

IN THE BOMBAY CITY CIVIL COURT FOR GREATER MUMBAINOTICE OF MOTION NO.186 OF 2021INS.C.SUIT(L) NO.6401 OF 2020(CNR:MHCC01-000520-2021)

Alia Bhatt

.. Applicant/
Defendant No.5In the matter between
Shri Babuji Rawji Shah

.. Plaintiff

V/s.

1. S. Hussain Zaidi & Ors

.. Defendants

ALONGWITHNOTICE OF MOTION NO.187 OF 2021INS.C.SUIT(L) NO.6401 OF 2020(CNR:MHCC01-000524-2021)1. Bhansali Production Private
Limited & Anr... Applicants/
Defendant No.3 & 4In the matter between
Shri Babuji Rawji Shah

.. Plaintiff

V/s.

1 S. Hussain Zaidi & Ors

.. Defendants

Appearances :-

Mr. Narendra Dubey, Adv. for plaintiff.

Mr. Pritha Mitha, Adv. for defendant No.1 and 2.

Mr. Pradeep D. Gandhi, Adv. for defendant No.3 to 5.

Coram : R. M. Sadrani
Judge, City Civil Court,
Greater Bombay, C.R. No.07.

DATED : 17th February, 2021.

COMMON ORDER

1 Notice of Motion No.186 of 2021 is taken out by the defendant No.5 and Notice of Motion No.187 of 2021 is taken out by the defendant No.3 and 4.

2 Learned counsel Pradeep Gandhi for the defendant No.3 to 5 argued that Notice of Motions are taken out under Order VII Rule 11 of Code of Civil Procedure(hereinafter referred to as CPC). The suit of the plaintiff is for injunction. According to the plaintiff, he is an adopted son of one Gangubai Kathiawadi. Defendant Nos.1 and 2 wrote a Novel namely “The Mafia Queens of Mumbai”. One of the chapter of the Novel, as per the plaintiff, is based on the life story of his mother Gangubai. According to the plaintiff, the contents of the said Novel regarding her mother are defamatory in nature. Defendant No.3 is a company producing the film. Defendant No.4 is a director of the defendant No.3/company. Defendant No.5 is an actress. According to the plaintiff, on the basis of said Novel, defendant No.4 is making the film titled as ‘Gangubai Kathiawadi’ and therefore, the plaintiff is claiming relief of injunction not to make film or not to release the film or promo in the public.

3 He argued that in fact, alleged Novel “The Mafia Queens of Mumbai” was published by the defendant No.1 and 2 in the year 2011 and Novel was available on the public domain. Defendant No.4 decided to make the film titled as ‘Gangubai Kathiawadi’ in the year 2019, therefore, suit is hopelessly barred by period of limitation. Plaintiff ought to have filed the suit within three years after publication of said Novel on 01/04/2011, but the plaintiff has not raised any objection. He further argued that plaintiff has shown false cause of action to file present suit. As per para 69 of the plaint, cause of action is shown that for the first time plaintiff came to know about the Novel in the month of August 2020, after seeing the promos of the said movie on social media platform. In fact, cause of action, if any, arose was on the publication of said Novel. As the Novel is available in the public domain, so everybody was aware about the same in the year 2011. On this point, he placed his reliance on the judgment passed by our Hon’ble High Court in the matter of **Sameer Wadekar and Anr. V/s. Netflix Entertainment Services Pvt. Ltd. reported in 2020 SCC Online Bom 659.**

4 He further argued that in fact, the plaintiff has no legal right to file the present suit. As per pleading, plaintiff is an adopted son but no any adoption deed is produced on record. Even procedure laid down for adoption is also not followed. Plaintiff has not proved any document of adoption. As the adoption itself is not proved, therefore, plaintiff is not entitled to

file present suit. On the point of guidelines of adoption, he placed his reliance on the following judgments.

- **Madhusudan Das V/s. Narayanibai(deceased) by Lrs. And Ors. reported in (1983)1 SCC 35.**
- **R. Meenakshi Ammal V/s. Velusamy & Ors. reported in 2002 SCC OnLine Mad 463.**
- **Senthikumar & Anr. V/s. Dhandapani & Ors. reported in 2004-3-L.W.375.**
- **Rahasa Pandiani (dead) by Lrs and Ors. V/s. Gokulananda Panda & Ors., reported in MANU/SC/0418/1987.**

5 He further argued that plaintiff filed the present suit only for injunction without claiming any further right or declaration of his right. Plaintiff titled the suit as suit for defamation, declaration and injunction U/s.34 and 39 of Specific Relief Act. In some of the paragraphs, plaintiff pleaded on the lines of declaration and defamation, however, prayer is restricted to the extent of injunction only which shows that by paying meager court fee, the plaintiff has attempted to prevent the defendants from making movie which involves amounts in crores. The suit is filed with ulterior motive. He submitted that the suit is not maintainable for the relief of injunction, therefore, it requires to be dismissed under Order 7 Rule 11 of CPC.

6 Defendant No.5 is an actress and there is no reason to implicate her in the present matter. What is defamatory is not explained in the suit. He further argued that if anything amounts

to defamation of the said deceased Gangubai, then it is personal right of the deceased and dies with her. On this point, he placed his reliance on the judgment delivered by Hon'ble Madras High Court in the matter of **N.S. Veerabhadraiah V/s. Aroon Purie and Ors. reported in MANU/TN/2304/2010.**

7 He argued that suit for mere injunction without declaration that said Novel or its contents are defamatory is not maintainable. On this point, he placed his reliance on the judgment delivered by Hon'ble Madras High Court in the matter of **Nakkheeran Publications V/s. The 292Nd Guru Maha Sannidhanam, CRP(PD) No.4033 of 2012 and M.P No.1 of 2012, dt. 12th September 2017.** He lastly requested that plaint be rejected under Order VII Rule 11 of CPC.

8 Learned Adv. Narendra Dubey for the plaintiff opposed the Notice of Motion. He argued that specific cause of action is mentioned in the plaint. Merely Novel is published in the year 2011 and available in the public domain, thus, it is not concluded that plaintiff is having knowledge of the Novel available in the public domain. He argued that plaintiff has filed photo copy of the ration card in which name of said Gangubai is mentioned as Gangubai Harjivandas. Name of the plaintiff is at Sr.No.2 as son alongwith other family members. As this document is apparent proof as son of deceased Gangubai, how to prove the adoption is question of evidence and cannot be considered at this stage. It is

specific pleading of the plaintiff in paragraph No.6 about his adoption since birth. Plaintiff is 74 years old. His birth was prior to independence particularly, prior to coming into force of Hindu Adoption and Maintenance Act 1956. As per Section 30 of this Act, it is not applicable to the adoption which was effected prior to codified law. Publication of defamatory contents is continuing cause of action within the meaning of Section 22 of the Limitation Act and plaintiff rightly filed the suit within limitation. Making of the movie is fresh cause of action in the present suit. He further argued that the suit for injunction is maintainable. It is choice of the plaintiff for what relief suit is to be filed. There is no necessity to file the suit for declaration. Suit is rightly valued. He requested that there is no substance in the Notice of Motion. It deserves to be dismissed with heavy cost.

9 He further argued that as the period of limitation is mixed question of facts and law, therefore, it cannot be considered without sufficient evidence on record, particularly, while exercising the prayer under Order VII Rule 11 of CPC. On this point, he placed his reliance on the judgment delivered by Hon'ble Supreme Court in the matter of **Kamala & Ors. V/s. K.T. Eshwara Sa & Ors. Appeal (Civil) No.3038 of 2008, dt. 29/04/2008.**

“15. Order VII, Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order VII, Rule 11, in our opinion, should not be mixed

up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause(d) of Order VII, Rule 11 of the code is the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order VII, Rule 11 of the code is one, Order XIV, Rule 2 is another.”

10 He argued that plaint cannot be rejected when cause of action is specifically pleaded. Merely improper framing of the suit cannot be a ground to reject it. On this point, he placed his reliance on the judgment delivered by Hon’ble Madras High Court in the matter of **Smt. V. Bragan Nayagi V/s. R.R. Jeyaprakasam, C.R.P. NPD (MD)No.819 of 2010 and M.P. (MD) No.4 of 2014, dt.01.04.2015.**

34. In J.LILI JABAKANI AND OTHERS Vs. T.A. CHANDRASEKHAR reported in {2006(5)CTC? 848}, it is held that a suit can be amended and the same cannot be rejected so far as the averment discloses the cause of action or raises questions fit to be decided by the Court and in such event, the mere fact that the suit is framed in different manner or that the suit is weak on account of such improper framing or that the plaintiff cannot succeed are not grounds for rejecting the plaint.”

11 After hearing both the sides, I go through record. Plaintiff has specifically pleaded cause of action that he came to

know about Novel and making of movie from the social media platform in the month of August 2020. Even assuming that plaintiff has knowledge prior to that, as per contention of the defendants, movie itself was announced in the year 2019 which gives fresh cause of action. As argued by learned counsel for defendant Nos.3 to 5 that plaintiff had not raised objection when Novel was published in the year 2011, in my opinion, it does not mean that plaintiff to keep silence for another cause of action. Therefore, apparently the suit is within limitation. Further, in view of guidelines given in the matter of **Kamala & Ors.**(supra), the question of limitation in the present matter appears to be mixed question of law and facts, therefore, plaint cannot be rejected on the point of limitation without evidence.

12 Further, contention of the defendants is that movie is based on Novel which was published in the year 2011. That Novel was available on the public domain. So, plaintiff should have knowledge about it. On this point, judgment was relied upon by the learned advocate for the defendant in the matter of **Sameer Wadekar**(supra). In that matter, plaintiff made a web series namely "BETAAL" and defendant infringed copy right. According to the plaintiff, story of the "BETAAL" which was original script of the plaintiff is based on fictional story. Hon'ble our High Court observed that though series is based on fictional script, story of "BETAAL" is relevant in Hindu Methodology and known to all and observing this, refused to grant interim relief in favour of the

plaintiff. Facts of the present case are that as per plaintiff, that Novel and film are based on life of his mother, therefore, facts are totally different from the facts of cited case, therefore, with respect, the ratio of cited judgment is not applicable to the present case..

13 Another submission of learned advocate for the defendant is that plaintiff is an adopted son and procedures laid down for adoption are not followed or proved and he relied on following judgments on this point i.e. **Madhusudan Das (supra)**, **R. Meenakshi Ammal(supra)**, **Senthikumar(supra)** and **Rahasa Pandiani**. I go through these judgments. These judgments are based upon the merits of the case after evidence of both the sides. None of the judgments is delivered while dealing with the application under Order VII Rule 11 of CPC. Therefore, guidelines given in these matters are applicable on the merits of the case and not at this stage. Apparently, plaintiff has relied upon the copy of ration card which shows name of the plaintiff at Sr.No.2 and name of the deceased Gangubai Harjivandas which shows that there is relation of mother and son between plaintiff and said deceased. How to prove adoption is a question of trial, therefore, guidelines laid down in the cited judgments cannot be considered at this stage.

14 The another ground raised by the defendants in Notice of Motion is that personal action of deceased died with person.

This ground is based upon well known magazine i.e. 'actio personalis moritur cum persona' expression meaning "a personal right of action dies with the person. Judgment relied on this point in the matter of **N.S. Veerabhadraiah**(supra), in para No.6, it is observed as under.

"6. When the suit was pending trial, Plaintiff died on 12.12.2008. By order dated 23.4.2010, the application filed by the legal representatives of Plaintiff was dismissed on the ground that the suit is founded on torts which is purely a personal right of the plaintiff and as per Section 306 of Indian Succession Act, cause of action does not survive and the suit will stand abated.

15 In view of above guidelines, case of the plaintiff is based upon contents of defamatory nature relating to his mother. Therefore, on this ground, suit is not maintainable and plaint needs to be rejected.

16 Another ground raised by the learned advocate for the defendants is that suit for mere injunction without relief of declaration is not maintainable and reply of the learned advocate for the plaintiff is that it is choice of the plaintiff to file suit and claim relief as per his choice. On this submission, I go through guidelines given by the Hon'ble Madras High Court in the matter of **Nakkheeran Publications**(supra) in para No.24, 25, 26 and 28.

24. So the perusal of the above said explanation, this Court now comes to the averments made in the plaint.

Further the prayer sought for in the plaint is not to publish any such publication in future. Whereas in the strict sense of law, the plaint must be construed for the relief of declaration that such article is defamatory as per law. When no such relief of declaration is sought for, no Court can presume that straight away the article published is defamatory, then it would be a pre-determination and pre-conception of the said issue. No Court can be a party of the pre-determination of the issue raised before the Court. So in the considered opinion of this Court, no such plaint can file unless the relief of declaration of the impugned publication is defamatory.

25. *Further the perusal of the entire publication, for which the plaint has filed, would not satisfy the legal parlance as contemplated under definition as contemplated under Section 499 of Indian Penal Code. Further in the considered opinion of this Court, the defendants are having right to freedom of press as enshrined in Article 19(1)(a) of the Constitution of India. As discussed above, the plaintiff cannot seek for a relief of blanket injunction by making omnibus prayer. Therefore, the above suit filed by the respondent herein is a clear case of abuse of process of law and the same cannot be allowed to stand.*

26. *At the same time, it is to be recorded that the maintainability of civil revision petition without exhausting the remedy available under Order 7, Rule 11 of C.P.C. However, the perusal of the said provision would show that it is the only remedy to avail such a relief. When there is no express bar is provided in the Code, then the filing of the instant C.R.P. under Article*

227 is very well maintainable. Further, the power conferred upon this Court under Article 227 is very wide with the object to secure the interest of justice which is more than the follow of law. So, the prime object in dealing with each and every matter to secure the interest of justice. Apart from that this Court is having power of superintence under Article 227 to supervise and to look out the affairs and judicial function of the subordinate Courts. This unfettered power in this regard is squarely covered under Article 227 of the Constitution of India. So this Court has no hesitation to hold the instant C.R.P under Article 227 is very well maintainable and points raised in this regard as the C.R.P is not maintainable is summarily rejected.

28. In view of the above discussions and in the light of the judgments referred above, I am of the considered opinion that the suit for permanent injunction filed by the plaintiff/respondent is liable to be struck down from its file.”

17 In paragraph No.24, Hon’ble Madras High Court specifically observed that when no such relief of declaration is sought for, no Court can presume that straight away the article published is defamatory, then it would be a pre-determination and pre-conception of the said issue and no Court can be a party to that issue. After reading the rest of guidelines quoted above, the present suit is based upon the contention that contents of said Novel titled as “The Mafia Queens of Mumbai” are defamatory in nature so far as character of his mother is concerned i.e. deceased Gangubai. However, plaintiff has not sought for any declaratory

relief to that effect. Therefore, in view of guidelines given in the judgment cited above, in my opinion, suit is not maintainable and plaint is liable to be rejected. Hence, I allow the Notice of Motion and pass following order.

ORDER

- 1 Notice of Motion Nos.186 of 2021 and 187 of 2021 are hereby allowed.
- 2 Plaint is hereby rejected under Order VII Rule 11(d) of CPC.
- 3 Both the Notice of Motions are disposed off accordingly.

(R. M. Sadrani)
Judge,
City Civil and Sessions Court,
Greater Bombay.

Dated : 17/02/2021.
Dictated on :17/02/2021.
Transcribed on :18/02/2021.
Signed on :18/02/2021.

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.

UPLOADED ON: **18/02/2021.**

(Santosh B. Sawant)
(Selection Grade Stenographer)

Name of the Judge(with Court Room No.)	Shri. R. M. Sadrani, Judge, C.R.No.07.
Date of pronouncement of Judgment /Order	17/02/2021.
Judgment/Order signed by P.O. on	18/02/2021.
Judgment/Order uploaded on	18/02/2021.