ble Court. Hence, the present suit is

liable to be returned to the court of appropriate jurisdiction wherein the alleged cause of action has arisen in favour of the Plaintiff(s), if any.

IMPROPER VALUATION

7. That the suit has been valued in para 49 at Rs. 2,00,05,000/- without giving any details, as to how the injunction is valued. For the purpose of pecuniary jurisdiction the suit is valued at Rs.2,00,05,000/- without giving any details. Furthermore, the relief for perpetual and mandatory injunction has been valued at Rs. 200 each.

Below mentioned is table extracted from the plaint wherein the valuation of court fee of the suit is mentioned:-

Sr. No.	Particulars	Valuation for court jurisdiction and court fees	Court payable fee (in Rupees)	Court fee paid (in Rupees)
1.	For the relief for Perpetual and mandatory injunction (see prayers a, b, & c) to prayer in the prayer clause of the plaint)	Rs. 200/- (each prayer) (Rupees Two Hundred Only)	Rs. 20.00/- (each prayer) (Rupees Twenty Only)	Rs 60.00/- (Rupees Sixty Only)
2.	For the relief for mandatory injunction (see prayers d, e, & f) to the prayer clause of the plaint.	Rs. 200/- (each prayer) (Rupees Two Hundred Only)	Rs. 20.00/- (each prayer) (Rupees Twenty Only)	Rs 60.00/- (Rupees Sixty Only)
3.	For the purpose of Pecuniary Jurisdiction	Rs.2,00,05,000/- (Rupees Two Crore and Five Thousand Only)	Rs. 1,97,600/- (Rupees One Lacs Ninety Seven Thousand and Six Hundred Only)	Rs. 1,97,600/- (Rupees One Lacs Ninety Seven Thousand and Six Hundred Only)

8. The suit has to be valued separately for court fees and jurisdiction. It is submitted that under the Suit Valuation Act, 1887 read with the Court Fees Act, 1870 the valuation for the purpose of court fees and pecuniary jurisdiction is required to be the same. Further the valuation of the suit for the purpose of pecuniary jurisdiction is not appropriate. Hence, the present suit is liable to be returned to the court of appropriate jurisdiction wherein the alleged cause of action has arisen in favour of the Plaintiff(s), if any.

NO CAUSE OF ACTION

9. That no cause of action as alleged or otherwise or at all has accrued / arisen in favour of the Plaintiff(s) for the reasons that no defamation has been alleged to be made concerning the Plaintiff(s). In fact, none of the alleged defamatory statements as identified in the suit refer to the Plaintiff(s). Secondly, in so far as purported allegations of a media trial are concerned, once again, the alleged statements do not concern the Plaintiff(s) as clearly, the Plaintiff(s) are not on trial here. Hence, the Plaintiff(s) have no locus to impugn the purported acts of media trial as alleged in the Plaint.

ABUSE OF PROCESS OF LAW

10. That the suit is an abuse of process because the Plaintiff(s) intend to interfere with the fundamental rights of the Applicant(s) / Defendant(s) protected by Article 19(1)(a) on causes with which the Plaintiff(s) have no concern. Section 41, Specific Relief Act, 1963 which postulates that no injunction may be issued at the instance of a Plaintiff that have no personal right. Plaintiff(s) are merely acting as a front for certain other individuals who have chosen not to approach this Hon'ble Court. Basis the aforesaid the present suit is not maintainable and is liable to be rejected.

NO IDENTIFIABLE CLASS OF PERSON ALLEGEDLY DEFAMED

11. That the Plaint seeks to make out a case of defamation of the unidentifiable class of persons namely 'Bollywood'. The Plaintiff(s) have stated that 'Bollywood' has been allegedly defamed, which is neither a definite nor an identifiable group or person. It cannot be stated with certainty that a particular individual of the 'Bollywood' has been defamed. Bollywood, if the said industry exists in that name, is always in a state of flux and ever changing and the members are unidentifiable and indeterminable. Hence, the present plaint is not maintainable on that count also, and as such, the present suit is liable to be returned/rejected as the same is not maintainable in view of the aforesaid.

NO DEFAMATION OF CORPORATIONS

12. That the Plaintiff(s) arraigned in the Plaint are all corporations, incorporated in accordance with law under the Companies Act, 1956. No pleading or averment is contained in the Plaint, which avers that it is the corporation or any employee of the corporation that has been defamed. The Plaintiff(s) being incorporated entities have not pleaded that any employee of these corporations have been defamed or the defamation of any person indirectly defames these entities. Hence, the present suit is not maintainable on that count as well.
13. Even otherwise a corporation i.e. the Plaintiff(s) herein does not have a locus standi to sue for the alleged defamation of any of his shareholders and/or employee. It is trite that the complainant ought to be the person who is allegedly directly affected / allegedly defamed. The party who has been allegedly directly affected / allegedly defamed has to come before the Court seeking appropriate relief. Hence, a corporation on behalf of his shareholders and/or employee cannot sue for the alleged defamation.

MIS-JOINDER OF CAUSE OF ACTION

14. That the Plaint has been filed by as many as 38 Plaintiff(s), who have separate and distinct causes of actions against each of the separate and distinct Defendant(s), who are 24 in numbers. The Plaint does not even

disclose or seek permission from this Hon'ble Court that it seeks to join various causes of action for and on behalf of 38 Plaintiff(s) against 24 Defendant(s).

15. The principle of joinder of causes of action under Order II Rule 3 CPC is clearly violated as the alleged joinder will clearly derail/delay the process of trial, and further, embarrass/be an abuse of process of law. Further, it is trite that such causes of actions ought to be joined / allowed to be joined in a single plaint only, if the causes of action arises out of the same transaction, which is not the case here.
16. A bare perusal of the Plaint clearly shows that the Plaintiff(s) alleged claim/complain about separate causes of actions, separate news reports allegedly published by separate and distinct Defendants(s), who are not connected with each other in any manner whatsoever. Hence, the joinder of causes of action is clearly an abuse of process of law and as such, the Plaint is liable to be returned / rejected under Order VII Rule 10/11 CPC, as the case may be.

NON-JOINDER OF NECESSARY AND PROPER PARTIES

17. That the news clippings/reports filed and complained in the Plaint discusses the alleged defamation of certain individuals, who happen to have acted in various movies and television serials from time to time.

The suit has been filed by 38 Plaintiffs, and none of these Plaintiffs plead that the said news reports/clipping talk about the said actors and actresses, pursuant whereof these 38 plaintiffs have been allegedly defamed. It is trite that the complainant ought to be the person who is allegedly directly affected / allegedly defamed. The present suit does not plead any indirect defamation of the Plaintiffs.

18. That the Plaintiff(s) complain about certain news reports allegedly made/published by the Defendant(s) herein. It is stated that none of the Plaintiff(s) arraigned have either been named specifically or allegedly defamed. Furthermore, the reports, which are alleged to be in violation are also not in respect of any of the Plaintiff(s) and as such, the present suit is not maintainable in view of non-joinder of the necessary and proper parties as Plaintiff(s).
19. Basis the aforementioned facts and circumstances, the Defendant(s) humbly submits that the instant suit is not maintainable and liable to be rejected.
20. That the instant application is being filed without prejudice to the right and other contentions of the Defendant(s) which shall be

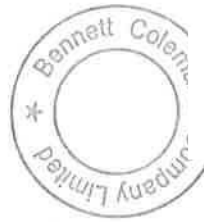
contended/raised by the Defendant(s) herein at an appropriate stage and in accordance with law.

21. That the instant application is being made in the interest of justice, and is bonafide.
22. That, as per the facts and averments of the present case, the balance of convenience is clearly in favour of the Defendant(s) herein and against the Plaintiff(s).
23. That there exists a prima facie case in favor of the Defendant(s) and against the Plaintiff(s).
24. That if the Present suit is not dismissed for the reason stated herein above, the Defendant(s) will suffer irreparable loss and injury.
25. That great prejudice would be caused to the Defendant(s), if the present application is not allowed.

PRAYER

In view of the facts and circumstances set forth hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- i. Pass an order allowing the instant application and rejecting/dismissing and/or returning the plaint filed by the Plaintiff(s) and/or;
- ii. Pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.



DEFENDANT NO.5

7

Through

New Delhi
Dated: 24.12.2020

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