

Petitioner Vs. Respondent

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Court : Chennai

Decided On : Dec-08-2016

Judge : C.V. Karthikeyan

Appeal No. : A. No. 5104 of 2011 in C.S. No. 812 of 2009

Appellant : Petitioner

Respondent : Respondent

Judgement :

1. This application has been filed to vacate the ex-parte injunction granted on 17.09.2009, which was subsequently made absolute on 23.10.2009 in O.A.No. 972 of 2009 in C.S.No. 812 of 2009. This application has been filed by the second defendant in the suit.

2. The suit in C.S.No. 812 of 2009 has been filed for the following reliefs:-

(i) directing the 1st, 2nd, 3rd, 4th and 5th defendants to pay jointly or severally the sum of Rupees One Crore (Rs.10000000/-) as compensation to the plaintiff for having caused defamation and consequentially;

(ii) directing the 1st, 2nd, 3rd, 4th and 5th defendants publish an unconditional apology in prominent news papers; and

(iii) directing the 1st, 2nd, 3rd, 4th and 5th defendants to pay the costs of the suit;

3. O.A.No. 972 of 2009 had been filed seeking the following relief:-

to grant interim injunction restraining the first, second defendants from making defamatory, scurrilous, derogatory and further false allegations against the plaintiff pending disposal of the suit .

As stated above, ex-parte interim injunction was granted and it was subsequently made absolute on 22.10.2005. This application has been filed to vacate the said order.

4. Originally the second defendant was shown as Mr.T.Retna Pandian, No.55, Railway Border Road, West Mambalam, Chennai 600 033 and subsequently, by order dated 16.12.2011 in A.No. 5563 of 2011, the name of the second defendant has been amended as follows:-

M/s. Fifth Pillar India

Rep. by its General Secretary

Mr.T.Retna Pandian

No.55, Railway Border Road,

West Mambalam, Chennai 600 033 .

5. This application had been filed prior to the said amendment being allowed by this Court and subsequent to amendment, the name of the applicant has not been suitably amended.

6. The learned counsel for the applicant/second defendant and the learned counsel for the first respondent/plaintiff presented their arguments before this Court.

7. In the affidavit filed in support of the said application, it had been stated that the first respondent/plaintiff is a multinational company manufacturing and exporting cars and spare parts. It had been further stated that the first defendant in the suit was the Central Excise Range Officer and while carrying on assessment of export

document during 2004-2006 came across some anomalies and reported the matter to higher authorities.

8. According to the applicant, there was an effort to hush up the matter. Therefore, the reports were sent to the Central Board of Excise and Customs and the Ministry of Finance and Office of Prime Minister and thereafter, the applications were made under the Right to Information Act.

9. In this connection, the newly amended second defendant, namely, Fifth Pillar India, took up the issue and filed a public interest litigation. The third, fourth and fifth defendants in the suit reported the details regarding the public interest litigation and claiming that such reports which emanated from the information given by the first and second defendants, the suit has been filed, as stated above for compensation for defamation and other reliefs.

10. This application has been filed on the ground that in the Judgment of the said Writ Petition, the Hon'ble First Bench of this Court by Judgment dated 11.11.2008, while dismissing W.P.No. 10152 of 2008 had observed as follows:-

41. In as much as the petitioner has failed to establish with necessary supporting materials for ordering any enquiry or investigation to be made as prayed for in this Writ Petition, we are not in a position to grant the relief as prayed for by the petitioner. Therefore, we dismiss this Writ Petition and the dismissal of the Writ Petition shall not preclude the petitioner, if so advised, from working out its remedy before the appropriate police authorities in the manner known to law;

42. The Writ Petition fails and the same is dismissed with the above observation. In the facts and circumstances of the case, we are not inclined to order any cost. All M. Ps. closed.

11. It may not be out of place to point out that the Writ Petition had been filed for the following relief:-

Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 3 to submit its action taken report on the allegations against Hyundai Motor India Limited, situated at

SIPCOT, Sriperumpudur, Kancheepuram District and further to issue suitable directions to the respondents to take appropriate action on the basis of the report and recommendations of the investigating team.

12. The learned counsel for the applicant pointing out the said observation stated that the order of the injunction of this Court which had been made absolute has restrained the applicant herein from making defamatory, scurrilous, derogatory and further false allegation against the first respondent/plaintiff. The learned counsel stated that the said order of injunction is contrary to the observation made by the Hon'ble First Bench of this Court, wherein the petitioner herein was granted the privilege of working out his remedies before the appropriate police authorities. It has been therefore stated that if he is to prefer a police complaint, the entire issue, for which the injunction has been granted will have to be revisited and consequently, the learned counsel urged that the order of injunction should be vacated.

13. The learned counsel for the first respondent/plaintiff refuting the above statements stated that the order of injunction is very clear and binds the parties to the suit. The learned counsel further stated that in the Writ Petition, a finding has been given that the allegation does not stand that we can only construe the present litigation as vexatious one and was launched purely with a view to wreck vengeance on the 5th respondent . It had been further stated that the material papers placed before us at the instance of the petitioner has not made out any strong case for causing an enquiry to be made as against the 5th respondent .

14. The learned counsel further stated that the order of injunction has to be sustained by this Court since the respondents therein have been directly restrained from publishing any defamatory articles.

15. I have carefully considered the arguments of both sides.

16. This Court in the interim injunction application has specifically directed that the respondents which included the second respondent should not publish any defamatory article against the first respondent/plaintiff. The observation of the Hon'ble First Bench states that the petitioner thereafter, if so advised, can work out

his remedy before the appropriate police authorities in the manner known to law.

17. It is necessary to point out that any complaint given before any authority has to necessarily pass to tests of genuineness. There are also further direct observations by the very same First Bench as extracted above, that the very Writ Petition is vexatious and launched purely to wreck vengeance. I therefore hold that the injunction order granted cannot be vacated. It is for the applicant to work out his remedies in manner known to law and he cannot seek the assistance of the Court in that regard.

18. The learned counsel further stated that the name of the second defendant has been amended and consequently, there is no order of injunction prevailing as on date against the applicant herein, who is the second defendant as amended.

19. With all due respects to the learned counsel, I disagree. Any order passed by this Court is binding not only on the person against whom such order is passed but also against anybody stepping into his shoes. In this case, the order of injunction has been granted against Mr.T.Retna Pandian and now, this application has been filed by Fifth Pillar India, represented by its General Secretary Mr.T.Retna Pandian. In effect, it is the order, which is important and any defamatory, scurrilous, derogative, false allegations cannot be made in the face of the injunction order.

20. The applicant can file any police complaint he wants to, but he should take care that the allegations raised by him does not breach the order of injunction, namely, they should not be defamatory, scurrilous, derogatory and false.

21. With these observations, this application is dismissed.

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