

Ajai Vatan(Sr. Citizen-68 Yrs.) vs Shashi Vatan on 24 December, 2024

DLST010015622017

In the Court of Sh. Munish Bansal,
District Judge-03, South District,
Saket Courts Complex, New Delhi.

CS No.: 167/2017

In the matter of :-
Sh. Ajai Vatan,
R/o Kh. No. 304/1, Plus Farm
Holi Chowk, near Sunil Store,
Neb Sarai Extn,
New Delhi- 110068.

.....Plaintiff

Versus

Ms. Shashi Vatan,
R/o C3, JVTS Garden,
Chattarpur,
New Delhi- 110074.

.....Defendant

Date of institution	:	22.02.2017
Arguments heard on	:	28.10.2024
Date of decision	:	24.12.2024

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SUIT FOR RECOVERY OF DAMAGES

CAUSED BY DEFAMATION

CS/167/2017

JUDGMENT

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1. The facts as epitomized in the plaint are that plaintiff is residing with his two children who are presently studying in residential Army Public School, Pithoragarh, Uttarakhand. The plaintiff is an Ex. Sr. Accounts/ Audit Officer, retired from Delhi Government on 31.01.2009 and is thus a gainful pensioner and also a practicing advocate/ legal advisor w.e.f. August, 2013, vide Enrollment no. D/1601/2013. The defendant is gainfully employed as Assistant Librarian in NDMC and presently working in NDMC's Women Technical Institute (WTI) near Ananth Ram Diary Palika Bhawan, behind Aradhna Enclave, Netaji Nagar, New Delhi. The gross emoluments of defendant for the month of January, 2017 are Rs.49,805/- and as per her affidavit in Hon'ble High Court dated 03.10.2012, she is earning private rent @ Rs.5,000/- w.e.f. 2007 from House no. D-27/11, Chhattarpur and Rs.9,000/- from the house in Naraina, New Delhi w.e.f. 2009. The defendant has an FD of Rs.15,00,000/- which was revealed through RTI from her NDMC office. The defendant has suppressed other assets/ properties. It is further averred that defendant has filed various cases against the plaintiff in various Courts and in Tis Hazari and Saket Court in year 2007 onwards under Domestic Violence Act, 2005 instituted in 2007 which was dismissed on 23.08.2016; complaint in Anti-corruption Branch of Delhi Government on 16.07.2007 on account of disproportionate assets which was adjudged as "not proved and no case of disproportionate asset is made out"; complaint in Directorate of Digitally Vigilance, Delhi Government filed in 2007 and in some charges signed by MUNISH MUNISH BANSAL BANSAL Date:

2024.12.24 the plaintiff herein has been exonerated as "not proved". 15:23:06 +0530 Defendant has also filed criminal complaints, one u/s 406/498A IPC instituted in year 2007 and another u/s 420/468/471 IPC instituted in year 2007 which are subjudice and a case under Guardian & Wards Act in the Court of Principal Judge, Family Court, Tis Hazari in 2007 which is also subjudice.

1.1. It is further stated that plaintiff has also filed various cases against the defendant from year 2010 onwards. Plaintiff has filed a case of divorce against the defendant under section 13 (1) (ia) of the HMA Act which is subjudice and also cases under different FIRs and complaints under different Sections of IPC which are subjudice.

1.2. It is further submitted that the application under section 12 of the Domestic Violence Act, 2005 (hereinafter referred as DV Act) filed by the defendant against the plaintiff was rightly dismissed vide order dated 23.08.2016. In the said application, defendant has made false assertions and statements against the plaintiff by stating that defendant and her family gave sufficient dowry to the plaintiff and the plaintiff has shown only one divorce whereas plaintiff was married thrice and divorced his three wives and that plaintiff is of badhai caste and converted to Islam; that after marriage plaintiff started harassing and beating her and forcing her that her father should give one plot to the plaintiff and on refusal she was given sound beatings by the plaintiff; that plaintiff's earlier name was 'Nakli Ram' but has mentioned his name as 'Ajai Vatan' and that plaintiff used to beat Digitally signed by the defendant on various occasions and father of the defendant MUNISH MUNISH BANSAL BANSAL Date:

2024.12.24 15:23:11 +0530 gave an amount of Rs. 6.50 Lacs to the plaintiff through cheques to please the plaintiff and even the defendant gave Rs. 2.50 lacs to the

plaintiff on various occasions; that plaintiff never gave any amount to carry out domestic needs and plaintiff who was having licensed revolver used to put it in the defendant's mouth when plaintiff used to beat the defendant and that plaintiff has threatened the defendant that he would kill her and used to beat her with the handle of pistol with which defendant got injured and plaintiff even threatened the defendant's father; that plaintiff was a cruel person and criminal by nature and was suspended from his job for about 20 months for embezzlement; that plaintiff was anti-social and did not maintain connection with his relatives and plaintiff used to speak with defendant indecently and that on 11.04.2007 plaintiff gave sound beatings to the defendant and again put his licensed revolver in his mouth; that plaintiff even took away defendant's children and did not tell their whereabouts; that plaintiff did not return her ornaments and dowry articles and have been harassing and beating her for extracting money from the defendant and that the plaintiff has taken away whole jewelry and dowry from the defendant in one go in November 1999 and also snatched all her ornaments in year 2002 and that plaintiff still has sexual relations with his previous wife who was legally divorced in July 1993.

1.3. It is further stated that the said unsubstantiated, baseless and motivated allegations did not find merit with the Ld. Mahila Court, Saket New Delhi and vide judgment dated Digitally signed by MUNISH MUNISH BANSAL 23.08.2016, the Ld. Mahila Court, Saket, New Delhi observed BANSAL Date:

2024.12.24 15:23:15 +0530 that 'From the analysis of the submission stated above, it does not appear that any domestic violence was inflicted upon the complainant. There are no specific allegations. Defendant's evidence has remained admitted by the aggrieved. There does not appear to be any dowry demand. Further, no abuse as specified in Section 3 of PWDV Act have been suffered by the aggrieved. Since domestic violence has not been inflicted upon the aggrieved, she is not entitled to claim from this court'.

1.4. It is further averred that the aforesaid baseless and untrue allegations, imputations and determined defamation/ malicious prosecution on the part of the defendant against the plaintiff has resulted in plaintiff being projected and termed as deceitful and dishonest in the eyes of friends, relations and society and the same was an instrument to brow-beat, harass and humiliate the plaintiff and henceforth, resulted in scuttling the plaintiff's freedom to live a normal dignified life. It is further stated that the said imputations caused irreparable tarnishing of the reputation and social standing of the plaintiff and also caused immense harm to his physical and mental health. It is further submitted that false complaint to the DCP (Licensing, Delhi Police) by the defendant alleging threat with licensed revolver by the plaintiff putting revolver in her mouth and further threat of killing the defendant's father and nephew resulted in deposit of the plaintiff's revolver in the police station since 2009, thus, compromising plaintiff's security and safety. It is further submitted that aforesaid motivated false allegations also caused Digitally signed by MUNISH

MUNISH BANSAL irreversible and irretrievable damage to the professional BANSAL
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2024.12.24 15:23:20 +0530 prospects as a practicing lawyer, of the plaintiff leading to lowering the plaintiff's earnings owing to tarnishing and spoiling of the plaintiff's social and professional image as a lawyer.

1.5. It is further submitted that the above-mentioned acts/ deeds and spoken/written words/ false allegations were done or made intentionally and knowingly by the defendant to defame, degrade, humiliate and mentally crush the plaintiff. Therefore, for the aforesaid misdeeds and legal misdemeanors, defendant is liable for damages for the injury suffered by the plaintiff and has also made herself liable for defamation of the plaintiff.

1.6. It is further submitted that the humiliation, harassment and defamation suffered by the plaintiff cannot be calculated in terms of money, however, plaintiff is claiming a sum of Rs.25,00,000/- as damages from the defendant due to more than 10 years of mental agony, harassment and loss of reputation suffered because of defendant.

1.7. On the afore-said grounds, the Plaintiff is seeking damages of Rs.25,00,000/- alongwith interest @18% p.a. from the date of institution of suit till its realization. Hence, this suit.

2. Summons of the suit were issued to the Defendant.

Upon service of summons, the Defendant appeared and filed her written statement. It is stated that it is well settled law that statement of facts and statement which speaker truly believes to Digitally signed by be truthful and in addition the statements that express person's MUNISH MUNISH BANSAL BANSAL Date:

2024.12.24 15:23:26 +0530 opinion are not considered as defamation.

2.1. In reply on merits, defendant has admitted contents of para 1 to the extent that two children are presently studying in Army Public School, Pithoragarh, Uttarakhand. Defendant has also admitted that she is employed as Assistant Librarian in NDMC. Defendant has also admitted contents of para no.5 of plaint. In reply to other paragraphs, it is stated that the same are matter of record. In reply to para 9 of plaint, defendant has stated that the trial was not righteously dismissed. Defendant has also stated that the allegations were not unsubstantiated, not baseless or imaginary or motivated or preplanned or lame and further stated that the same were bona fide with the sole intention of seeking redress from the Court. It is further stated that all the contents of so-called defamation relied upon by the plaintiff are excerpts from the Court record and never broadcasted by the defendant to the public at large. It is also stated that the allegations were consisting of truth, opinion and not made with intention of broadcasting them to cause injury to the plaintiff.

On these grounds, it is prayed that present suit be dismissed.

3. Replication to written statement of the Defendant was filed on behalf of the Plaintiff thereby denying all the averments made in the written statement and reaffirming and reiterating the pleadings made in the plaint.

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4. From pleadings of parties, following issues were framed vide order dated 05.03.2018: -

1. Whether the plaintiff is entitled to recovery of Rs.25,00,000/- from the defendant on account of damages caused by defamation as prayed for? OPP

2. Relief.

Thereafter, matter was fixed for Plaintiff's evidence.

5. To prove his case, the Plaintiff himself stepped in witness box as PW1 and tendered his evidence by way of affidavit Ex.PW1/A wherein he made similar averments as made in his plaint. He has also relied upon certain documents viz:

1. Copy of reply in CM(M) no. 779/2010 Mark 'A'.

2. Copy of RTI reply dated 09.04.2012 Mark 'B'.

3. Attested copy of statement of defendant on 22.10.2013 in FIR no. 57607 Ex. PW1/B1.

4. Copy of decree-sheet dated 28.04.2017 passed in petition under Section 25 of Guardian and Ward Act, Mark 'C'.

5. Copy of decree-sheet dated 28.04.2017 passed in petition under Section 13 of HMA, Mark 'D'.

6. Copy of affidavit of evidence of defendant in case u/s 12 of D.V. Act, Mark 'E'.

7. Attested copy of judgment dated 23.08.2016 in case under Section 12 of D.V. Act, Ex. PW1/F. Digitally MUNISH signed by MUNISH BANSAL

8. Typed copy of telephonic messages content, Mark 'F'.

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2024.12.24 15:23:37 +0530 He was cross-examined at length by Ld. Counsel for the defendant. Thereafter, PE was closed and matter was listed for Defendant's evidence.

6. In defence, the defendant herself stepped in witness box as DW1 and tendered her evidence by way of affidavit Ex.DW1/A wherein she made similar averments as made in her written statement. She was cross-examined by the plaintiff.

Thereafter, DE was closed and matter was fixed for final arguments.

7. I have heard arguments as advanced by Ld. Counsel for the Plaintiff as well plaintiff in person and the counsel for the defendant and gone through the record including the written submissions on behalf of the plaintiff. My issue-wise findings are as follows: -

Issue no. 1 Whether the plaintiff is entitled to recovery of Rs.25,00,000/- from the defendant on account of damages caused by defamation as prayed for? OPP

8. The onus to prove this issue was upon the Plaintiff. Though in the plaint, plaintiff has used the word 'malicious prosecution' number of times, however, after the final arguments were heard in the present matter, this Court after going through the record sought clarifications from the plaintiff as regards Digitally signed by MUNISH MUNISH BANSAL BANSAL Date:

2024.12.24 15:23:43 +0530 whether the suit was filed seeking damages for malicious prosecution or for defamation or for both, however, plaintiff in person on 28.10.2024 has stated that in essence, his suit is for seeking damages on the basis of defamation.

8.1. In the plaint, plaintiff has pleaded various cases, apart from the case under DV Act filed by the plaintiff. Equally, plaintiff has also pleaded to have filed a number of cases against the defendant from year 2010 onwards. Plaintiff in his cross examination has stated that he is basing his suit and seeking relief on the basis of documents.

8.2. In the plaint, Plaintiff has asserted that various false cases containing false averments qua the plaintiff, were instituted against the plaintiff, which resulted in the defamation of the plaintiff. It was submitted on behalf of the plaintiff that the pleadings or the statements made by the defendant in these cases, were false and the same were made and published by way of filing of the pleadings or statements so made in the respective cases and the same were intended to harm the reputation of the plaintiff. In this regard, plaintiff has relied upon the judgment of the Hon'ble Karnataka High Court in Smt. Sushma Rani vs. Sri H.N. Nagaraja Rao, ILR 2020 KAR 5143 wherein other judgments have been cited wherein it is observed that defamatory statements made in the written statement filed before the Court can be taken as published and that the said defamatory statements made in judicial proceedings are not absolutely privileged. It has also been observed that it is the defendant who has to establish Digitally signed by MUNISH MUNISH BANSAL

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2024.12.24 15:23:47 +0530 that he/ she was justified in making such a statement and the same falls under the exceptions to the suit for defamation or that the statements were made with due care and attention.

8.3. Before delving into the question and requirement of the defendant proving that the statement made by the defendant was made with due care and intention and within the realm of protection against the suit for defamation, it is necessary for the plaintiff being the dominus litus to prove by cogent evidence that the statement by way of pleadings in the cases instituted against him were imputations intending to harm the reputation of the plaintiff and that the said imputations were indeed published.

Though the plaintiff has narrated certain pleadings pertaining to the application under Section 12 of the DV Act, instituted by the defendant against the plaintiff and which was dismissed vide order dated 23.08.2016 Ex. PW1/F, however, the pleadings as well its publication by filing the said application, was required to be proved by the plaintiff. The same has not been done by the plaintiff in terms of Rules of evidence, either by summoning the requisite record from the concerned Court or by filing the certified copies of the same.

8.4. In the present case, plaintiff has relied upon certain documents to prove his case. However, plaintiff has neither produced the originals of the same at the time of evidence except Ex. PW1/B-1 and Ex.PW1/F, which are the extract of the statement of the defendant made on 22.10.2013 in case FIR no.576/07 and attested copy of the judgment dated 23.08.2016 in Digitally signed by MUNISH MUNISH BANSAL BANSAL Date:

2024.12.24 15:23:52 +0530 case u/s 12 of the DV Act, nor have summoned the requisite record from the concerned quarters nor have filed true certified copies for which production of certified copies is permitted to be the proof of the contents the documents contains. Without documents being proved, the same cannot be read in evidence. Mere averments are not enough, proof is required. Mere statements cannot prove anything. It is further noted that present case has been filed by the plaintiff seeking damages on the basis of defamation by the defendant that the defendant has filed false case under DV Act and various other Acts stating false averments and allegations against the plaintiff and filing of the said cases resulted in defamation of the plaintiff. Pleadings of the aforesaid respective cases filed by the defendant against the plaintiff, which the plaintiff alleges to contain false and defamatory content has not been proved by the plaintiff in the present suit. Though judgment dated 23.08.2016 of the Ld. Mahila Court has been exhibited by bringing on record the certified copy of the same, however, that cannot replace the exact pleadings contained in the petition/application filed by the defendant under the DV Act against the plaintiff. Judgment may contain a summary or gist of averments made in the petition/ application but the same cannot be a substitute of pleadings.

8.5. Furthermore, it is noted that pleadings in the present plaint, though refers to the different cases filed by the defendant against the plaintiff, but the pleadings are more concentrated and directed towards the statements and imputations made by the Digitally signed by MUNISH MUNISH BANSAL defendant in her application u/s 12 of DV Act. However, an BANSAL Date:

2024.12.24 15:23:57 +0530 attested/ certified copy of the statement of the defendant on 22.10.2013 in FIR no. 576/07 Ex. PW1/B-1, has been tendered in evidence, though no specific pleadings qua the statements made in the said extract of evidence has been made in the plaint. It is further noted that during cross-examination of defendant appearing as DW1, certain copies of documents were put to defendant, which were marked as Mark DW1/P1 to Mark DW1/P24. Except Mark DW1/P1 which is simple notice dt. 01.05.2005 issued by the defendant to the plaintiff, Mark DW1/P19 which is decree sheet passed in divorce petition, Mark DW1/P20 which is photocopy of evidence of the defendant recorded on 22.10.2013 in FIR no.576/07 and Mark DW1/P24 which is a document containing a typed message written in Hindi, rest all of the documents were marked as DW1 has denied having knowledge of the said documents and also objection as to mode of proof was also raised.

8.6. In Subash Chander vs. Shri Bhagwan Yadav 2009 SCC OnLine Del 3818, Hon'ble High Court of Delhi has observed:-

"11 The legislative intent behind order 7 Rule 14(4) and Order 8 Rule 1A (4) and Order 13 Rule 1(3) appears to be to permit an element of surprise, which is very important in the cross examination of witnesses.

A litigant may well be of the opinion that if the document on the basis whereof he seeks to demolish the case of the adversary is filed on the court record along with pleadings or before framing of issues, with resultant knowledge to the adversary, the adversary may come prepared with his replies thereto. On the contrary, if permitted to show/produce Digitally signed by MUNISH the document owing to element of surprise, the adversary or witness, MUNISH BANSAL BANSAL Date:

2024.12.24 15:24:02 may blurt out the truth. Once it is held that a litigant is entitled to such +0530 right, in my view it would be too harsh to make the same subject to the condition that the litigant would thereafter be deprived of the right to prove the said documents himself. Thus, if the witness to whom the document is put in cross examination fails to admit the document, the party so putting the document, in its own evidence would be entitled to prove the same. However, the same should not be understood as laying down that such party for the said reason and to prove the said document would be entitled to lead evidence which otherwise it is not entitled to as per scheme of CPC and evidence law. For instance, if the document is shown by the defendant to the plaintiff's witness and the plaintiff's witness denies the same, the defendant can prove the document in his own evidence. Conversely, if the plaintiff puts the document to the defendant's witness and the defendant's witness denies the

same, the plaintiff if entitled to lead rebuttal evidence would in his rebuttal evidence be entitled to prove the same. However, if the plaintiff has no right of rebuttal evidence in a particular case, the plaintiff would not be entitled to another chance to prove the document. In such a case, the plaintiff has to make a choice of either relying upon the surprise element in showing the document or to file the document along with its pleadings and/or before the settlement of issues and to prove the same. Similarly, if the defendant chooses to confront the document to the plaintiff's witness in rebuttal, merely because the witness denies the document would not entitle the defendant to a chance to prove the document subsequently."

8.7. In view of the ratio laid down in the aforesaid judgment, it was required to prove the said documents, however, no effort has been made to prove the documents either by summoning the original record from the concerned Courts or by filing the certified copies of the same, in case where certified Digitally signed by copies are permissible to be the proof of the contents document MUNISH MUNISH BANSAL BANSAL Date:

2024.12.24 15:24:07 contains. Even the said exercise of proving the documents could +0530 have been done at the earlier stage of plaintiff's evidence by the aforesaid procedure of summoning the record or by filing the certified copies. Thus, the documents not being proved as per law, the same is of no assistance to the plaintiff as the said documents cannot be read into evidence without being proved.

8.8. Though Mark DW1/P24 has been admitted by the defendant in her cross-examination but no reliance can be placed on the same since admittedly the message it contains pertains to having sent through mobile phone for which complete chat needs to be brought on record for the Court to verify the context in which the message had been made. Moreover, the said message is contained in a typed form on a blank paper and filed before the Court and it is not exact screen-shot of the mobile chat/conversation. Moreover, the same is sans certificate u/s 65B of the Indian Evidence Act.

8.9. Plaintiff has also exhibited extract of evidence Ex.PW1/B-1 and not the complete evidence. It is well settled that evidence has to be read in context of the pleadings and even the evidence beyond the pleadings cannot be led. Moreover, an extract of the record of the evidence cannot be read with complete evidence not brought on record. It would be inappropriate to read and rely upon the incomplete record of evidence and reading and relying on the same may result in miscarriage of justice.

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2024.12.24 15:24:12 +0530 8.10. For defamation, action of defendant in publishing the defamatory material is essential and is required to be proved.

For that, in the present facts of the case, pleadings filed by the defendant in the case under DV Act are relevant since the said pleadings would be instrumental in proving the action of the defendant in publishing the defamatory content. Judgment/ order/ decree is given by the court and the contents contained therein cannot be a proof of publication of the defamatory material by the defendant and the same can be proved by placing on record the pleadings filed by the defendant. It is the defamatory statements made in the pleadings filed before the court amount to being a publication; the judgment rendered by the court may be relevant to the extent of determining whether the pleadings put forth by the defendant were defamatory or not or whether true or false.

8.11. In view of the above discussion, the Plaintiff has failed to prove his case. This issue is accordingly, decided against the plaintiff.

Relief

9. In view of the above discussion, the present suit is dismissed. No orders as to costs. Decree-sheet be prepared accordingly. File be consigned to record room.

MUNISH BANSAL Date:

BANSAL 2024.12.24 Announced in the Open Court 15:24:17 +0530 on 24.12.2024
(Munish Bansal) Additional District Judge South District: Saket Courts New Delhi