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Delhi District Court

Dr. Sunil Dangwal vs The Registrar on 9 February, 2016

Author: Hemraj

IN THE COURT OF HEM RAJ
ACJ/CCJ/ARC(SOUTH EAST DISTRICT),
SAKET COURTS, NEW DELHI

CS. No. 41/2015

Unique case ID No. 02406C0052972015

Dr. Sunil Dangwal
S/o Sh. Manwar Singh Dangwal
Owner of Garhwal Clinic,
Gali No. 26, Molarband Extension,
Badarpur, New Delhi.
Also

User Queries

[medical council](#)[delhi medical council](#)[naturopathy](#)[website](#)[garhwal](#)[mci](#)[medical council act](#)[medical service](#)[community medical service](#)[molarband](#)

Residing at:E67, Mohan Baba Nagar,
Badarpur,
.....Plaintiff

New

Delhi

Versus

1.

The Registrar Delhi Medical Council Room No. 308, IIIrd Floor, Administrative Block, Maulana Azad Medical College, New Delhi.

2. The Secretary Ministry of Health Department, Govt. of India, 1st Floor, Nirman Bhawan, New Delhi.

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3. The Secretary/Chairman Department of Ayurveda Yoga & Naturopathy, Unani, Sidha and Homeopathy, Ayush Bhawan, BBlock, GPO Complex, INA, New Delhi.Defendants Suit instituted on : 16.02.2015 Judgment pronounced on : 09.02.2016 EXPARTE JUDGMENT

1. This is a suit instituted by plaintiff against the defendants seeking a decree of mandatory injunction thereby directing the defendants to remove the name of the clinic of plaintiff i.e Garhwal Clinic, Gali No. 26, Molarband Extension, Badarpur, New Delhi110044 from the list of fake/incompetent clinic/doctors website which has been done by the defendants in collusion and in connivance with one another with immediate effect. Further a decree of perpetual injunction thereby restraining the defendants, their agents, servants, attorneys, assignees, representatives etc. from illegally and forcibly publishing the name of abovesaid clinic of plaintiff and from interfering/restraining in the peaceful operation/run/practice of the said clinic CS. No. 41/2015 Dr. Sunil Dangwal Vs. The Registrar, Delhi Medical Council & Ors. age 2 of 11 by the plaintiff without any due process of law.

2. Brief narration of the facts as stated in the plaint is that the plaintiff is Prathmic Chikitsak Doctor by profession and is running a clinic under the name and style of Garhwal Clinic, Gali No. 26, Molarband

Extension, Badarpur, New Delhi. Plaintiff is having a valid degree of Medical Education as "Diploma in Naturopathy & Yogic Science (DNYS)" obtained from All India Nature Cure Federation, Delhi Gandhi Smarak Nidhi, Patparganj, New Delhi in the year 2006. Plaintiff has also obtained and having a diploma in Community Medical Service (CMS) and ED from Maharshi Balmiki National University, New Delhi in the year 2011. Plaintiff on the basis of abovesaid documents has been running his clinic and providing better services to the citizens locality and the society as well as other persons. Plaintiff surprised when he watched the name of his clinic on defendants Delhi Medical Council website as "Doctor is not competent to run clinic in the name and style of Garhwal Clinic". The Medical Council of India clearly stated vide letter No. MCI2013 (1)/2004Regn./10/93 dated 21.04.2004 in reference to "permission recognition of Paramedical & CMS & Ed Certificate & Diploma Courses", that "With reference to defendants letter No. NBV HAB 13X04, dated 08.10.2004, on the subject noted above this is to inform defendants that Paramedical & CMS & ED courses do not come under the purview of Medical Council of India, New Delhi. As CS. No. 41/2015 Dr. Sunil Dangwal Vs. The Registrar, Delhi Medical Council & Ors. age 3 of 11 such, permission of the MCI is not required for starting/running Paramedical & CMS & ED courses in MCI as on date".

So, admittedly keeping in view the abovesaid observation Medical Council of Delhi has absolutely no authority to blacklist the abovesaid clinic of plaintiff or put any ban on that.

The Health Ministry of India, vide its order dated 25.11.2003, letter no. R14015/25/96 U & H (R) (Pt) having given permission to practice the doctor who has Naturopathy degree from recognized university.

The Hon'ble Supreme Court of India in its judgment and order dated 19.02.2003 has held that "Giving thousands of diploma holder in Community Medical Service (C.M.S) the right to prescribe medicine is unjust to allow them only to treat rural population without the consequential right to prescribe medicine or issue medical certificate." Aggrieved from the said illegal acts of the defendants, the plaintiff with all relevant documents approached three times to the office of defendant no. 1 and showed the said documents to the officials of defendant no. 1 and requested them to remove the name of clinic from the list of fake/incompetent clinic/doctors on the website of the defendants. It has been

further stated that due to said illegal acts of defendants, plaintiff is suffering exceptional financial loss and further have lost his reputation in society and legal fraternity. Thereafter, plaintiff issued a statutory legal notice dated 08.12.2014 under section 80 CPC to the CS. No. 41/2015 Dr. Sunil Dangwal Vs. The Registrar, Delhi Medical Council & Ors. age 4 of 11 defendants calling upon them to stop their abovesaid illegal, unlawful and unwarranted acts of wrongly publishing the name of plaintiff's clinic on the fake/incompetent clinic/doctors website. The defendants neither replied to the said notice nor removed/delisted the name of plaintiff's clinic. Hence, the present suit.

3. Defendant no. 1 entered the contest by filing written statement. It has been submitted that the plaintiff has filed the present suit on the wrong premises that he is a doctor being the holder of Diploma in Naturopathy and Yogic Science from All India Nature Cure Federation and Diploma in Community Medical Service & ED from Maharshi Valmiki National University. The plaintiff can not claim himself to be a doctor and practice in Allopathic System of Medicine in the NCT of Delhi without being registered with Delhi Medical Council. Even the so called Diploma in Naturopathy and Yogic Science from All India Nature Cure Federation, Patparganj is ostensibly not a recognized course from a recognized institution and does not entitle the plaintiff to call himself as a doctor. It has been further submitted that the [Indian Medical Council Act, 1956](#) regulates modern system of medicine (Allopathy) in the NCT of Delhi, the regulation of practice of profession in the modern system of medicine is being done by statutory authority viz Delhi Medical Council constituted under the Delhi Medical Act, 1997. It is pertinent to mention here that for practicing in modern scientific CS. No. 41/2015 Dr. Sunil Dangwal Vs. The Registrar, Delhi Medical Council & Ors. age 5 of 11 system of medicine registration with the Delhi Medical Council is mandatory in the NCT of Delhi. Without registration, a person can not practice in the modern scientific system of medicine in the NCT of Delhi and is also liable for action under the [Medical Council Act, 1997](#). The plaintiff has not approached the Hon'ble Court with clean hands. Hence, he is not entitled to the equitable relief of injunction. It has been stated that on 10.03.2008, the Delhi Medical Council received a complaint letter from one Sh. S.P. Rathore alleging the quacks mentioned therein including the plaintiff are practicing in the allopathic system of medicines without holding any recognized medical qualification. It was requested by the Delhi Medical Council to carry out an inspection/survey at their place to ascertain in which

system of medicine the said individuals are practicing and to send the inspection report to the DMC within 15 days of receipt of the letter. It has been further stated that the inspection report in respect of the clinic mentioned that the said clinic was inspected on 19.11.2008 and the plaintiff was stated to be practicing from the last 89 years using allopathic medicines. The said report was accompanied by the copy of registration of the plaintiff with Council of Ayurvedic and Unani System of Medicine, Bihar. The same did not entitle the plaintiff to practice in Allopathic. Thereafter a show cause notice dated 09.01.2009 was issued to the plaintiff to stop practicing allopathic system of medicine forthwith and to appear before the Delhi Medical Council on 20.01.2009. The CS. No. 41/2015 Dr. Sunil Dangwal Vs. The Registrar, Delhi Medical Council & Ors. age 6 of 11 said show cause notice was returned back with the remark "left without address/wrong address". The Delhi Medical Council again issued a show cause notice dated 17.03.2009 to the plaintiff which again was returned back with the same remark. The plaintiff has committed the offence punishable under section 27 of the Delhi Medical Council Act, 1997. Hence, the plaintiff is not entitled to the reliefs prayed for.

4. Defendant no. 3 filed its written statement wherein it has been stated that there is no [Central Act](#) or Regulation to regulate the naturopathy system of medicine. Therefore, the defendants have no authority to issue any direction regarding publishing of the name of plaintiff or his clinic in the website of defendant no. 1. It has been submitted that the then Department of AYUSH now Ministry of AYUSH has issued guidelines to all the State Governments to enact comprehensive legislation for regulation of Naturopathy covering registration of practitioners, medical education etc. It has been stated that as per the plaintiff, the defendant no. 1 i.e Delhi Medical Council has published the name of the clinic on their website. The defendant no. 3 has no role in issuing the orders regarding the publishing of the name of plaintiff or his clinic in the website of defendant no. 1. As such, it is for the defendant no. 1 to redress the grievance of the plaintiff. On bare perusal of the prayer of the plaintiff in the suit, it is evidently clear that the plaintiff has CS. No. 41/2015 Dr. Sunil Dangwal Vs. The Registrar, Delhi Medical Council & Ors. age 7 of 11 wrongly sought relief from defendant no. 3. The issue raised in the suit does not come under the purview of defendant no. 3 and as such defendant no. 3 is not the concerned appropriate authority and can not provide any relief/reliefs to the plaintiff.

5. On 06.06.2015, counsel for plaintiff submitted that defendant no. 2 be deleted from the array of parties. Although no formal order was passed but during the course of arguments, this fact was not disputed by the Ld. Counsel for plaintiff. Hence, defendant no. 2 has been treated as deleted from the array of parties. Thereafter, on 11.09.2015, defendant no. 3 was deleted from the array of parties on the statement of counsel for plaintiff. Further on 15.10.2015 defendant no. 1 was proceeded exparte for non appearance and plaintiff was directed to lead exparte evidence.

6. In plaintiff's exparte evidence, plaintiff Dr. Sunil Dangwal examined himself as sole witness and tendered his affidavit as Ex.PW1/A. He relied upon the documents i.e copy of voter ID card as Ex.PW1/1, copy of electricity bill of the suit property as Ex.PW1/2, photograph of suit property as Ex.PW1/3, copy of diploma (DNYS) as Ex.PW1/4, copy of diploma (CMS and ED) as Ex.PW1/5, copy of migration certificate as Ex.PW1/6, Internet copy of website showing the name of the clinic is Mark A, copy of notification having number MCI203(1)/2004Regn./10/93 dated 21.04.2004 as Ex.PW1/7, copy of Gazette published on 06.03.1997 as Ex.PW1/8, copy of CS. No. 41/2015 Dr. Sunil Dangwal Vs. The Registrar, Delhi Medical Council & Ors. age 8 of 11 letter no. RI4015/25/96 dated 25.11.2003 as Ex.PW1/9, copy of judgment for reference as Ex.PW1/10, copy of notice as Ex.PW1/11, postal receipts as Ex.PW1/12 (colly) and plaint as Ex.PW1/13. No other witness has been examined by the plaintiff and PE was closed on 17.11.2015.

7. I have heard the arguments at bar advanced by Ld. Counsel for plaintiff, perused the written arguments filed on behalf of plaintiff and gone through the records.

8. in this suit, the defendant no. 1 was proceeded exparte after it had filed the written statement. Defendant no. 1 was the main defendant in the suit as the relief had been claimed against him. Defendant no. 2 and 3 were deleted from the array of parties. It is well settled principle of law that even though the defendant is exparte still the plaintiff is not absolved from its responsibility to prove the case on merits. Plaintiff has to stand upon its own legs and he can not derive any benefits from either the absence of the defendant or the weakness of the defence.

9. The plaintiff has sought the relief that defendants be directed to remove the name of the clinic of the plaintiff from the list of fake/incompetent clinics/doctors website as he is a qualified diploma holder in Naturopathy and Yogic Science. The pleadings especially the written statement filed by the defendant no. 1 shows that the plaintiff has been guilty of suppressing the material facts and has approached the Court with unclean CS. No. 41/2015 Dr. Sunil Dangwal Vs. The Registrar, Delhi Medical Council & Ors. age 9 of 11 hands. In its written statement, defendant no. 1 has stated in para no. 8 that on a complaint, it had directed the CDMO (South) Directorate of Health Services, Govt. of NCT to carry out an inspection of the clinic of the plaintiff which was done on 19.11.2008 and the plaintiff was found to be practicing from the last 89 years using allopathic medicine. A show cause notice was issued to the plaintiff by it. The plaintiff had provided copy of his registration with Council of Ayurvedic and Unani System of Medicine, Bihar but was practicing in the modern science (Allopathic).

In reply to para 8 of the preliminary submission of ws, the denial was made by the plaintiff in his replication for the first time. These facts were not mentioned by the plaintiff in his plaint and disclosed the same for the first time in his replication.

In my opinion the plaintiff has been guilty of suppressing the material facts from the knowledge of the Court. It is settled law that one who seeks equity must do equity. The power of injunction is a discretionary relief and the Court can not use the discretion in favour of party who has not approached the Court with clean hands.

10. Furthermore the plaintiff has not examined any official from the so called institution from where he has alleged to have received his diploma in Naturopathy and Yogic Science as well as diploma in Community Medical CS. No. 41/2015 Dr. Sunil Dangwal Vs. The Registrar, Delhi Medical Council & Ors. age 10 of 11 Service and ED. It has not been proved on record whether such institute exists or not or whether any diploma etc has been received by the plaintiff from them. Accordingly, I hold that the plaintiff has failed to prove on record the genuineness of his documents.

11. Therefore, in view of the aforesaid discussions, I hold that the plaintiff has miserably failed to prove his case on merits. The plaintiff is not entitled to discretionary relief of injunction as prayed for. The suit of the plaintiff, therefore, stands dismissed. No order as to costs. Decree sheet be prepared accordingly. File be consigned to Record Room.

Announced in the open Court
Today on February 9th, 2016

(Hem Raj)
ACJ/CCJ/ARC(SE)
Saket Court, Ne

Delhi

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