



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (LODGING) NO. 35506 OF 2022

IN

SUIT NO. 72 OF 2023

The Indian Express (P) Ltd. & Anr.

...Applicants/Plaintiffs

Versus

Unmesh Padmakar Gujarathi & Ors.

...Defendants

WITH

INTERIM APPLICATION (LODGING) NO. 41033 OF 2022

IN

SUIT NO. 72 OF 2023

- Dr. Abhinav Chandrachud, Mr. Pranit Kulkarni, Tejaswi Ghag, Mr. Shivam Singh i/by Poorvi Kamani, for Applicants/Plaintiffs.
- Mr. Vishal Shriyan and Arsalan Thaver i/by Vishal Shriyan, for Defendant No. 3.
- Mr. Akash Menon and Ms. Bency Ramakrishnan, for Defendant No. 4.
- Mr. Alankar Kirpekar and Mr. Ayush Tiwari i/by MAG legal, for Defendant No. 5.

CORAM : MANISH PITALE, J

DATE : 05th JUNE, 2023

P. C. :

1. Heard learned Counsel for the parties.
2. The Plaintiffs have filed the present suit seeking specific direction against the Defendants, particularly Defendant Nos. 1 and 2, claiming that the said Defendants have caused defamatory news articles to be published on their e-paper "Sprouts", which has been circulated on Facebook page and Twitter account of Defendant No. 1. Apart from seeking an unconditional apology from the said

Defendants, the Plaintiffs have sought ancillary reliefs, including decree for damages to the extent of Rs. 100 crores.

3. In the present application, on 14th December, 2022, this Court found that *prima facie* the articles appeared to be defamatory, particularly when no justification was provided whatsoever for publishing such articles. Accordingly, by the said order itself, this Court at ad-interim stage directed that Defendant Nos. 1 and 2 shall not in any manner republish, re-post, upload, forward or circulate the news reports/articles dated 03rd November, 2022 and 06th November, 2022 or any part thereof, containing similar allegations against the Plaintiffs.

4. The Plaintiffs have raised grievance against the said articles, for the reason that it is stated in the said articles that the Plaintiff No. 2, being the editor of Marathi Daily "Loksatta" had attended a lunch hosted by the Deputy Chief Minister, he had taken lunch at the said event and that he had also received gift in the form of a voucher during the said event. It is indicated that by such actions, the Plaintiff No. 2 had compromised the hallowed principles that journalists are supposed to follow and that he also caused articles published in Marathi Daily that allegedly favoured the Deputy Chief Minister and other politicians.

5. In the present proceedings, the Defendant Nos. 3 to 5 have been added as parties for ensuring compliance with the direction that this Court may order in the facts and circumstances of the present case.

6. As noted hereinabove, this Court having found a strong *prima facie* case as regards the defamatory nature of the said articles / news reports dated 03rd November, 2022 and 06th November, 2022, granted limited ad-interim reliefs in favour of the Plaintiff and directed that the present application would be placed for considering ad-interim reliefs in terms of prayer clauses (a) and (b).

7. The orders passed by this Court record the fact that Defendant Nos. 1 and 2 were represented by advocates. It appears that the said Defendants have been changing their advocates on various dates. In any case, affidavit in reply of the said Defendants is on record.

8. The learned Counsel appearing for the Applicants submits that a perusal of the affidavit in reply filed in the present application would show that the said Defendants have sought to justify their actions. It is stated that, other than claiming that the actions of the Plaintiff No. 2 resulted in comprising the high standards of journalism, there is no other justification given in the affidavit in

reply. Much emphasis is placed in the reply on the alleged admission on the part of the Plaintiffs that the Plaintiff No. 2, did, in fact, attend the event in the context of which the said articles/ news reports were published in the e-paper of the Defendant Nos. 1 and 2.

9. The learned Counsel for the Plaintiffs has sought to distinguish the position of law in such cases as recognized in England, from the position of law recognized in India. Reliance is placed on judgment and order passed by this Court in the case of *Shree Maheshwar Hydel Power Corporation Ltd. Vs. Chitroopa Palit and Anr*.¹. It is submitted that when there is no *prima facie* justification in the stand taken by the contesting Defendants, interlocutory reliefs ought to be granted in such cases.

10. Insofar as the other Defendants are concerned, it is submitted that they have been added as parties to ensure compliance with the directions that this Court may grant in the facts and circumstances of the present case. It is fairly conceded that insofar as Defendant No. 3 is concerned, compliance may be difficult to ensure, for the reason that individuals exchanging messages on the platform of Defendant No. 3 cannot be controlled even by Defendant No. 3 itself. But, insofar as Defendant Nos. 4 and 5 are concerned, it is submitted that this Court may consider granting appropriate

1 AIR 2004 Bom. 143

directions for compliance.

11. It was pointed out by the learned Counsel appearing for Defendant Nos. 4 and 5 that appropriate amendments may have to be made in the cause title, for the reason that the representation of the Defendant No. 4 through Facebook India Online Services Private Limited is not appropriate and that the Defendant No. 4 i.e. Meta Platforms Inc. can be arrayed as Defendant by showing its proper address of the United State of America. The details of the same have been provided in the affidavit in reply filed on behalf of the said Defendant. Similarly, as regards Defendant No. 5, it is pointed out that the said Defendant Twitter Inc is now X Corp and that instead the address of Mumbai, the address of 1355 Market Street, Suite 900, San Francisco, California, USA would have to be incorporated in the representation of the said Defendant. The details have been handed over to the learned Counsel appearing for the Plaintiffs. In that light, the learned Counsel for the Plaintiff seeks permission to amend the cause title, insofar as Defendant Nos. 4 and 5 are concerned.

12. In the light of the submissions made on behalf of the Defendant Nos. 4 and 5, the Plaintiffs are granted leave to amend the cause title for proper representation of the said Defendants. The amendment be carried out within two weeks from today. Re-

verification is dispensed with.

13. As noted hereinabove, there is no appearance on behalf of the Defendant Nos. 1 and 2, although the advocates representing the said Defendants were changed on various dates before this Court.

14. This Court has perused the affidavit in reply filed on behalf of Defendant Nos. 1 and 2 and the stand taken therein. The position of law, insofar as India is concerned in such cases, is noted in the aforementioned judgment of this Court *Shree Maheshwar Hydel Power Corporation Ltd. Vs. Chitroopa Palit and Anr.(supra)*. In paragraph no. 49 it is held as follows :

“49. After having heard the learned Counsel for both the parties at length and after perusal of the impugned judgment and order and also the various judgments cited by both the parties, it is clear that in any event, the principles of law in England and in India with regard to grant of interlocutory reliefs in a civil action for Libel are different. In England, the principle of law is that in case of an action for defamation, once the defendants raise the plea of justification at the interim stage, the plaintiff will not be entitled to an interlocutory injunction. To put in other words, in England, a mere plea of justification by the defendant would be sufficient to deny the plaintiff any interim relief. As far as India is concerned, as has been clearly held by this Court in the judgments referred to hereinabove, specially the judgment of this Court in the case of *Dr. Yashwant Trivedi v. Indian Express Newspapers*

(*Bombay*) *Private Ltd.*, Dated 21st March, 1989 and the judgment of appellate Bench dated 29th June, 1989 with regard to the same matter in appeal, the judgment of this Court in *Purushottam Odhnvji Solanki v. Sheela Bhatta* dated 03rd December, 1990, judgment of this Court in the case of *Mrs. Betty Kapadia v. Magna Publishing Co. Ltd.*, dated 22nd July, 1991, and the judgment in the case of *Indian Express Newspapers (Bombay) Ltd. v. Magna Publishing Co. Ltd.*, dated 21st July, 1995, it is clear that in India, a mere plea of justification would not be sufficient for denial of interim relief. The defendants, apart from taking a plea of justification will have to show that the statements were made bona fide and were in public interest, and that the defendants had taken reasonable precaution to ascertain the truth, and that the statements were based on sufficient material which could be tested for its veracity. Therefore, in India, the Court is very much entitled to scrutinise the material tendered by the defendants so as to test its veracity and to find out whether the said statements were made bona fide and that whether they were in public interest. Therefore, in India, even at the interlocutory stage, the Court is very much entitled to look into the material produced by the defendants for the plea of justification, so as to test its veracity with regard to the allegations, alleged to be defamatory.”

15. Applying the said test to the affidavit in reply filed on behalf of the Defendant Nos. 1 and 2 before this Court in the present application, it is found that there does not appear to be even *prima facie* justification offered by the said Defendants for publishing the

said news reports/articles in its e-paper. Although reference is made to the alleged compromise with the high standards of journalism due to the actions of the Plaintiff No. 2, there are no details forthcoming. It appears that according to Defendant No. 1, merely because the Plaintiff No. 2, who is the editor of a well-known Marathi Daily, attended an event hosted by the Deputy Chief Minister, it was enough to make such allegations against the Plaintiffs. It is also noted by this Court that no material is placed on record on behalf of the said Defendants to indicate as to the nature of articles or other material allegedly brought into the public domain by the Plaintiffs for benefiting the Deputy Chief Minister or other politicians as a quid pro quo for having attended the aforesaid event. There does not appear to be any justification placed before this Court on behalf of the Defendant Nos. 1 and 2.

16. Hence, this Court is convinced that a strong *prima facie* case is made out on behalf of the Applicants/Plaintiffs for grant of ad-interim reliefs in terms of prayer clauses (a), (b) and (c). This Court is of the opinion that unless such ad-interim reliefs are granted, the Plaintiffs will continue to suffer grave and irreparable loss, as the articles appear to be *prima facie* defamatory in nature. The balance of convenience is therefore, found in favour of the Plaintiffs.

17. At this stage it would be appropriate to take note of the

fact that Defendant Nos. 3, 4 and 5 are justified in contending that prayer clauses (a), (b) and (c), reference is made to all the Defendants, but even if the contentions raised on behalf of the Plaintiffs are to be accepted, the reliefs in that regard ought to be limited to Defendant Nos. 1 and 2 only. It was stated that in the event the Defendant Nos. 1 and 2 fail to comply with the directions that this Court may issue, the Defendant Nos. 3, 4 and 5 could be asked to take appropriate steps in the matter towards compliance.

18. As noted hereinabove, the learned Counsel for the Plaintiffs has fairly conceded that the directions pertaining to compliance may not apply to Defendant No. 3 i.e. WhatsApp LLC, for the reason that it would not be possible for Defendant No. 3 to ensure compliance, as individuals sending messages on the platform of the said Defendant could perhaps not be enjoined or controlled by it due to the very nature on its platform. This Court is inclined to accept the said position.

19. In view of the above, there shall be ad-interim reliefs in terms of prayer clauses (a), (b) and (c), which read as follows :

“(a) for an order and direction of this Hon’ble Court to the Defendants, their agents, servants and representatives to delete, take down, and remove the 1st and 2nd defaming news reports dated 03.11.2022 and 06.11.2022 respectively from their

page, cache and archives of Facebook, WhatsApp, Twitter and any social media platform, website, or medium under their control or ownership, where the same appears in any manner whatsoever.

- (b) Pending hearing and final disposal of the Interim Application for an order and direction of this Hon'ble Court to the Defendants, their agents, servants and representatives to delete, take down, and remove the 1st and 2nd defaming news reports dated 03.11.2022 and 06.11.2022 respectively from their page, cache and archives of Facebook, WhatsApp, Twitter and any social media platform, website, or medium under their control or ownership, where the same appears in any manner whatsoever.
- (c) for a order and injunction of this Hon'ble Court restraining the Defendants, their agents, servants and representatives from in any manner re-publishing, reposting, uploading, forwarding and/or circulating the 1st and 2nd defaming news reports dated 03.11.2022 and 06.11.2022 respectively, and/or part thereof and/or part thereof and/or containing similar allegations, in the publication "Sprouts", its website, and e-paper, on the Facebook pages of the 1st and 2nd Defendants, on the Twitter accounts of 1st and 2nd Defendants, on WhatsApp and in any newspaper, publication, website and/or on any social media platform;"

20. It is made clear that reference to the word "Defendants" in

the above quoted prayer clauses shall apply only to Defendant Nos. 1 and 2. The Defendant Nos. 1 and 2 are directed to take appropriate steps in the matter in terms of the ad-interim reliefs granted hereinabove, within 48 hours.

21. In the event, Defendant Nos. 1 and 2 fail to comply with the said ad-interim directions within the period of 48 hours of pronouncement of this order, the Defendant Nos. 4 and 5 shall take down the Facebook pages and the Tweets on the following URLs.

<https://twitter.com/unmeshgujarathi/status/1588052213938548736/photo/1>

https://twitter.com/unmeshgujarathi/status/1588994103643344896?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet

<https://twitter.com/unmeshgujarathi/status/1638399358604398593/photo/1>

<https://twitter.com/mayamadhava/status/1595418653532782596?lang=en>

<https://twitter.com/newslaundry/status/1595412991708901376?lang=en>

<https://www.facebook.com/unmesh.gujarathi.1/>

<https://www.facebook.com/unmesh.gujarathi.1/posts/pfbid02QGfvAw6lK3fLgVtTQBwHBi3CRdsL5nX2cXXhfXWMHvRZhSmH8xE9ofQYzkP7Xunel>

<https://www.facebook.com/photo.php?fbid=679789910381124&set=pb.100050503629039.-2207520000.&type=3>

<https://www.facebook.com/photo.php?fbid=681637206863061&set=pb.100050503629039.-2207520000.&type=3>

<https://www.facebook.com/photo?fbid=681637206863061&set=a.591336582559791>

<https://www.facebook.com/photo/?fbid=678913610468754&set=a.591336582559791>

<https://www.facebook.com/SproutsNews>

URLs at pg 81, 82 , 83 of plaint (Ex F)

<https://sproutsnews.com/lashkar-e-devendrasrs-50000-gift-vouchers-in-debate/>

<https://www.newslaundry.com/2022/11/23/indian-express-group-sends-rs-100-crore-defamation-notice-to-mumbai-daily-over-fadnavis-gift-report>

<https://www.bhadas4media.com/express-group-threatens-sprouts/>

22. List this application for further consideration on **12th July, 2023.**

23. The Plaintiffs are also granted liberty to place on record rejoinder affidavit in the present application.

(MANISH PITALE, J.)