



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

M.F.A. NO.4019/2022 (CPC)

BETWEEN:

1. MR. ARNAUD DESCAMPS

... APPELLANT

(BY SRI A.S.VISHWAJITH, ADVOCATE)

AND:

1 . ONMOBILE GLOBAL LIMITED
A COMPANY HAVING ITS
REGISTERED OFFICE AT
'E CITY TOWER #1'
NOS.94/1C AND 94/2
VEERASANDRA VILLAGE
ATTIBELE HOBLI, ANEKAL TALUK
ELECTRONIC CITY PHASE-1
BANGALORE-560 100
KARNATAKA, INDIA
REPRESENTED BY ITS GENERAL
COUNSEL MS. N.S.INDIRA.

... RESPONDENT

(BY SRI UDAY HOLLA, SENIOR COUNSEL A/W.
SRI NIKHILESH RAO M., ADVOCATE)

THIS M.F.A. IS FILED UNDER ORDER 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED 17.02.2022 PASSED ON I.A. NO.1 IN O.S.NO.2751/2020 ON THE FILE OF THE LVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-59), BENGALURU CITY (CCH NO.59), ALLOWING I.A.NO.1 FILED UNDER ORDER 39 RULES 1 AND 2 READ WITH SECTION 151 OF CPC.

THIS M.F.A. HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.07.2023 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

J U D G M E N T

Heard the learned counsel for the appellant-defendant and the learned counsel for the respondent-plaintiff.

2. This miscellaneous first appeal is filed challenging the order dated 17.02.2022 passed on I.A.No.1 in O.S.No.2751/2020 on the file of the LVIII Additional City Civil and Sessions Judge, Bengaluru City (CCH No.59), allowing I.A. No.1 filed under order 39, Rule 1 and 2 read with Section 151 of C.P.C. restraining the defendant, including his representatives, his agents from making any statement, remarks and/or imputations against the plaintiff and its management in any social media, public forum and before any other entities, until disposal of the suit.

3. The factual matrix of the case of the plaintiff before the Trial Court is that the defendant is an en-employee of the plaintiff company and was employed with the plaintiff from 09.01.2007 till 12.04.2013. The defendant during his employment with the plaintiff failed to perform his duties promptly, which left the plaintiff company with no option but to legally terminate the defendant with effect from 12.04.2013. In the year 2015, the defendant filed a case before the Labour Court, Paris against the plaintiff claiming damages for restraining the defendant from exercising his options under Employee Stock Option Plan ('ESOP' for short). In this regard, the French Labour Court rightly dismissed the claim of the defendant against the plaintiff dated 18.10.2018. It is also contended that the defendant had filed a revision petition before the Court of appeal challenging the findings and the same was also dismissed vide order dated 12.09.2019. The defendant also made desperate attempts to initiate false and frivolous proceedings against the plaintiff by submitting a Whistleblower complaint before the Whistleblower Committee of the plaintiff company on the same grounds and the Committee considering that the said concern is

a subjudice matter being considered and await orders of the Labour Court, Paris, directed the defendant to act in accordance with the observations and findings of the said Labour Court.

4. The defendant in pursuit to accomplish his false allegations against the plaintiff, also filed a complaint before the Ministry of Corporate Affairs ('MCA' for short) on 06.11.2018 to initiate statutory proceedings against the plaintiff company, which was finally closed vide e-mail dated 20th February, 2020, considering that there were no merits in the allegations made by the defendant. It is also contended that the defendant has time and again with malafide intention filed several complaints before the SEBI and MCA inter alia, making baseless and frivolous allegations using defamatory and derogatory remarks such as fraudulent and lying, misleading, making false statements, do not adhere to the code of conduct, stealing shares, furnishing false information to SEBI to cover-up fraud, failures in governance and specifying incorrect number of outstanding shares against the plaintiff company and its management.

5. The defendant also made similar imputations against the plaintiff addressed to Karvy Investor Services Limited ('Karvy' for short) and ESOP Direct, being private entities, with malafide intention to coerce the plaintiff company to adhere to his illegal demands. The defendant is also constantly attempting to mislead the authorities and several other service providers of the plaintiff, thereby causing irreparable loss of business and adversely affecting the reputation of the plaintiff before the society at large. Hence, the plaintiff filed the suit for declaration and inter alia sought for the relief of temporary injunction and before filing the suit, the plaintiff also issued legal notice to the defendant to withdraw all the complaints filed before the SEBI, MCA and all other statutory authorities and also to withdraw the defamatory imputations and tender unconditional apology and since, he did not comply with the same, the plaintiff filed the suit.

6. The very grounds urged are reiterated in the affidavit filed in support of the application. The appellant-defendant herein appeared and filed the written statement contending that

the very suit is mischievous, frivolous and plaintiff has not shown any prima facie or irreparable injury caused to it and the consideration of the true facts pleaded by the defendant shows that the balance of convenience is not in favour of the plaintiff. The plaint and applications are liable to be dismissed for want of jurisdiction and also barred by limitation and contend that he invoked the defence of privilege in respect of the statements actually made by him. Subsequent communications by him to the Judicial Authorities, Government Regulators and other entities ancillary to the process of exercising its vested stock options were based on true and genuine claims. It is also contended that the plaintiff approached this Court with unclean hands and no cause of action and balance of convenience lies in favour of the plaintiff and prayed the Court to dismiss the appeal.

7. The Trial Court, having considered the pleadings of the plaintiff and the defendant, formulated the points whether the plaintiff has made out a prima-facie case, whether the balance of convenience lies in favour of the plaintiff and whether

the plaintiff would be put to irreparable loss and injury, if an order of temporary injunction is not granted and answered the said points as 'affirmative', in coming to the conclusion that the material placed before the Court clearly discloses that there is an defamatory imputations against the plaintiff and the plaintiff has made out a prima facie case and balance of convenience lies in favour of the plaintiff. Hence, the present appeal is filed before this Court by the appellant-defendant.

8. The main contention of the learned counsel for the appellant-defendant before this Court is that, it is not in dispute that the defendant was an ex-employee of the plaintiff and he was terminated in the year 2013. The main contention urged before this Court is that the plaintiff has not whispered anything about the jurisdiction to entertain the suit and the plaint. The counsel also would vehemently contend that, in the plaint, nothing is mentioned with regard to the defamatory imputations made against the plaintiff and the Trial Court also passed a blanket order and not formed any opinion that imputations are defamatory in nature and in the cause title to the plaint itself, it

is mentioned that the defendant is a resident of France and no specific averments are made in the plaint with regard to defamatory imputations and also with regard to jurisdiction, except mentioning that the Court has got jurisdiction. There is no whisper with regard to invoking jurisdiction under Section 20(c) of C.P.C. and the defendant is also not within the jurisdiction of the Court.

9. It is also contended that the list of authorities which have been furnished before the Trial Court both in respect of merit as well as the jurisdiction has not been considered. The plaint also does not disclose defamatory statement and though the defendant worked till July, 2013, but stated that he worked only till April, 2013 as against what the plaintiff is claiming. In Para No.19 of the order, the Trial Court also discussed with regard to the false allegations made by the defendant before SEBI and MCA which pertains to the relief as sought. It is also contended that ESOP was exercised before 30 days of termination since, he has worked till July, 2013 and not up to April, 2013 as contended and the documents which have been

produced before the Court are clear that the defendant served till July, 2013 and their own documents disclose the same i.e., he was relieved on 05.07.2013 but, he exercised his option on April 25th itself and the fact that he worked from 31.10.2008 to July, 2013 is not in dispute and option is also exercised within the vesting period.

10. Learned counsel for the appellant-defendant in support of his argument, relied upon the judgment of the Calcutta High Court in ***W. HAY AND OTHERS VS. ASWINI KUMAR SAMANTA*** reported in ***1957 SCC ONLINE CAL 26*** and brought to notice of this Court Para No.10, wherein the Court has discussed with regard to the defamatory words and held that the defamatory words must be set out in the plaint where the words are per se or prima facie defamatory. The counsel would contend that, if the defamatory words are not set out in the plaint, there cannot be any order in the absence of necessary averments and the plaint is liable to be rejected on the ground that it does not disclose any cause of action.

11. The counsel also relied upon the judgment of the Calcutta High Court in **MANIK LAL BHOWMIK VS. BHARAT SANCHAR NIGAM LIMITED** reported in **2017 SCC ONLINE CAL 302** and brought to notice of this Court Para Nos.35 and 36, wherein it is observed that privilege is of two kinds, absolute and qualified. A statement is absolutely privileged when no action lies for it even though it is false and defamatory and made with express malice. On certain occasions, the interest of society require that a man should speak out his mind fully and frankly without fear of consequences and the allegations made in his complaint are qualified privilege and no action lies for it and the same does not amount to defamatory and the plaintiff must prove the existence of an express malice which may be inferred either from the excessive language of the defamatory matter itself or from any facts that show that the defendant was actuated by spite or some oblique motive.

12. The counsel also relied upon the judgment in **KEDUTSO KAFPO VS. KENEINGULIE** reported in **(1994) 1 GAUHATI LAW REPORTS 145** and brought to notice of this

Court Para No.8, wherein the Court has discussed with regard to jurisdiction as to the place of sueing. It is also observed that, under Section 19 of the Code of Civil Procedure, such a suit could be instituted either within the local limits of the jurisdiction of a Court where the defendant resides or carries on business or personally works for gain. Such a suit could also be instituted within the local limits of the jurisdiction of a Court where the wrong was done.

13. The counsel also relied upon the judgment of the Apex Court in **DEEPAK KUMAR @ DEEPAK SAHA VS. HINDUSTAN MEDIA VENTURES LTD. & ORS.** reported in **2017 SCC ONLINE DEL 8970** and brought to notice of this Court Para No.7, wherein the Court has extracted Para No.6 of the judgment of the Karnataka High Court in the case of **JAHARLAL PAGALIA VS. UNION OF INDIA** reported in **AIR 1959 CALCUTTA 273**, wherein it is observed that, cause of action has one meaning in relation to the basis of a claim and another in relation to the jurisdiction of Court. The former is the restricted and the latter is the wider meaning of cause of action.

The counsel referring this judgment would vehemently contend that nothing has been stated in the plaint with regard to cause of action which is having wider meaning. The counsel also brought to notice of this Court Para No.10, wherein also the Apex Court has held that, a mere plea of existence of a head office or a corporate office of a defamatory company will not confer jurisdiction on a Court if the defendant company has a branch office at the place where whole or part of cause of action has arisen and contend that no cause of action has arisen within the jurisdiction of the Court.

14. The counsel also relied upon the judgment of the Hyderabad High Court in ***BENNETT COLEMAN AND CO. LTD. VS. K. SARAT CHANDRA*** reported in ***2015 SCC ONLINE HYD 822*** and brought to notice of this Court Para No.8(c) of the judgment with regard to essentials of defamation, wherein the Court has set out the essentials or requisites constituting defamation as civil wrong.

15. The counsel also relied upon the judgment of High Court of Judicature at Madras in ***ORIGINAL APPLICATION***

NOS.18 OF 2019 AND CONNECTED APPLICATIONS dated **03.06.2019** and brought to notice of this Court Para No.30, wherein it is discussed with regard to the issues which would lead to an irresistible conclusion that grant of pre-trial injunctions in the matters of defamation, can be resorted to only in rarest of rare cases, where the Court reaches a conclusion that there is no iota of truth in the allegations made.

16. The counsel also relied upon the judgment in **AXIS BANK LTD. VS. MPS GREENERY DEVELOPERS LTD.** reported in **2010 SCC ONLINE CAL 1717** and brought to notice of this Court Para No.3 of the judgment, wherein it is observed that the word "prima facie" case does not mean a case proved to the hilt, but is one, which is at least "an arguable one" at the time of trial. If at that stage, the Court prima facie finds that from the averments made in the plaint itself, the Court has no territorial jurisdiction to entertain the suit in accordance with law, it should not consider the other two factors and reject the application on the ground of absence of prima facie jurisdiction of the Court to give the ultimate relief to the plaintiff.

17. The counsel also relied upon the judgment of the Apex Court in **CIVIL APPEAL NO.7653 OF 2004** dated **29.03.2005** and brought to notice of this Court Para No.21, wherein it is held that the plea of the jurisdiction goes to the very root of the matter. The Trial Court having held that it had no territorial jurisdiction to try the suit, the High Court should have gone deeper into the matter and until a clear finding was recorded that the Court had territorial jurisdiction to try the suit, no injunction could have been granted in favour of the plaintiff by making rather a general remark that the plaintiff has an arguable case that he did not consciously agree to the exclusion of the jurisdiction of the Court.

18. Per contra, learned counsel for the respondent-plaintiff would submit that, though an appeal was filed before the Foreign Court against the order of the Labour Court, the same was withdrawn. The counsel also would vehemently contend that the revision petition was also dismissed. But, in Para No.10 of the plaint, it is specifically stated with regard to the defamatory imputations made by the defendant. Hence, the

defendant cannot contend that no such averments are made in the plaint. The counsel also would vehemently contend that online mobile information was sent to Bengaluru and the same is found in Page Nos.176, 202 and 205 and specific averments are also made in the plaint with regard to the defamatory imputations and also the e-mail correspondence between the plaintiff and the defendant through the persons involved in the affairs.

19. Learned counsel for the respondent-plaintiff, in support of his argument relied upon the judgment of this Court in **A.K. SUBBAIAH VS. B.N. GARUDACHAR** reported in **ILR 1987 KAR 100**, wherein it is discussed with regard to statements per se defamatory not excusable in anticipation of plea of justification or truth. The counsel relying upon this judgment would contend that, when specific averments are made in the plaint, particularly in Para No.10 with regard to the defamatory imputations and also complaints made against the plaintiff and the suit is also filed for the relief of declaration that the same is defamatory imputations, the Court has to decide the

same and the Trial Court rightly comes to the conclusion that there is a prima facie case to grant the relief and the Trial Court has not committed any error.

20. In reply to the arguments of the learned counsel for the appellant-defendant, learned counsel for the respondent-plaintiff would contend that e-mail is sent to Venkateshwarulu and not to the plaintiff and when the same is received from a friend, the same cannot give any jurisdiction and he is only a recipient of the defamatory statement and the averments made in Para No.10 of the plaint does not constitute any defamatory imputations.

21. Having heard the respective counsel, the pleadings of the parties and also the grounds urged in the appeal, the points that would arise for consideration of this Court are:

- (1) Whether the Trial Court has committed an error in allowing the application in I.A.No.1 in O.S.No.2751/2020 filed by the plaintiff under Order 39, Rule 1 and 2 read with Section 151 of C.P.C.?
- (2) What order?

Point No.(1)

22. Having perused the pleadings of the parties, it is not in dispute that the defendant was an ex-employee of the plaintiff and he was terminated from service in 2013. Though the respondent-plaintiff contend that the defendant was terminated in April, 2013, the appellant-defendant contend that he served till July, 2013. However, the documents disclose that the defendant worked till July, 2013 and it is also not in dispute that he has taken up the issue of termination before the French Court and the same was dismissed and thereafter, revision was also filed and the same was also dismissed. Though it is contended that the appeal was dismissed, but it was withdrawn, as contended by the learned counsel for the respondent-plaintiff. However, the same is not the crux of the issue involved between the parties before this Court. It is relevant to note that the defendant also approached SEBI and MCA, wherein he made an allegation against the plaintiff.

23. The first contention of the learned counsel for the appellant-defendant is that, in the complaint, nowhere the

defamatory imputations are stated and the said contention cannot be accepted for the reason that the learned counsel for the respondent-plaintiff brought to notice of this Court Para No.10 of the plaint, wherein it is specifically pleaded with regard to filing of several complaints before SEBI and MCA. But, specific allegation is made that, with a malafide intention, the defendant filed several complaints before SEBI and MCA inter alia, making baseless and frivolous allegations using defamatory and derogatory remarks such as fraudulent and lying, misleading, making false statements, do not adhere to the code of conduct, stealing shares, furnishing false information to SEBI to cover-up fraud, failures in governance and specifying incorrect number of outstanding shares against the plaintiff company and its management. The defendant also made similar imputations against the plaintiff addressed to Karvy Investor Services Limited ('Karvy' for short) and ESOP Direct, being private entities, with malafide intention to coerce the plaintiff company to adhere to his illegal demands.

24. Having perused the averments made in the plaint, it is seen that specific allegations are made in the plaint with

regard to making allegations using defamatory and derogatory remarks in the complaint before SEBI and MCA. Hence, the very contention of the learned counsel for the appellant-defendant that a blanket order is passed by the Trial Court and the same is not defamatory cannot be accepted.

25. The other contention of the learned counsel for the appellant-defendant before the Court is that, in the complaint, not whispered anything about the jurisdiction. In order to invoke the jurisdiction of the Trial Court, the Court has to look into the averments made in the plaint with regard to invoking the jurisdiction of the Trial Court. Having read the plaint in its entirety, except making the allegations with regard to the appointment, termination and questioning the same before the Court at France and not exercising the option within the time frame and defamatory imputations, nothing is stated in the plaint with regard to invoking the jurisdiction of the Trial Court.

26. It is important to note that, the defendant, while filing the written statement in Para No.61, raised the issue of jurisdiction and particularly, in Para No.62, it is contended that

the defamation action can only be initiated either where the defendant resides (France) or where the defamatory statement is published. It is contended that without accepting the claims of the plaintiff, even if it is presumed that the statements made by the defendant to Karvy and ESOP Direct were defamatory, then in such cases, the place of publication could either considered to be France or places where the aforesaid entities i.e., Karvy (situated in Mumbai, Maharashtra) and ESOP Direct (situated in Pune, Maharashtra) have their offices. It is also pleaded that the plaintiff has also relied upon certain other complaints/communications that have been made by the defendant to judicial authorities, SEBI and MCA. Hence, it is contended that the Trial Court is not having jurisdiction to entertain the suit.

27. No doubt, while considering the issue involved between the parties it is alleged that option was not exercised within the time frame, but that is not the issue and the same is also not the material for grant of an order of temporary injunction when an order of temporary injunction is sought to

restrain the defendant from making any defamatory and derogatory imputations. I have already pointed out that, in the plaint, there is an averment with regard to such derogatory and defamatory allegations in Para No.10. But, with regard to the jurisdiction is concerned, except stating in Para No.16 of the plaint that this Court has jurisdiction to entertain the above suit and grant the relief, on perusal of the entire plaint, nowhere it is stated that on what basis the jurisdiction of the Trial Court is invoked and nothing is whispered as regards how the Court has got jurisdiction as contended by the learned counsel for the appellant in the plaint.

28. It is also important to note that, no doubt, the Trial Court has discussed with regard to the defamatory imputations, failed to consider the issue which is raised before the Court with regard to the jurisdiction is concerned which is a fundamental issue raised before the Trial Court as whether the Court as got jurisdiction to entertain the suit. It is also important to note that the Trial Court, in Para No.10 of the order, narrated the defence taken by the defendant that the Court has no jurisdiction and

specific contention was taken in the plaint that the application is liable to be dismissed for want of jurisdiction. No doubt, the defendant also raised the contention that the suit is barred by limitation, the same cannot be considered while considering an application filed under Order 39, Rule 1 and 2 read with Section 151 of C.P.C. and the Court has to examine whether prima facie case is made out and when the issue of jurisdiction is also raised, the Trial Court ought to have considered the same, but the same has not been considered by the Trial Court.

29. No doubt, the learned counsel for the appellant-defendant relied upon several judgments, in the judgment of the Apex Court in **CIVIL APPEAL NO.7653 OF 2004** dated **29.03.2005**, in Para No.21, the Apex Court has held that the plea of jurisdiction goes to the very root of the matter. The Trial Court having held that it had no territorial jurisdiction to try the suit, the High Court should have gone deeper into the matter and until a clear finding was recorded that the Court had territorial jurisdiction to try the suit, no injunction could have been granted in favour of the plaintiff by making rather a

general remark that the plaintiff has an arguable case that he did not consciously agree to the exclusion of the jurisdiction of the Court. The said judgment is aptly applicable to the facts of the case on hand since, the issue with regard to jurisdiction has not been considered by the Trial Court.

30. No doubt, in the case referred by the learned counsel for the appellant, the Trial Court rejected the application on the ground that there is no jurisdiction, but the High Court reversed the same. Hence, the Apex Court observed that, no injunction could have been granted in favour of the plaintiff by making rather a general remark that the plaintiff has an arguable case. In the case on hand, the Trial Court though comes to the conclusion that there exists a prima facie case, but not discussed anything about the jurisdiction.

31. The counsel for the appellant also relied upon the judgment in **AXIS BANK LTD. VS. MPS GREENERY DEVELOPERS LTD.** reported in **2010 SCC ONLINE CAL 1717**, wherein in Para No.3 of the judgment, it is observed that the word "prima facie" case does not mean a case proved to the hilt,

but is one, which is at least "an arguable one" at the time of trial. If at that stage, the Court prima facie finds that from the averments made in the plaint itself, the Court has no territorial jurisdiction to entertain the suit in accordance with law, it should not consider the other two factors and reject the application on the ground of absence of prima facie jurisdiction of the Court to give the ultimate relief to the plaintiff. This judgment is aptly applicable to the facts of the case on hand since, the Trial Court has not considered the issue of jurisdiction.

32. With regard to the other aspect i.e., defamation is concerned, since the Trial Court has considered the same taking note of the words which have been used i.e., the defamatory imputations, I do not find any error committed by the Trial Court in coming to such a conclusion but, failed to take note of the fact that whether the Court has got jurisdiction to entertain the suit. No doubt, learned counsel appearing for the respondent would vehemently contend that there is a communication between the parties with regard to the affairs, it is contended that the same is sent to Bengaluru and the counsel also brought to notice of

this Court Page Nos.176, 202 and 205. But, I have already pointed out that the Trial Court has not discussed with regard to the issue of jurisdiction whether the Court has got jurisdiction to entertain the suit and what are all the materials placed before the Court to invoke the jurisdiction of the Trial Court, while granting the relief but, the Trial Court failed to take note of the said fact into consideration

33. In the other judgment relied upon by the learned counsel for the appellant in **DEEPAK KUMAR @ DEEPAK SAHA VS. HINDUSTAN MEDIA VENTRUES LTD. & ORS.** reported in **2017 SCC ONLINE DEL 8970**, in Para No.7 of the judgment, it is held that cause of action has one meaning in relation to the basis of a claim and another in relation to the jurisdiction of Court. The former is the restricted and the latter is the wider meaning of cause of action and there must be a cause of action for jurisdiction and the same is also aptly applicable to the case on hand.

34. In the other judgment relied upon by the learned counsel for the appellant in **KEDUTSO KAFPO VS.**

KENEINGULIE reported in **(1994) 1 GAUHATI LAW REPORTS 145**, in Para No.8 of the judgment, the Court has held that, under Section 19 of the Code of Civil Procedure, such a suit could be instituted either within the local limits of the jurisdiction of a Court where the defendant resides or carries on business or personally works for gain. Such a suit could also be instituted within the local limits of the jurisdiction of a Court where the wrong was done and though there is no dispute with regard to the fact that suit could be instituted in a Court where the wrong was done, but nothing is discussed by the Trial Court. Hence, I am of the opinion that the Trial Court has committed an error in not considering the issue of jurisdiction as to whether the plaint is maintainable for want of jurisdiction and on perusal of the order of the Trial Court in its entirety, it is seen that the same has not been considered by the Trial Court. Even though the Trial Court extracted the defence of the defendant in Para No.10 of the order, however not touched upon the issue of jurisdiction, while passing an order. Hence, I answer point No.(1) framed by this Court as 'affirmative'.

Point No.(2)

35. In view of the discussions made above, I pass the following:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order dated 17.02.2022 passed on I.A.No.1 in O.S.No.2751/2020 on the file of the LVIII Additional City Civil and Sessions Judge, Bengaluru City (CCH No.59), allowing I.A. No.1 filed under order 39, Rule 1 and 2 read with Section 151 of C.P.C., is hereby set aside.
- (iii) The matter is remitted back to the Trial Court to consider the issue of jurisdiction as observed hereinabove within one month from the date of receipt of certified copy of this order.

**Sd/-
JUDGE**

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