

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No. 257/2017**

% **6th July, 2017**

DEEPAK KUMAR @ DEEPAK SAHA Appellant
Through: Mr. Nakul Pathana and Mr.
Akhand Pratap, Advocates.

versus

HINDUSTAN MEDIA VENTURES LTD. & ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. Nos. 21061-62/2017 (for exemptions)

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

**FAO No. 257/2017 and C.M. Appl. No. 21063/2017 (for
condonation of delay of 256 days in re-filing the appeal)**

1. This first appeal under Order XLIII Rule (1)(a) Code of Civil Procedure, 1908 (CPC) impugns the order of the Trial Court dated 12.5.2016 which has allowed the application of the respondents/defendants under Order VII Rule 10 CPC and directed the

return of the plaint to be presented to the court of correct territorial jurisdiction.

2. The facts of the case are that the subject suit for compensation and damages for defamation was filed by the appellant/plaintiff against the three respondents/defendants. Defamation is alleged to have been caused to the appellant/plaintiff on account of an article dated 11.8.2014 published by the respondent no.1/defendant no.1 in Bhagalpur, Bihar edition of the Hindi newspaper Hindustan.

3. It is settled law that defamation takes place because a defamatory statement or article or any other material is published i.e it comes to the knowledge of the public and the appellant/plaintiff is brought down in estimation of the right thinking people of the society. Publication is a *sine qua non* with respect to defamatory article because defamation is only caused when the general public comes to know of the defamatory article. As per the provisions of Sections 19 and 20 CPC a suit seeking compensation/damages on account of defamation has to be filed where either whole or part of the cause of action arises or where the defendant(s) reside or work for gain. In case the defendant is a company then additionally the Court has to consider the provision of the Explanation to Section 20 CPC read with the ratio of

the judgment of the Supreme Court in the case of *Patel Roadways Limited, Bombay vs. Prasad Trading Company (1991) 4 SCC 270* and which holds that merely because a corporate office or a registered office or a head office of a company is situated at a particular place the same is not sufficient to confer territorial jurisdiction if the cause of action is found to have arisen at a place where the defendant company has a branch office.

4. In the present case it is undisputed that the publication is in the Hindi newspaper Hindustan at Bhagalpur in Bihar. There is admittedly no circulation of the newspaper Hindustan outside Bhagalpur in Bihar. It is not even the case of the appellant/plaintiff in the plaint that the defamation is caused by reading of the article in the newspaper Hindustan in Delhi, inasmuch as, no such argument has been raised before this Court by the appellant/plaintiff. Therefore, it is seen that the entire cause of action as regards defamation has arisen beyond the territorial jurisdiction of the courts in Delhi, inasmuch as, defamation is alleged to have been caused on account of publication of the article in daily newspaper Hindustan at Bhagalpur in Bihar. Therefore, the Court below has rightly held that no part of the cause of action has accrued in Delhi for this Court to have territorial jurisdiction.

5. Learned counsel for the appellant argues that cause of action has accrued in Delhi because interview which was given by the appellant/plaintiff was given at Delhi and therefore in Delhi part of cause of action has arisen. Reliance in this regard is placed upon a judgment of the learned Single Judge of the Karnataka High Court in the case of *Jaharlal Pagalia Vs. Union of India, AIR 1959 Calcutta 273* and the relevant para 6 of which judgment which is relied upon reads as under:-

“6. Thus 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. In the restricted sense it includes facts constituting the infringement of the right and is thus the cause which is the foundation of the suit. In the wider sense it includes facts constituting the right itself. The expression cause of action for the purpose of jurisdiction of the Court was held by Das J. (now Chief Justice of India) in *Madanlal Jalan v. Madan Lal*, 49 Cal WN 357: (AIR 1949 Cal 495) to be an expression of wider import. To illustrate, the plaintiff could attract jurisdiction of the Court by pleading assignment of a promissory note within the jurisdiction of the court as a part of the cause of action. In the restricted sense the non-payment of the promissory note is the cause of action. In the wider sense cause of action will include the plaintiff's title and right acquired by the assignment of the promissory note, at a place within the jurisdiction of the Court. It is necessary for the plaintiff to prove assignment and therefore it is a part of the cause of action.”

6. Firstly, in my opinion the counsel for the appellant/plaintiff is in fact misleading the Court by arguing that the interview having taken place at Delhi would give territorial jurisdiction to Delhi, inasmuch as, on a query of the Court as to whether such a plea is pleaded in the plaint, counsel for the appellant/plaintiff

concedes that no plea is pleaded that part of cause of action has arisen in Delhi because appellant's/plaintiff's interview was taken at Delhi. Even assuming for the sake of argument such a plea has been taken/raised, even then in my opinion, that would not confer territorial jurisdiction to the courts at Delhi, inasmuch as, for a suit seeking compensation/damages for defamation, publication is a *sine qua non* because it is only by publication of the alleged defamatory article that the alleged defamatory statement or article comes to the knowledge of the general public including those persons in whose estimation the plaintiff is brought down and is defamed. Therefore, mere interview in itself taken of the appellant/plaintiff does not result in arising of cause of action in Delhi, inasmuch as, defamation is caused only on account of the article which has been published in the Hindi newspaper Hindustan at Bhagalpur in Bihar and having circulation only at Bhagalpur in Bihar.

7. Facts of the judgment in the case of ***Jaharlal Pagalia*** (*supra*) in no manner applies to the facts of the present case, inasmuch as, the said case did not pertain to any suit for defamation and arising of whole or part of cause of action for defamation merely because of giving/taking of an interview. As already stated above, it is only

publication which results in defamation and without publication there is no defamation.

8. The next argument urged on behalf of the appellant/plaintiff was that since the respondent no.1/defendant no. 1 has a head office/corporate office in Delhi, therefore, this Court would have territorial jurisdiction. This Court need not labor at length on this aspect because the issue is now well settled against the appellant/plaintiff for now over 27 years in view of the judgment of the Supreme Court in the case of *Patel Roadways Limited (supra)* and which holds that a mere plea of existence of a head office or a corporate office of a defendant 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 acting has arisen. In the present case, it is not disputed that the respondent no.1/ defendant no. 1 has an office at Bhagalpur in Bihar from where the Hindi newspaper Hindustan is published.

9. In view of the above discussion, there is no illegality which is found in the impugned order returning the plaint to be filed in the proper court of territorial jurisdiction.

10. Since this appeal is a gross wastage of judicial time and having been filed against the settled law, as also without even taking

appropriate pleadings of interview given at Delhi giving rise to a cause of action, and which even if taken would not have conferred territorial jurisdiction, accordingly, this appeal is dismissed with costs of Rs.10,000/- and which shall be deposited within four weeks with the website www.bharatkeveer.gov.in and receipt thereafter be filed in this Court within two weeks. In case the receipt is not filed within the said time the Registry will list the matter in Court for appropriate action to be taken against the appellant/plaintiff.

JULY 06, 2017

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VALMIKI J. MEHTA, J