

## **HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS**

Misc. Civil Appeal No.S-03 of 2024

Appellant: Bherji s/o Jalaji (in person)

Respondent: Hemoon Bheel s/o Ladhu Ji Bheel  
Through Mir Pervez Akhter Talpur advocate.

Date of Hearing: 21.01.2026.

Date of Judgment: 21.01.2026.

### **JUDGMENT**

**Muhammad Hasan (Akber), J:** The Judgment dated 14-02-2019 passed in Civil Suit No.01 of 2018 by the learned Additional District Judge-I, Tharparkar @ Mithi, has been assailed, whereby the plaint of the Suit was rejected under Order VII Rule 11 C.P.C.

2. The Appellant, claiming to be a writer, social worker and enjoying a good reputation, belonging to Thakur family, initiated a Suit for compensation amounting to Rs.500 million against the alleged Defamation by the Respondent. It was alleged that upon instigation of the Respondent, his caste fellows namely Jano, Pehlaj, Aanbo, Chimji and Sajan Das filed five suits (Suit Nos. 01/2014, 02/2014, 03/2014, 04/2014 and 05/2014) against the appellant in the Court of the learned Civil Judge-II, Mithi and along with the plaint, the statement of the respondent was submitted, which he had given in his capacity as Ex. U.C. Nazim Jhirmiryo, and an Advocate, whereby he defamed the appellant that the appellant does not enjoys good reputation in his village, in society as well as in the area, and has forcibly occupied homes/plots of poor people. Subsequently, the said suits were withdrawn on 19.03.2014. Per the appellant, the Respondent's statement damaged his reputation, for it became public talk in Mithi City, causing him loss of reputation in public, in addition to mental agony and stress. Appellant claimed that such an act of the respondent lowered his respect and honour in society, which affected the creative thoughts of the appellant. The appellant also filed an application against the respondent before the Sindh Bar Council, Karachi, on 19.05.2016 through TCS, which was registered on 06.05.2018 bearing No. PMC 59/2018 ('Bherji V/S Mr. Hemraj Advocate'), but ultimately, the Disciplinary Committee dismissed the complaint on 07.07.2018 by observing that there is no Hemraj Advocate on the ledger of the Sindh Bar Council and advised the appellant to approach a proper

forum for redressal of his grievances against the respondent. The appellant also served the respondent with a legal notice dated 27.08.2018 wherein he called upon the respondent to publish his apology in a well-circulated daily Sindhi Newspaper "Kawish", and daily Urdu Newspaper "Jang", but the respondent failed to do so and replied evasively. Finally, the suit was filed with the main prayer:

"To grant a decree in favour of plaintiff as general damages amounting to Rs. 50,00,00,000/- (Rupees Fifty Crore Only) against the defendant on account of plaintiff's defamation caused by the defamatory statements of defendant and to direct the defendant to pay Rs. 50,00,00,000/- to the plaintiff for as compensation of his mental agony and stress caused by the illegal acts of defendant."

3. The Respondent filed his written statement and an application under Order VII Rule 11 C.P.C. for rejection of the plaint, which was allowed after due hearing, hence this Misc. Civil Appeal.

4. Appellant-in-person submits that the learned trial Court did not provide him an opportunity to lead evidence; that the impugned Order is against facts, law and equity; that the plaint was not barred under any law; the impugned Order be set aside; and the case be remanded for trial.

5. Learned counsel for the respondent argued that the suit was barred by Limitation since it was filed after lapse of four years from the date of the alleged cause of action; that under The Defamation Ordinance, 2002 (Ordinance-2002) such a suit can only be filed within 06 months; that the impugned Order is well reasoned and does not require any interference; and that the Appeal be dismissed.

6. Heard and perused.

7. From the perspective of fundamental rights, Freedom of speech and expression have been guaranteed as a fundamental right under Article 19 of the Constitution of the Islamic Republic of Pakistan 1973, subject to reasonable restrictions imposed by law, and as per the categories provided therein. Freedom of expression, being the cornerstone of democratic societies, carries with it the right to publish and circulate one's ideas, opinions and views with freedom. Such right, though, is not unfettered and unbridled, for in any modern State, absolute and uncontrolled liberty is not encouraged. While on one hand, Article 19 protects freedom of expression, on the other hand, Article 14 of the Constitution guarantees the dignity of man and the privacy of the home, as inviolable. Not only in the Constitution of Pakistan, but since time immemorial in history and even in religions,

great value has been attached to the dignity of man and the privacy of the home. The test would be to find a balance between these two fundamental rights, for where defamation is caused, it directly affects human dignity, honour, respect and privacy.

8. The Defamation Ordinance 2002 is an attempt to strike such a balance between these two Constitutional guarantees, so that one does not infringe the other. Hence, in all fairness, a person, while exercising the right of freedom of speech and expression, must keep in mind that he also has a corresponding responsibility to ensure that his freedom of expression or speech shall not transgress the limits of freedom, beyond the boundaries of Article 14 of the Constitution. The case of '***Flt. Lt. (Dr) Shariq Saeed V. Mansoob Ali Khan and 5 others***' (2010 YLR 1647) is a valuable resource on this subject.

9. The award of general damages by Courts is based on the conditions of vindication, injury to reputation and injury to feelings. The quantum of damages awarded in respect of vindication and injury to reputation and feelings depends on several factors, including (a) the gravity of the allegation; (b) the size and influence of the circulation; (c) the effect of the publication; (d) the extent and nature of the claimant's reputation; (e) the behaviour of the defendant; and (f) the behaviour of the claimant. The standard of proof is the normal civil standard of the balance of probabilities. However, in common with a plea of justification to serious charges, the evidence must be clear and cogent. Proof of a state of mind can only be inferred from the facts, as held in *Mansoob Ali Khan* supra.

10. A quick survey of the relevant provisions of the Ordinance-2002 sets certain boundaries, which are to be observed not only for lodging claims thereunder, but also for the defences to be chosen against such claims. For instance, section 3 defines the two forms of defamation, being '***libel***' and '***slander***'. Section 4 has two parts; the former specifically declares publication of defamatory matter as an actionable wrong, even in the absence of special damage, whereas the latter part grants a statutory presumption of damages, in cases of publication of defamatory matter, subject to proof. Even the defences to be adopted in such cases have also been elucidated in the Ordinance, whereas two of such defences (**absolute and qualified privileges**) have been expressly outlined in sections 6 & 7, respectively. A fourteen-day prior written notice is mandatorily required to be sent by a Plaintiff, within two months of the defamatory publication coming to his notice.

11. With respect to actions against newspapers and broadcasting sections, six months period has been statutorily fixed for initiating an action. The District Courts and the High Courts have been vested with exclusive jurisdiction for deciding suits and appeals respectively within the specific and expeditious periods, as provided under sections 13 to 15 of the Ordinance, as also dilated in '**Dr. Abdul Jabbar Khatak V. 1Ind Senior Civil Judge, Larkana and Others**' (PLD 2017 Sindh 438) and '**A. Khalid Anari V. Mir Shakeelur Rahman**' (PLD 2011 Karachi 484). Section 11 keeps open the remedy of criminal defamation, meaning thereby that both remedies are concurrently available to an aggrieved person.

12. In the present case, perusal of the record reflects that the cause of action accrued to the appellant/ plaintiff on 15-01-2014, whereas the suit was filed on 01-10-2018 i.e. after more than four years, whereas section 12 of the Defamation Ordinance, 2002, provides limitation of actions:

“12. Limitation of actions.—An action against—

- (a) an author, editor, proprietor or publisher of a newspaper;
- (b) the owner of a broadcasting station;
- (c) an officer, servant or employee of the newspaper or broadcasting station; or
- (d) any other person;**

for defamation contained in the newspaper or broadcast from the station or its publication otherwise shall be taken within six months after the publication of the defamatory matter came to the notice or knowledge of the person defamed.”

13. As is clear from the above, the suit was to be filed within six months. Even if it is presumed that by any action of the respondent, the appellant has been defamed in public, his suit was still barred by limitation. In addition to the above, the fourteen-day mandatory notice as required under section 8 of the Ordinance was also not served. Such notice under section 8, has been held as a mandatory requirement for maintaining a suit under the Ordinance 2002, as held in the cases of '**Preetam V. Madhu Das Godwal**' (2021 MLD 1), '**Chief Editor Muhammad Riaz Anjum V. Dr. Muhammad Shahbaz**' (2023 MLD 525), '**Kazim Ali V. Ishaq Ali**' (PLD 2022 Quetta 66), '**Said Rasool V. Dr. Humayun Khan**' (2014 MLD 1199), '**Mst. Dr. Yousaf Fida v. Justice (Retd.) Muhammad Azam Khan**' (PLD 2016 Peshawar 105), '**Shafqat-ur-Rehman V. Daud-ur-Rehman**' (PLD 2006 Peshawar 206). On the contrary, in the instant suit, the cause of action arose on

15-01-2014, whereas the legal notice is dated 27-08-2018 i.e. after more than four years from the alleged defamation/ cause of action.

14. Considering the above position, no illegality or irregularity in the impugned Order could be made out, which is accordingly upheld, and the instant Appeal stands dismissed, with no order as to costs. These are the reasons for my short order dated 21-01-2026.

JUDGE