

CS 1275/2021
VISHNU GUPTA VS STATE & ORS.

17.11.2021

Matter taken up through video conferencing via CISCO Webex interface in view of the Order No.700/RG/DHC/2021 dated 30.09.2021 passed by Hon'ble High Court of Delhi read with Office Order No.16993-17058/Judl/Prin.D&SJ/NDL/2021 passed by learned Principal District & Sessions Judge, New Delhi District, Patiala House Courts, New Delhi.

Fresh civil suit received by way of assignment. It be checked and registered.

Present : Adv. Mr. Akshay Aggarwal, Ld. counsel for plaintiff.

- 1) Along with the present case, an application under Order XXXIX Rule 1 & 2 CPC seeking interim injunction has also been filed and ad-interim injunction has been pressed for.

- 2) It is submitted that the plaintiff is the President of Hindu Sena, an organization working for the welfare of the society registered under Indian Trust Act, 1860 and on the even of 10th November, 2021, the defendant no.2 released a book through offline & online mode namely "Sunrise Over Ayodhya" in the presence of other prominent leader of the society and a passage in the book on page no.113 has hurt the religious sentiments of a large number of people of society who follow the Hindu religion. That, the copy of the excerpt of the said book has also been annexed as "Annexure – A". It is prayed in the main suit that the decree of prohibitory injunction in favour of the plaintiff and against the defendants be granted thereby restraining the defendants, their associates, agents, servants etc., from circulating, publishing, distributing and selling the aforementioned book and also ban the book for the larger interest of the society and counter. Additionally, it is prayed that defendants be directed not to create any nuisance and illegal activity with the plaintiff.

3) At this stage as an interim measure, it is prayed that till the final disposal of the suit, a decree of prohibitory injunction in favour of the plaintiff and against the defendants thereby restraining the defendants and their associates, agents, servants, etc., by prohibiting the defendant not to circulate not to circulate, publish, distribute and sell the aforementioned book and not to create any nuisance or illegal activity with the plaintiff.

4) Submissions heard. File perused.

5) At the outset, in Morgan Stanley case 1994 (4) SCC 225 (241), the Hon'ble Supreme Court of India has laid down the following guidelines to be followed by the Court while issuing ex-parte interim injunction :-

“As a principal, ex-parte injunction could be granted only under exceptional circumstances. The factors, which should weigh with the Court in the grant of ex-parte injunction, are :-

- (a) Whether irreparable or serious mischief will ensue to the plaintiff;*
- (b) Whether the refusal of ex-parte injunction would involve greater injustice than the grant of it would involve;*
- (c) the Court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;*
- (d) the Court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex-parte injunction;*
- (e) the Court would expect a party applying for ex-parte applying for ex-parte injunction to show utmost good faith in making the application;*
- (f) even if granted, the ex-parte injunction would be for a limited period of time;*
- (g) General principal like prima-facie case, balance of convenience and irreparable loss would also be considered by the Court.”*

6) Perusal of file shows that the plaintiff has claimed relief against all the defendants and the defendant no.1 is the State of NCT of Delhi through Hon'ble Lieutenant Governor of Delhi. On specific query of the Court, it is stated that the defendant no.3 is the publisher of the book in question. Apparently from the records, it is transpired that the mandatory notice under Section 80 CPC has not been served upon the defendant no.1 nor any application seeking leave of the Court for exemption from filing the same has been filed, whereas the relief has been sought against all the defendants. It is settled proposition of law that when a suit is itself not maintainable, in such a case ad-interim injunction cannot be granted [Reliance placed on case titled Shree Priya Ballabh V. Manoj, 1988 (2) SCC 1040].

7) Further, one of the grounds set out by the plaintiff in the plaint is that the plaintiff is seeking relief for the larger interest of the public. Nonetheless, the plaintiff has not followed the procedure provided under Order I Rule 8 CPC.

8) Furthermore, the defendant no.2 & 3 herein have the right to write / publish the book. The plaintiff has not been able to establish that inconvenience will be caused to him to avoid the book or alleged "offensive" excerpts of the book. On the other hand, injunction would lead to hardship for the publishers and also curtail the right of speech and expression of the author. The plaintiff can always propagate against the book and can even publish rebuttal to the alleged paragraphs which have hurt his sentiments. Also, only copy of excerpt has been placed on record and such excerpt cannot be read in exclusion / isolation for interpreting the context in which the said statement has been made.

9) For the reasons as discussed above, in the opinion of this Court, neither a prima-facie case nor any exceptional circumstance for grant of ad-interim ex-parte injunction in favour of the plaintiff is made out in the present case. Also, the plaintiff has failed to establish that the balance of convenience lies in his favour. Hence, the prayer for ad-interim ex-parte relief is declined at this stage.

10) Put up for arguments / clarification on maintainability of the present suit on
18.11.2021.

It is certified that proceedings have been conducted uninterrupted through video conferencing and no malfunctioning has been reported at both ends.

**(PREETI PAREWA)
ACJ/CCJ/ARC, NDD, PHC
NEW DELHI : 17.11.2021**