

Aravali Infrapower Ltd and Anr Vs. R.B. Gupta and Ors

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Court : Delhi

Decided On : Jan-27-2015

Judge : Manmohan Singh

Appellant : Aravali Infrapower Ltd and Anr

Respondent : R.B. Gupta and Ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Order delivered on:

27. h January, 2015 % + I.A. No.1569/2013 and I.A. No.1570/2013 in CS(OS) 1473/2011 ARAVALI INFRAPOWER LTD & ANR Plaintiffs Through Mr. Vijayender Kumar,Adv. with Mr. Siddharth Bhatia,Adv versus R.B. GUPTA & ORS Through ... Defendants Mr. G.C.Gargdhuriwala, Adv. with Mr. Ram Ekbal Roy, Adv. for D-1. CORAM: HON'BLE MR.JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The plaintiffs have filed this suit for defamation and malicious falsehood and for permanent and mandatory injunction against the defendants seeking damages for the sum of Rs.5 crores.

2. During the pendency of the suit, defendant No.1 has filed two applications, one being I.A. No.1569/2013 under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint, and another being I.A. No.1570/2013 under Section 10 CPC. By this order I propose to decide both these applications.

3. In the application being I.A. No.1569/2013 under Order 7 Rule 11 read with Section 151 CPC, defendant No.1 has contended that the suit is not maintainable against him as being without valid cause of action.

4. It is averred that this suit is a counter blast to the Civil Suits bearing No.44 of 2010, 45 of 2010 and 754 of 2010 filed by defendant No.1 against the plaintiffs in Derabassi, Distt. Mohali on the basis of fraud committed by the plaintiffs. In fact in the present suit, the plaintiffs have specifically alleged that he has been defamed by defendant No.1 by way of institution of the said civil suits. It is stated by defendant No.1 that since the said suits are pending for adjudication, this suit for damages filed by the plaintiffs is liable to be dismissed as no valid cause of action is present.

5. It is averred that the present suit is an attempt to conceal the wrongdoings of the plaintiffs and falsely implicate the defendant No.1. It is also averred that no finding is given till date in any proceedings and thus no allegation of malicious falsehood is sustainable. There is an admission of unpaid dues by the plaintiffs and he cannot be permitted to escape from his liabilities by filing such frivolous suit without any valid cause of action.

6. It is contended that the entire basis for instituting the present suit is the pleadings contained in the civil suits instituted by defendant No.1 before the Courts at Derabassi/Chandigarh, therefore, the cause of action, if any, accrued in favour of the plaintiffs would be within the territorial jurisdiction of the courts in State of Punjab and U.T., Chandigarh. It is averred that this Court has no territorial jurisdiction to entertain and try the present suit. The plaintiffs have deliberately impleaded defendants No.2 and 3, who are residents of Delhi, so as to maintain the present suit. Defendant No.1 neither knew the said two persons nor has he ever had any communication with them.

7. In the other application being I.A. No.1570/2013 under Section 10 CPC, the defendant No.1 has contended that litigation between the parties to the present case on the same issue are pending at the Civil Court, Chandigarh where defendant No.1 has filed suits for declaration to the effect that sale deed dated 28th February, 2008 be declared as null and void on the basis of the fraud played

and for other consequential reliefs. Another suit for recovery is also pending between the parties at Derabassi Civil Court.

8. It is contended that the factum of the pending litigation is not disputed by the plaintiffs and ultimately, the issue as to whether the plaintiffs have actually played fraud or defendants have wrongly alleged fraud is pending before the Courts at Derabassi/Chandigarh. The plaintiffs cannot call upon for parallel litigation on the same issue to determine as to whether the allegation of fraud levelled by defendant No.1 in the previous suits are right or wrong.

9. It is averred that the matter is subjudice before other competent court of jurisdiction and the plaintiffs cannot be permitted to prosecute parallel litigation on the same set of facts and evidence. It is prayed that the proceedings in the present suit be stayed till pendency of the suits preferred by defendant No.1 are decided and a finding on the basis of fraud is returned.

10. In his reply to the application under Order 7 Rule 11 CPC, the plaintiffs have stated that the said application is not maintainable as the same has been filed with malafide intentions merely to delay the suit proceedings.

11. The defendant No.1 with ulterior motive to defame the reputation and goodwill of the plaintiffs in the corporate world in India as well as abroad had used defamatory and highly objectionable remarks like "cheating habits", "mafia don", "natwarlal" etc. in the civil suits filed by defendant No.1.

12. Defendant No.1 had circulated defamatory material and slander in the Delhi office of the plaintiffs and at various departments in Delhi only, thus the present suit is maintainable and this Court has jurisdiction to try and entertain the present suit. The application under Order 7 Rule 11 CPC filed by the defendant No.1 does not satisfy any of the conditions stipulated under the said provision for rejection of plaint.

13. Vide order dated 3rd August, 2012, this Court closed the final opportunity of defendant No.1 to file the written statement. The said order has not been challenged by defendant No.1 and the same has attained finality. Vide order dated

28th January, 2013, defendant No.1's right to file admission denial by way of affidavit was closed on account of non-compliance of order dated 4th January, 2013. Therefore, defendant No.1 only with an ulterior motive to delay the proceedings of the present suit moved the application under Order 7 Rule 11 CPC as alleged by the plaintiffs.

14. It is alleged by the plaintiffs that so far as the cause of action to institute the present suit is concerned, it is stated that plaintiffs had sent a legal notice on 18th March, 2011 to the defendant No.1 to stop defamation and to tender an apology but defendant No.1 refused to do so in his reply dated 31st March, 2011 and continued to defame the plaintiffs. The cause of action is continuing and subsisting since then.

15. It is also submitted by the plaintiffs that defendant No.1 has tarnished the image and reputation of the plaintiffs by circulating the defamatory materials and copies of the Court notices and proceedings related to the matters pending in the Court at Derabassi, Distt. Mohali. Copies of various documents related to the said were sent to the Delhi office of the plaintiffs where all the posts/daks were received at the reception and the contents were read by various employees of the plaintiffs, which led to the tarnishing of image and reputation of the plaintiffs in the eyes of its own employees and various clients. Further, defendant No.1 has been calling upon various clients of the plaintiffs and asking them not to award contract to the plaintiffs in the light of the defamatory material which has tarnished the image of the plaintiffs in the society and amongst his own employees.

16. It is averred that cause of action in the present matter arose at Delhi in July, 2010 to September, 2010 when copies of suit at Derabassi were served on various unrelated people who have been clients of the plaintiffs.

17. It is averred that defendants No.2 and 3 are equally responsible for tarnishing the image of the plaintiffs as defendants No.2 and 3 were clients of the plaintiffs who on one hand, at behest of defendant No.1 engaged themselves in spreading defamation which had been unleashed by defendant No.1, and on the other hand, defendant Nos.2 and 3 communicated to the plaintiffs about the defamation unleashed by defendant No.1, which was itself a maliciously planned and knitted

strategy of the defendants.

18. It is stated that the business of the plaintiffs is at New Delhi and all the defamatory material has been circulated in Delhi as various other clients i.e. Government agencies have their head offices or branch offices at Delhi, so the cause of action has arisen within the territorial jurisdiction of this Court. Therefore, the said application has no merit and is liable to be rejected.

19. Firstly I shall take up the application being I.A. No.1570/2013 filed by the defendant No.1 under Section 10 CPC. Section 10 reads as under:

10. Stay of suit.-No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India]. having jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India]. established or constituted by [the Central Government]. and having like jurisdiction, or before [the Supreme Court]..

20. As far as the present suit is concerned, the same is filed by the plaintiffs against the defendants for defamation and malicious falsehood and for permanent and mandatory injunction. On the basis of the earlier litigation initiated by the defendants, the relief is sought against the plaintiffs under the provision of Section 10 CPC. The details of the same are as under: a. Civil Suit No.754/2010, in the Court of Civil Judge, Distt. Mohali, for declaration to the effect that the sale deed dated 28th February, 2008 and deed of assignment of the possession dated 28th February, 2008 and supplementary agreement for purchase of firm dated 28th February, 2008 and another supplementary agreement dated 1st April, 2008 are illegal, void, a result of fraud and ineffective for want of complying with the terms and conditions of the agreement of sale and suit for decree of permanent injunction. b. Civil Suit No.44/2010, in the Court of Civil Judge, Distt. Mohali, for recovery of Rs.93,75,808/- along with interest @ 15% p.a. from the date of supply i.e. 20th September, 2008 till the date of actual realization on the basis of oral as well as documentary evidence. c. Civil Suit No.45/2010, in the Court of Civil Judge, Distt. Mohali, for declaration to the effect that the sale deed registered by

sub Registrar Derabassi vide Vasika No.5030 Jaid Bahi - I, Jild No.0, Safa No.0, regarding agricultural land measuring 19 Bigha, 11 Biswa 0 Biswani bearing Khata No.110/175, Khasra Nos.1037/385 (2-0), 392 (4-0), 393 (2-17), Kitte 3 Area 8 Bigha 17 Biswas & Kata No.51/78, Khasra Nos.383 (4-14), 384 (4-0), 1036/385 (20), Kitte 3 area 10 Bigha 14 Biswa as null and void and illegal being based on fraud coercion, threats of arrest and for not handing over the possession of 182/15, Industrial Area, Phase-I, Chandigarh which was illegally taken in possession by the defendant no.1 and with the help of his 10 musclemen and with further threat to get the plaintiff arrested on the basis of the complaint dated 15th September, 2008 made to the Chandigarh Police.

21. It is evident from the prayer made in the above mentioned suits and suit pending before this Court that the issue involved in the present suit and the previously suits instituted by the defendant is directly and substantially different. Therefore, the relief of stay of the suit is not maintainable. The application is accordingly dismissed.

22. With regard to second application, being I.A. No.1569/2013 under Order VII Rule 11 CPC, it is settled law that while deciding the application only the averments made in the plaint are to be considered and not the pleas taken in the written statement.

23. There are specific statements made in the suit by the plaintiff that the defendants are guilty of defamation and malicious falsehood against the plaintiff. Therefore, the suit for damages is filed. It is also settled law that the defendants may be having good case on merit but while considering the application under Order VII Rule 11 CPC, the said aspect cannot be decided at the stage of the disposal of the application. The following decisions are necessary to be referred in this regard: i) The Supreme Court in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success*, (2004) 9 SCC512 while dealing with the law relating to rejection of plaint under Order VII Rule 11 CPC, observed as follows: "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". ii) In the case of Saleem Bhai and Ors. vs. State of Maharashtra, AIR 2003 SC759 it was held with reference to Order VII Rule 11 CPC that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The Court can exercise the power at any stage of the suit, before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Order VII Rule 11 CPC, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. iii) In the case of Popat and Kotecha Property vs. State Bank of India Staff Association, (2005) 7 SCC510 it was held as under:"The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits."

"Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."

24. Without expressing any opinion about the merit of the case and in view of the averments made in the plaint, the application filed by the defendant No.1 is not maintainable. Thus, the same is accordingly dismissed. CS(OS) 1473/2011 List before the Joint Registrar on 13th April, 2015 for fixing the date of trial. (MANMOHAN SINGH) JUDGE JANUARY27 2015

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