Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 337 OF 2014

Taher Fakhruddin Saheb alias Taherbhai K Qutbuddin alias Taher Bhai Qutubuddin …Plaintiff

Versus

Mufaddal Burhanuddin Saifuddin …Defendant

WITH

INTERIM APPLICATION NO. 1152 OF 2021

IN

SUIT NO. 337 OF 2014

Mufaddal Burhanuddin Saifuddin …Applicant

Versus

Taher Fakhruddin Saheb alias Taherbhai K Qutbuddin alias Taher Bhai Qutubuddin & Anr … Respondents

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Mr Anand Desai, *with Mr Chirag Mody, Mr Samit Shukla, Mr Nausher Kohli, Ms Saloni Shah & Ms Shivani Khanwilkar, i/b DSK Legal, for the Plaintiff in Suit and for Respondent No. 1 in IA/1152/2021 in S/337/2014.*

Mr Iqbal Chagla, Senior Counsel, *with Mr Fredun DeVitre, Senior Counsel, Mr Pankaj Savant, Senior Counsel & Mr Murtaza Kachwalla, i/b Argus Partners for the Applicant/Original Defendant.*

Dr Birendra Saraf, Senior Advocate, *with Dipesh Siroya, i/b Dipesh Siroya, for Respondent No. 2.*

CORAM: G.S. PATEL, J
(Through Video Conferencing)
DATED: 27th July 2021

PC:-

1. There are now two Affidavits each by the two Respondents. There is also a recent Affidavit by the Defendant/Applicant. For completeness, a copy of this recent Affidavit is to be served on the Advocates for both the Respondents.

2. Having read these Affidavits and considering their contents, I do not think it is either necessary or prudent to enlarge the controversy in this Interim Application. Both Respondents have tendered apologies, given undertakings and expressed regret. I accept those apologies and undertakings. I am also satisfied that the advice rendered by Dr Saraf to the 2nd Respondent more than adequately serves the purpose.

3. The 2nd Respondent, Udaipur Times, had, in my view, gone beyond what is legitimately permissible in its reportage of a part of the cross-examination in this matter. To be sure, in proceedings in an open Court system, fair reporting cannot be restrained, except perhaps in the most extraordinary circumstances, or where there are valid issues of privacy and security. Indeed, with modern communications technology, the nature of reporting — often from the well of the Court itself — has radically changed: we often now see updates going out every few minutes on digital media.

4. Even given this latitude, there is a limit to what a news report can say and do. This may be a very thin red line, but it does exist. Specifically: fair reporting of court proceedings does not extend to comments on the *quality* of evidence or arguments before a Court before judgment is delivered. Assessing those — finding them good or bad —is no part of a reporter's job. It is the work of a Court and only a Court. This task requires special skills. Sometimes, it is an exceedingly technical business, demanding a closely-read understanding of the 'issues framed', how well the cross-examination is directed to a particular issue framed (or a specific part of an issue), and so on. That demands a degree of special learning, training and experience. Even lawyers and judges are known to struggle as they engage with these matters, and there is no shortage of fine questions of law, especially regarding evidence, that greatly vex the most seasoned practitioners and courts. Moreover, matters, particularly on the civil side, are seldom decided by this or that question and answer in evidence, or one line from some document. Judges and lawyers are trained in the matter of appreciation of the entire body of evidence in a trial. It is often described as an art. A reporter or commentator, whether a journalist, columnist or a lay person, is certainly entitled to critically examine the resultant judgment. He or she is perfectly at liberty to critique or criticize that judgment, in terms that may even be fierce, harsh and unsparing.

5. But what no reporter — or any other commentator — should do is deliver for public consumption a view on the quality of evidence, that is to say, its evidentiary value before judgment is pronounced. Only the court can do that; and that is firmly and

exclusively the prerogative of the Court. It is perfectly acceptable for a journalist to say that a certain witness was cross-examined by the named counsel on some aspect in the matter. I would even venture to suggest that simply noting a particular question and answer might also be acceptable, or at least not objectionable. But the line is crossed when such a reproduction is accompanied by what is effectively a judgment on *merits*, a statement that purports to assess the evidentiary value and weight of the cross-examination in a matter yet pending before Court; for instance, by suggesting that some part of the cross-examination was repetitive or ineffective or futile. That is an assessment that no court reporter can do. An editorialising of yet-to-adjudged evidence, when communicated publicly, directly affects the decision-making process and, more importantly, clouds the perception of a necessary neutrality in the decision-making process. It presents a foregone conclusion at a time when no conclusion has been drawn or can even legitimately be drawn by the final arbiter, the Court itself. When he or she says that a particular line of cross-examination was ineffective or purposeless, a journalist is literally pronouncing on the merits of the evidence. But no one knows that yet. Not even the judge. He is yet a distance from assessing whether any particular piece of evidence is or is not weighty. Once all the evidence is in, then collated, presented, and then submissions are made on what ought to be a correct evaluation of the evidence, then, and only then, will there be an assessment of the evidence. This is why a fleeting impression by a journalist of the value of evidence is entirely beyond his or her legitimate scope. Such a journalistic pronouncement becomes unacceptable when it is conveyed to the reading audience or public as something already decided, or about which no other view is possible.

6. It is possible that the understanding of the process of appreciation of evidence, with which lawyers and judges are familiar, may not be obvious to others who watch or follow a trial. I prefer, therefore, to view the Udaipur Times as an inadvertent error. Everyone makes mistakes. Not every mistake merits strong action by a court. I believe the press and courts each have their roles to play. Each must respect the other's duties and responsibilities, always careful not to cross the dividing lines. If courts should not gag or silence the press, then, equally, the press must be reasonably circumspect about entering a territory that is exclusively the preserve of a court.

7. Dr Saraf assures me that this has been explained thoroughly to the staff concerned at the Udaipur Times. There will, he assures me, be no repetition. I am not inclined, in view of his assurance, to more closely examine the news reports of which the Defendant complains. Nothing would be achieved by that if no action is proposed against the publication and reporter in question.

8. The undertaking of the Plaintiff /1st Respondent in paragraph 17 of his Affidavit of 6th July 2021 is also accepted as an undertaking to the Court. There are other undertakings in the 2nd Respondent's Affidavit. I accept those too. No further action is necessary.

9. Even if I have not identified individual paragraphs, I accept all undertakings by both Respondents. All are accepted as undertakings to this Court.

10. These observations will suffice to dispose of the Interim Application.

11. The Defendant will make arrangements to file his last Affidavit in the Registry. That Affidavit may be affirmed at the earliest possible.

12. I request the Advocates for the Plaintiffs to send one of their clerks to Court Registry to ensure, for the sake of the record, that the Affidavits are correctly paginated and arranged. At the moment, the record is entirely disordered.

13. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(G. S. PATEL, J)