

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

RFA No.333 of 2000.
Date of decision: 29.02.2008

Sanjay Hindwan

....Appellant

Versus

Bhagat Urban Cooperative Bank

....Respondent

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?¹

**For the Appellant: Mr.G.D. Verma, Senior Advocate with
Mr.Romesh Verma, Advocate.**

For the Respondent: Mr.K.D. Sood, Advocate.

Dev Darshan Sud,J.

This is defendant's appeal against the judgment and decree of the learned Additional District Judge, Solan, in Civil Suit No.9-S/1 of 1997, decided on 11.08.2000, awarding Rs.10,000/- as damages to the respondent-plaintiff and a direction to the defendant to publish the 25th and 26th Annual Report Ex.D-1 issued by the Bhagat Urban Cooperative Bank Limited, Solan.

The brief facts necessary for decision of this appeal are that the respondent-plaintiff instituted a suit against the appellant-defendant for defamation on the ground that the defendant had published an article in the newspaper owned by him

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

casting serious aspersions on the financial capacity of the respondent-plaintiff, which is a registered Society under the Societies Registration Act, 1860 working as a Co-operative Bank. The appellant-defendant is the proprietor, printer, publisher and editor of the Grass Saptahik. It was pleaded that he caused to be published a news item in the newspaper as aforesaid on 28.4.1997 bearing following headlines:

"Baghat Bank Mein Bhari Ghotale Ki Sambhawana" (Ex.PC) .

According to the plaintiff-respondent, this publication circulated in the news-paper caused damage to its reputation as a Banking Institution. Its customers even threatened to withdraw their bank accounts and close all business transactions. The suit was resisted by the appellant-defendant on a number of grounds.

The learned trial Court, after appreciation of the evidence on record decreed the suit of the plaintiff in the following terms:-

"In view of my findings on the issues above, the suit of the plaintiff is partly decreed and decree for the recovery of Rs.10,000/- with interest at the rate of 12% from the date of institution of the suit till its realization is passed in favour of the plaintiff Bank and against the defendant as the defendant had

published the defamatory news in the "Grass Saptahik" on dated 28.4.1997 that the plaintiff Bank had gained profit of Rs.2,23,75,850/- and paise 68 only in the year 1993-94-1995 and committed embezzlement in distribution of profit and the defendant has misinterpreted the word gross income as profit. The defendant is also directed to publish the 25, 26th Annual Report Ex.D-1 issued by the Baghat Urban Cooperative Bank Limited Solan as mentioned in the judgment para No.17 in toto. In view of the peculiar circumstances of the case, the parties are left to bear their own costs. Decree sheet be drawn accordingly.

The file, after due completion be consigned to the Record Room".

The defendant is now in appeal.

Learned counsel appearing for the defendant-appellant has urged a number of points for consideration by this Court including the ground that a reading of the news item Ex.PW-1/C does not in any manner constitute defamation. It is urged that the news item in no way lowers the estimation of the plaintiff-respondent in the General Public nor causes any harm to its financial or commercial reputation.

I have heard learned counsel for the parties and have gone through the record.

The point touching the maintainability of the suit as having been filed by a person who is not

authorized and that it is bad for non-joinder of necessary parties, needs no discussion, as in the first instance this Court is to determine as to whether Ex.PW-1/C, produced in evidence before the trial Court, is actionable per se or not.

Freedom of speech and expression is enshrined in Article 19(1)(a) of the Constitution of India. Of-course, this freedom is not unfettered but subject to reasonable restrictions, one of them being that fair reporting should not transgress the limitations imposed by morality, decency, public interest and the limitation imposed by the law of torts. It is in this background that Ex.PW-1/C is to be judged and evaluated. The headline as noticed above has been worded in a manner which makes it tempting for a person to read the main contents. It only says that there is a possibility of a loss being incurred in the respondent-Bank. A reading of the article as a whole only deals with the interse dispute between the Members and Board of Directors of the Bank with respect to the holding of elections etc. because of some dispute between them. Subsequently, the article says **"Labhansh Mein Ghotala"**? A reading of the entire item suggests otherwise as facts and figures published in the Article are not such as would show that they deserve the headline printed by the appellant-defendant, who is indulging in sensationalism merely to attract readers. It becomes

amply evident that the bold headline at the top has no connection with the contents and material with the facts and figures of profit as given in the body of the news item, nor does it in any manner indicate loss having been incurred by the bank. This is the plain and simple meaning of the article Ex.PW-1/C which was published in the news paper.

Learned counsel for the respondent submits that there is ample evidence on record to show that the false reporting by appellant-defendant had caused damage to the financial reputation of the bank. There is evidence of PW-3, Shri Padam Gupta, stating that on reading the news item he was convinced that the bank was running in losses and for that reason he would be closing his account with the respondent. This is only one sided appreciation of the evidence by the learned Court below. In the evidence of the defendant including that of DW-2, Shri Nek Ram, who has remained as Director of the bank and DW-3, Shri Nardev Singh, who is share-holder of the bank, DW-4, Shri Avinash Thakur, who is accountant of the bank, it has been stated that there is nothing in Ex.PW-1/C to suggest that the plaintiff-respondent has been defamed by the appellant-defendant or that the article Ex.PW-1/C is defamatory. As I have held, a reading of Ex.PW-1/C shows that barring the headline which may be suggestive of a possibility of a loss having been or likely to be incurred by the bank, there is nothing in

the report which would show that the financial reputation of the plaintiff-respondent has been tarnished or that the appellant is responsible for publishing half truths, innuendos or suggesting an answer to the query(s) raised by it in the headline(s) which would lead to the conclusion that bank is not solvent. It is trite that certain portions of article cannot be read in isolation in order to arrive at a conclusion as to whether it is defamatory and causes damage to the reputation of an individual. In order to determine the nature of the writing to be defamatory or libelous, the entire article has to be read and not a few words in isolation. The evidence of PW-1, PW-2 and PW-3 is repetitive merely stating the obvious to support the claim of the plaintiff namely that PW-3 wanted to close his bank account because of the contents of Ex.PW-1/C. The only conclusion which can be reached on a reading of the evidence in its entirety is that no reasonable person would interpret the writing to be defamatory. I am not satisfied that the contents of Ex.PW-1/C when read as a whole are of a nature which can cause any harm to the respondent-plaintiff.

In view of the facts and circumstances on record, I hold that there has been no defamation. It must also be remembered that the privilege of reporting enjoyed by a journalist is not to be lightly interfered with unless it is salacious, malicious or

suggestive of a conduct which does not exist. In these circumstances, this appeal is allowed. The judgment and decree of the trial Court is quashed and set aside. There shall be no order as to costs.

February 29, 2008.
(aks)

(Dev Darshan Sud)
Judge.