

P L D 2010 Lahore 413

Before Nasir Saeed Sheikh and Mian Shahid Iqbal, JJ

Rao DIL JAN KHAN---Appellant

Versus

Dr. MUHAMMAD YOUNIS and another---Respondents

Regular First Appeal No.180 of 2008, heard on 26th May, 2010.

(a) Defamation Ordinance (LVI of 2002)---

---Ss. 3, 4, 5 & 9---Defamatory suit---Plaintiff claimed Rs.20,00,000 as damages alleging that the defendant had published false news item in the newspaper damaging his reputation and professional performance---Trial Court decreed the suit awarding Rs.500,000 as damages directing the defendant to publish apology for and contradiction of the false news within fifteen days, failing which plaintiff would be entitled to remaining Rs. 15,00,000 of the amount claimed---Defendant contended that publication of the apology had dissolved his liability to pay Rs.500,000 as damages awarded by the Trial Court---Validity--- Defendant's contention that the publication of apology had entitled him to the defence provided by S.5(e) of the Defamation Ordinance, 2002 was not maintainable because the defendant published apology only after the judgment had been passed by the Trial Court, so the same could not be regarded as a proper apology offered to be tendered. and published voluntarily--- Defendant published apology to save him from payment of the hefty amount of Rs. 15,00,000 awarded as portion of damages---Apology tendered in pursuance of judgment of the court to avoid payment of alternative damages could not be termed a proper apology as envisaged in S.5(e) of the Defamation Ordinance, 2002---Plaintiff's case for damages was proved beyond shadow of doubt---Defendant could not produce any evidence to prove the veracity of allegations levelled against the plaintiff in the news items---Publication of news items constituted defamation, appeal therefore, was dismissed.

(b) Defamation Ordinance (LVI of 2002)---

---S. 5(e)---`Proper apology'---Validity---In order to set up the defence of proper apology under S.5(e) of the Defamation Ordinance, 2002, offer to tender and publish apology must be voluntary---Apology tendered and published under court order/judgment in order to avoid payment of damages could not be termed a proper apology as envisaged in S.5(e) of the Defamation Ordinance, 2002.

Ch. Anwar ul Haq Pannun for Appellant.

Sultan Mahmood Dar for Respondent No.1.

Date of hearing: 26th May, 2010.

JUDGMENT

NASIR SAEED SHEIKH, J.--This Regular First Appeal is directed against the judgment and decree dated 13-11-2007, passed by the learned Additional District Judge, Narowal, in civil suit No.4 of 2006.

2. The brief facts of the case are that the respondent No.1 Doctor Muhammad Younis instituted a suit by invoking the provisions of Defamation Ordinance, 2002 against the appellant No.1 and the respondent No.2 for the recovery of Rs.20,00,000 (rupees twenty lac only) on account of false publications made in the daily "Insaf" dated 31-10-2005, 25-11-2005, 26-11-2005 and 27-11-2005. The respondent No.1/plaintiff further contended that on account of the publications of these news items by the appellant and the respondent No.2, a serious defamation about his character and professional performance has been committed by the defendants of the suit. Only the appellant, who was the defendant No.2 in the suit and who is the Crime Reporter of the Daily "Insaf" contested the suit by submitting a written-statement dated 11-9-2006.

3. 3. The learned Additional District Judge, Narowal framed the following issues:--

ISSUES

1. Whether plaintiff has no cause of action/ OPD.
 2. Whether the defendants had published in the news paper allegations against plaintiff with bona fide intention and in the public interest? OPD
 3. Whether the plaintiff is entitled to recovery of damages Rs.20,00,000 on account of defamation from the defendant? OPD
 4. Relief.
4. The plaintiff produced his evidence, whereas, the defendant No.2/the appellant absented himself from the proceedings, his right to produce his evidence was closed and was resultantly proceeded ex parte. The plaintiff produced clippings of the newspapers as Ex.P.6 to Ex.P.9. The plaintiff also produced oral evidence in the form of seven PWs in support of his case apart from other documentary evidence.
5. The learned Additional District Judge vide judgment and decree dated 13-11-2007 decreed the suit of the plaintiff/respondent No.1. In paragraph No.17 of the relief clause, the following decision was pronounced by the learned Additional District Judge:-
- (17) For what has been discussed under issue No.3, the plaintiff's suit is decreed with costs in his favour, against the defendants Nos.1 and 2 in terms:-.

- (i) That they will pay Rs.5,00,000 as damages for defaming the plaintiff;
- (ii) And as a compensation of remaining Rs.15,00,000, they will publish news in four successive issues of the daily 'Insaf' Lahore, in which they will not only tender apology but also contradict false allegations made against the plaintiff. All the news of apology and contradiction will be published at the same place and will have same number of columns as were of the news Exh.P.6 to Exh.P.9. More-over, the news will be published within 15 days of this judgment, otherwise the plaintiff will be entitled to recover remaining amount of damages, i.e. Rs.15,00,000."

6. Out of the two judgment-debtors, only the appellant, who was the defendant No.2 has preferred this appeal against the impugned judgment and decree. A C.M. No.2-C of 2008 was moved before this Court for placing on record the newspaper clippings published in the daily 'Insaf' dated 20-6-2008, wherein the Crime Reporter/ the appellant published unqualified apology as per above direction issued by the learned Additional District Judge in paragraph No.17 (ii). The factual as well as legal position, which emerges from the above circumstances is that paragraph No.17 (ii) stands implemented as public apology has been published in the daily 'Insaf' by the appellant.

7. The learned counsel for the appellant has contended that this publication of apology is not only by the appellant but is also from the respondent No.2, who was the defendant No.1 in the suit as he is the owner and editor of the newspaper. The learned counsel for the appellant argued that it was one of the defences available to the appellant as per section 5(e) of the Defamation Ordinance, 2002 to tender proper apology and publish the same, therefore, the publication of the apology would dissolve the liability of the appellant from application of clause (i) of para. 17 of the judgment, whereby the damages of Rs.5,00,000 have been awarded by the learned Additional District Judge for the publication of the defamatory material in question.

8. The learned counsel for the respondent No.1 has controverted the contentions of the appellant and has stated that the judgment insofar as the respondent No.2 is concerned has attained finality. It is also argued by the learned counsel for the respondent No.1 that the defamatory material was not only published once, but was repeated four times in the newspaper, the proof of which publications has been produced in the form of clippings of the newspaper daily "Insaf", which are Ex.P.6 to Ex.P.9. It is also contended by the learned counsel for the respondent No.1 that by tendering unqualified apology, the judgment-debtors have admitted their illegal act of defaming the respondent No.1/plaintiff and that the argument that on account of publication of unqualified apology, the liability to pay damages of Rs.5,00,000 as awarded by the learned Additional District Judge in para 17 clause (i) of the judgment has ceased, has no force.

9. We have considered the arguments of the learned counsel for the parties and have gone through the record with their assistance.

10. The appellant submitted written-statement before the learned Additional District Judge in which in paragraph No.3 of the preliminary objections, the following plea was taken:-

11. The publication of the defamatory material is not denied. However, the contention raised in the written-statement by the appellant is that it was published in good faith. It is very important that the respondent No.2, who is the owner of the newspaper "Insaf" did not even dare to join the proceedings of the suit before the learned Additional District Judge and did not contest it. Similarly, the appellant although submitted a written-statement, but later on absented himself from the proceedings and was accordingly proceeded ex-parte. It is another important fact, which is a matter of record that the defence of the appellant was also closed by the learned Additional District Judge against which a Civil Revision was preferred by the appellant before this Court, which was disposed of by a learned Single Judge of this Court on 3-10-2007 with the following observation, which is re-reproduced in paragraph No.14 by the learned Additional District Judge:-

"However, before parting with this order, I may note that the learned trial Court has still to examine the records and announce a judgment in the case. It is hoped that the learned trial Court will attend to the contents of the written statement filed on 11-9-2006 wherein it has been stated that if the plaintiff considers the news to be false and that he had been defamed, the petitioner and the newspaper in question are prepared to tender apology and also to publish and contradiction and denial thereof."

12. The appellant has claimed to have tendered apology and this publication of apology is established through the production of newspaper clippings along with CM No.2-C of 2008. The contention of the learned counsel for the appellant that this apology be treated as a defence, is not entertainable by this Court, because the apology tendered by the appellant as published in the newspaper dated 20-6-2008 was a result of the impugned judgment passed on 13-11-2007 by the learned Additional District Judge and it was not a voluntary tendering of apology. The provisions of section 5 of the Defamation Ordinance, 2002 read as follows:--

Section 5. Defence.-- In defamation proceedings a person has a defence if he shows that:--

- a) -----
- b) -----
- c) -----
- d) -----

(e) Offer to tender a proper apology and publish the same was made by the defendant but was refused by the plaintiff.

This clause thus visualizes offering of a proper apology and publication of the same by the defendant. The proper apology must have a touch of voluntariness in order to enable a defendant to plead such an apology as a defence. If a defendant in a defamatory suit under the Defamation Ordinance, 2002 publishes an apology and that too for saving himself from the liability to pay substantial amount of Rs.15,000,000, a portion of damages awarded by the learned Additional District Judge, it cannot be treated as a proper apology so as to dissolve such a defendant or a judgment-debtor from his liability for the act of defamation and thus not to pay the amount of damages awarded in the present case by the learned

Additional District Judge in paragraph No.17 clause (i) of the impugned judgment and decree dated 13-11-2007. The defamatory news items were published in the daily 'Insaf' by the appellant and respondent No.2 on 31-10-2005 (P6), 25-11-2005 (P7), 26-11-2005 (P8) and 27-11-2005 (P9) respectively and repeatedly. The respondent No.1 served legal notices dated 22-11-2005 (P1 and P2) and dated 17-1-2006 (P3 and P4) upon the defendants through registered postal services (Receipts P5 and P10 to P14). The suit for damages was instituted by the respondent No.1 on 21-4-2006 which remained pending till 13-11-2007, when the impugned judgment was passed by the Additional District Judge. It is on 2-6-2008 that the unqualified apology was published by the appellant and the respondent No.2 in consequence of the judgment and that too to avoid payment of Rs. 15,00,000. This tendering of apology cannot be termed as a proper apology as envisaged in section 5 clause (e) of the Defamation Ordinance, 2002. It is an apology in fact tendered in implementation of para. 17 clause (ii) of the impugned judgment in order to save the judgment debtors from the payment of Rs.15,00,000 awarded as an alternative of damages by the Additional District Judge. The case of the plaintiff/respondent No.1 for claiming damages on account of his defamation was proved beyond any shadow of doubt. The appellant and the respondent No.2 did not produce any evidence to prove the correctness or truthfulness of the allegations levelled against the respondent No.1. The publication of the defamatory material was thus without any justification, which news items on the face of it constitute defamation as per provisions of section 3 of the Defamation Ordinance, 2002.

13. As a result of the above, this RFA has no force and is, dismissed, without any orders as to costs.

A.R.K./D-10/L

Appeal dismissed.