

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

INTERLOCUTORY APPLICATION NO. 111396 OF 2018

IN

MISCELLANEOUS APPLICATION NO. 2757 OF 2018

IN

MISCELLANEOUS APPLICATION NO. 782 OF 2017

IN

S.L.P. (CIVIL) NO. 12501 OF 2017

Deepak Chandrakant Jhaveri & Ors. ...Petitioners

Versus

Johnson Dye Works Pvt. Ltd. & Ors. ...Respondents

IN THE MATTER OF

**M/s New Era Fabrics Ltd. ...Applicant/
Respondent No. 2**

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J. :

This application has been filed by M/S. New Era Fabrics Ltd. (hereinafter 'Applicant') under Section 340 read

with Section 195(1)(b) of the Criminal Procedure Code (hereinafter 'CrPC') seeking institution of criminal proceedings against Nikhilesh Keshrichand Jhaveri (hereinafter 'Respondent No. 3') in Civil Appeal No. 6344/2017 (reconverted to S.L.P. (Civil) No. 12501 of 2017) for giving false evidence.

2. The brief facts of the case are as follows:

2.1 Twelve members of the Jhaveri family, including the petitioners herein and Respondent Nos. 3-5, claim to be the lessors of suit premises being C.S. No. 560 and 561, final Plot No. 268, T.P.S. III of Mahim Division, Ward No. 6/North 5546 (1-1A) situated at Mogul Lane, Tulsi Pipe Road, known as Senapati Bapat Marg, Mahim, Mumbai-400016. The Applicant is a monthly tenant of the suit premises. The tenancy of the Applicant was terminated by notice dated 11.2.2009, and subsequently, in March 2009, the aforesaid twelve members of the Jhaveri family filed a suit (hereinafter '1st suit') before the Court of Small Causes, Mumbai for possession and injunction against Johnson Dye Works Pvt. Ltd. (hereinafter 'Respondent No. 1'), the Applicant, and some other parties. In August 2010, Respondent No. 1 also filed an eviction suit (hereinafter '2nd

suit') before the Court of Small Causes, Mumbai against members of the Jhaveri family, including the aforesaid twelve members, contending that they were merely sub-lessees, and that Respondent No. 1 had become the owner of the property as it had purchased the suit property from the original owners.

2.2 On 12.08.2016, the petitioners herein, being six members of the Jhaveri family, filed an application under Section 24 of the Code of Civil Procedure (hereinafter 'CPC') before the High Court of Bombay, seeking clubbing together of the aforesaid suits so that they could be heard together.

2.3 This application seeking clubbing together of suits was opposed by Respondent Nos. 3-5 vide reply dated 22.12.2016 on the ground that the petitioners were acting in collusion with a third party, namely, Gnani Investment Pvt. Ltd. to render the 1st suit infructuous. In this reply, Respondent Nos.3-5 pointed out that this Court, vide order dated 22.07.2016 in SLP (Civil) No. 10337/2013, had directed that the trial in the 1st suit had to be concluded by 27.01.2017. It was submitted that significant progress had been made in the trial

of the 1st suit, whereas even issues had not been framed in the 2nd suit.

2.4 Vide order dated 23.12.2016, the High Court of Bombay dismissed the application filed by the petitioners, accepting the submissions made by Respondent Nos. 3-5. It was against this order that Special Leave Petition (Civil) No. 12501/2017 came to be filed by the petitioners.

2.5 Vide order dated 04.05.2017, this Court granted the relief of clubbing the suits together. The relief was granted without notice being issued to Respondent Nos.3-5, as this Court was of the opinion that issuing notice to them would merely delay the matter. However, Respondent Nos.3-5 were given the liberty to approach this Court if they had any objections to the order.

2.6 Utilising the liberty granted to him, Respondent No.3 filed M.A. No. 782 of 2017, seeking modification of the order dated 04.05.2017 and de-tagging of the two suits. In the said application, Respondent No.3 stated that while the preliminary issue of jurisdiction had already been decided by the Court of Small Causes in the 1st suit, even issues had not been framed in

the 2nd suit, and that therefore, the two suits should not have been tagged.

2.7 The Applicant in its reply to M.A. No. 782 of 2017 contended that both the suits were at similar stages, as the only difference was that the preliminary issue of jurisdiction had been decided by the Court of Small Causes in the 1st suit, and that even this issue was pending consideration before this Court. Significantly, it was contended that issues had been framed by the Court of Small Causes in the 2nd suit also.

2.8 In his rejoinder, Respondent No.3 admitted that due to an oversight, it had erroneously stated that issues had not been framed in the 2nd suit. Further, Respondent No. 3 tendered an unconditional apology for this oversight, and sought to provide an explanation as to why the oversight had taken place.

2.9 On 12.01.2018, this Court allowed M.A. No. 782 of 2017, recalled the order dated 04.05.2017, and restored SLP (Civil) No. 12501/2017 to its original file. Thereafter, this Court heard the matter afresh, and dismissed SLP (Civil) No. 12501/2017.

2.10 On 07.08.2018, the Applicant filed the present application under Section 340 of the CrPC, claiming that Respondent No. 3 had made incorrect statements in M.A. No. 782 of 2017 regarding the stages of the two suits with the intent of misleading this Court in order to get a favourable order.

3. Heard learned senior counsel Shri Vikas Singh appearing on behalf of the Applicant, and learned senior counsel Shri Amit Sibal appearing on behalf of Respondent No.3.

4. Shri Vikas Singh contended that Respondent No.3 had deliberately stated in M.A. 782 of 2017 that issues had not been framed in the 2nd suit, although this was factually incorrect. It was submitted that this factually incorrect statement was made only with a view to mislead the court and obtain a favourable order, and that this clearly amounted to perjury, therefore requiring initiation of criminal proceedings against Respondent No.3

5. Per contra, Shri Sibal argued that Respondent No. 3, in his rejoinder, had sought to explain the reasons for the

oversight that had led to incorrect submissions being made in M.A. No. 782 of 2017. It was pointed out that after the issues had been framed in the 2nd suit vide order dated 03.04.2014, the Applicant itself had filed an application on 28.10.2014 seeking framing, recasting, and deletion of issues on the ground that the issues that had been framed vide order dated 03.04.2014 were not in consonance with tenancy law. It was thus submitted that due to the pendency of this application, seeking recasting and deletion of framed issues as well as framing of certain new issues, Respondent No. 3 had committed the inadvertent error of stating that the issues had not been framed in the 2nd suit. Furthermore, as mentioned earlier, Respondent No. 3 also tendered an unconditional apology for the error.

6. We find that the rejoinder filed by Respondent No. 3 contained a clear admission to the effect that in M.A. 782 of 2017, he had stated certain facts which were not accurate. This Court was thus apprised of the fact that such submissions were not to be relied upon. Further, we are also of the view that the explanation offered by Respondent No. 3 in his rejoinder seems

reasonable inasmuch as the pendency of the application seeking framing, recasting, and deletion of issues, filed by the Applicant, could have caused some confusion in the mind of Respondent No. 3 regarding the stage at which the 2nd suit was pending. In light of this, it would be difficult to conclude that Respondent No. 3 had deliberately tried to mislead this Court to obtain a favourable finding or order, more particularly when Respondent No. 3 has tendered an unconditional apology in his rejoinder.

7. Therefore, we are of the considered opinion that no *prima facie* case is made out against Respondent No. 3 requiring initiation of criminal proceedings against him. Consequently, the present application filed by the Applicant is dismissed.

.....J.
[MOHAN M. SHANTANAGOUDAR]

.....J.
[R. SUBHASH REDDY]

NEW DELHI;
MARCH 03, 2020