

Gosain v Dahiya

2012 NY Slip Op 32899(U)

November 13, 2012

Supreme Court, New York County

Docket Number: 100583/10

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE Justice

PART 61

Index Number : 100583/2010
GOSAIN, RAJIV SHAH
vs.
DAHIYA, KARAMVIR S.
SEQUENCE NUMBER : 004
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed order.*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

NOV 16 2012

NEW YORK
COUNTY CLERK'S OFFICE



_____, J.S.C.
HON. ANIL C. SINGH
SUPREME COURT JUSTICE

Dated: 11/13/12

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X

RAJIV SHAH GOSAIN,

Plaintiff,

DECISION AND
ORDER

-against-

Index No.
100583/10

KARAMVIR S. DAHIYA,

Defendant.

FILED

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COUNTY CLERK'S OFFICE

-----X

HON. ANIL C. SINGH, J.:

Defendant moves to dismiss the complaint pursuant to CPLR § 3211, contending that the complaint fails to state a cause of action for defamation, and for sanctions against the plaintiff and his attorney pursuant to 22 NYCRR § 130.1-1 and Disciplinary Rules DR 2-109(A)(2). Plaintiff opposes the motion and cross-moves for an order scheduling a preliminary conference.

Rajiv Gosain, who is the plaintiff in the present action, was also the plaintiff in an action in Federal District Court for the Southern District of New York (Federal action). Karamvir Dahiya, who is the defendant in the present action, was legal counsel for one of the defendants in the Federal action.

The complaint in the Federal action was dismissed without leave to amend. The complaint was dismissed against defendant State Bank of India (SBI) on the basis of a lack of subject matter jurisdiction. The complaint was dismissed against

defendant Techinvest India Private Ltd., for whom Mr. Dahiya was the attorney, for lack of personal jurisdiction.

Plaintiff appealed the decision. The United States Court of Appeals for the Second Circuit affirmed the decision as it pertained to SBI and vacated and remanded the decision as it pertained to Techinvest India. Upon being remanded to the District Court, Techinvest India made a motion to dismiss the complaint on the grounds of forum non conveniens. This order has been granted.

The allegedly defamatory or fraudulent statements were made: 1) in a letter to the court; 2) during a court conference, and 3) in a declarative note filed with the court, all during the course of litigation.

In a letter dated July 20, 2009, to the Hon. Victor Marrero, the defendant wrote:

I respectfully request your Honor to note that all claims or counterclaims etc. took place in India . . . The property is in India, the entire legal proceedings impacting the Plaintiff vis-a-vis his company assets took place in India. The plaintiff submitted to the jurisdiction of Indian courts. The plaintiff availed the Indian legal process, had opportunities to agitate [sic.] his claims. Further he has filed an appeal which is pending before the Highest Court of the State of Uttranachal, India. This case here in United States must not proceed and is filed in bad faith.

The above language is from an endorsed letter to the court requesting that the federal action be dismissed. Plaintiff asserts that the defendant knew that the

Plaintiff was never party to litigation in India regarding the subject matter of the Federal action and that the Plaintiff had never filed an appeal in India. Plaintiff asserts that these statements are false and have harmed his reputation in both the United States and India.

In the same letter, the defendant went on to write:

Here, the plaintiff has already availed and is still keeping the matter subjudice with the courts of India. The plaintiff has already and voluntarily submitted to the Indian Court. Further, the Tech India that went in liquidation was an Indian company though the shares might have been controlled ex-Indians at the time of liquidation . . . Here Tech India was given and is being given all opportunities to avail judicial remedies. The complaint is absolutely quiet about how plaintiff has prodded the Indian courts to obtain relief and has not deterred in fashion . . . Plaintiff and his company were entitled to due process in Indian Courts and they already receive that. Now just because the Indian courts have decided against them, they cannot come to the United States Court (with no links to the incident or party) for a de novo trial.

Plaintiff asserts that these statements are also false and have harmed his reputation in the United States and India.

Next, plaintiff alleges that the defendants stated to the Court that the Plaintiff had "defrauded the Indian government" by accepting the transfer of stock from his father. This statement was made during a court conference in the Federal action on July 28, 2009. Plaintiff asserts that Defendant knew, or should have known that the stock transfer was legal. Plaintiff asserts that this statement is false and constitutes

* 5]
slander per se because it accuses the Plaintiff of committing a criminal offense.

In his declarative note in the federal action, the defendant wrote:

In the case at the bar, the plaintiff has availed all judicial means in the foreign country and now since he has lost there, he comes to the home state bringing same allegations . . . all litigation has taken place in India and the plaintiff has submitted to the litigation there and not only has he submitted, he has initiated some of them including filing appeals that which are pending . . . All throughout, in the pleadings in India and other documents executed for acquiring shares etc. the plaintiff has been holding himself as a NRI i.e. Non Resident Indian (though in reality he was a United States Citizen).

The plaintiff conducted business in India through a Indian corporation Techinvest India Private Limited. He brings the present law suit mischievously in his own name to create diversity of parties. In reality the business was in the name of the corporation and he was an active shareholder of that corporation . . . The plaintiff has availed and continues to avail the India Legal System on a parallel basis, he must be estopped to continue this harassing litigation and hence this case be dismissed.

Discussion

The elements of defamation are "a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation per se." (*Dillon v. City of New York*, 261 A.D. 2d 34 [1999].)

Defendant contends that the statements were covered by an absolute privilege granted to participants in judicial proceedings. Statements made by counsel and

parties in the course of judicial proceedings are privileged as long as such statements are material and pertinent to the questions involved ... irrespective of the motive with which they are made. (See *Wiener v. Weintraub*, 22 N.Y.2d 330 [1968], quoting *Marsh v. Ellsworth*, 50 N.Y. 309; *Youmans v. Smith*, 153 NY 214.)

It is clear to the Court that the statements at issue here were pertinent to the litigation as they deal with defenses, jurisdiction, and res judicata issues. Therefore, the Defendant has an absolute privilege for the statements made in the course of the proceedings in the Federal Court action. As there is a privilege, one of the elements for defamation is missing and, therefore, Plaintiff has failed to state a cause of action.

Finally, the Court finds that the conduct of plaintiff and his attorney does not warrant sanctions.


Accordingly, it is

ORDERED defendant's motion to dismiss the case pursuant to CPLR § 3211 is granted; it is further

ORDERED that plaintiff's cross-motion is denied.

The foregoing constitutes the decision and order of the court.

Date: 11/13/12
New York, New York


Anil C. Singh

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NEW YORK
COUNTY CLERK'S OFFICE

HON. ANIL C. SINGH
SUPREME COURT JUSTICE