

CS DJ 1032/22

VINAY PANDEY VS. RAPHEL SATTER AND ORS

03.10.2024

Present: None.

1. Arguments have already been heard on the application filed under Order 39 Rule 1 and 2 CPC. Record perused.

2. A purported association initially filed the instant suit for injunction and recovery of damages for reputation loss, against some journalists and media organization or media platforms contending that some published articles are maligning its brand name. Later on some students also joined the suit as party plaintiff. Ld. Predecessor initially granted ex-parte injunction. Defendants filed some applications under Order 39 Rule 4 CPC. Some modification and clarification were issued subsequently on account of such application filed by media platform. The main contesting party i.e. journalist and his media organization however withdrew their application filed under Order 39 Rule 4 CPC. Be that as it may, now the main application filed under Order 39 Rule 1 and 2 CPC is being disposed of by the present order.

3. In **Bloomberg Television Production Services India Private Limited vs Zee Entertainment Enterprises Limited** 2024 INSC 255, a three judge bench of Hon'ble Supreme Court set aside an injunction order against publication of some article and opined as under:

“The three-fold test of establishing (i) a prima facie case, (ii) balance of convenience and (iii) irreparable loss or harm, for the grant of interim relief, is well-established in the jurisprudence of this Court. This test is equally applicable to the grant of interim injunctions in defamation suits. However, this three-fold test must not be applied mechanically, to the detriment of the other party and in the case of injunctions against journalistic pieces, often to the detriment of the public. While granting interim relief, the court must provide detailed reasons and analyze how the three-fold test is satisfied. A cursory reproduction of the submissions and precedents before the court is not sufficient. The court must explain how the test is satisfied and how the precedents cited apply to the facts of the case.

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Significantly, in suits concerning defamation by media platforms and/or journalists, an additional consideration of balancing the fundamental right to free speech with the right to reputation and privacy must be borne in mind.⁵ The constitutional mandate of protecting journalistic expression cannot be understated, and courts must tread cautiously while granting pre-trial interim injunctions.

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In essence, the grant of a pre-trial injunction against the publication of an article may have severe ramifications on the right to freedom of speech of the author and the public’s right to know. An injunction, particularly ex-parte, should not be granted without establishing that the content sought to be restricted is ‘malicious’ or ‘palpably false’. Granting

interim injunctions, before the trial commences, in a cavalier manner results in the stifling of public debate. In other words, courts should not grant ex-parte injunctions except in exceptional cases where the defence advanced by the respondent would undoubtedly fail at trial. In all other cases, injunctions against the publication of material should be granted only after a full- fledged trial is conducted or in exceptional cases, after the respondent is given a chance to make their submissions”.

4. Quoting from some English decisions, the Hon’ble Supreme Court further indicated that the Court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest.

5. Keeping the aforesaid in mind, we need to take a decision. Perusal of the record shows that the articles so published are giving a hint about unethical hacking and involvement of certain persons in the same. Though there is dispute if the journalist has followed the ethical code or has given the opponents a chance to clarify their stand or has properly collected the evidence to base his opinion, this court is of the view that all these finer points can be decided only after recording of evidence and not otherwise. At present, we have to see only if the plaintiff has made out some strong case to prohibit free speech or not.

6. Incidents or references made in the article are largely based on occurrences taken place several years ago. The plaintiff association came into being in the year 2022 and was registered after the institution of the suit. Other plaintiffs (i.e. the students) became party in the year 2024 and none of them claims to be student of some earlier time to which the articles are making references. In such circumstances, it will be hard to accept that the plaintiffs have any concern with the past events and can plead any loss on account of publication of past event whether as an opinion or as a news. Defendants are projecting that they have properly verified the available material and have published the article simply for the dissemination of information amongst public without any fault of maligning another person or entity. This court is of the view that in such circumstances, a proper opportunity needs to be given to the defendant to justify their cause. Simply because a plaintiff has filed a suit, we cannot issue injunction against freedom of press.

7. Ld. counsel for plaintiff has tried to argue that the association is continuing the legacy of the earlier entity i.e. APIN and therefore, the brand name is very material. This court is however of the view that such a claim cannot be accepted. There is a copy of affidavit available on record which was filed by the plaintiff before registrar of trademarks. In the said affidavit, the plaintiff has claimed to have started the work w.e.f. 2022 and wanted to have the trademark registered. If now, the plaintiff claims to the contrary, it will be guilty of misleading the trademark registry. The claim of continuing the legacy cannot be accepted in such circumstances. If the plaintiff now would claim

that it is continuing the legacy of the earlier institution, the same will have to be tested on evidence and cannot be accepted on a mere ipse dixit. With written submission, Ld. counsel for plaintiff has filed copy of assignment deed dated 15.01.2013 purportedly to claim that the earlier entity had assigned the legacy to the later entity. Firstly, the court cannot rely upon such document which has not been properly brought on record through Order 7 Rule 14(3) CPC. Secondly, even this assignment deed is showing Rajat Khare as the person who has executed the assignment. A single person cannot prima facie assign a trade name of any association or institution. Be that as it may, the trademark apparently remained registered in the earlier name even after the year 2013 i.e. when the purported assignment was made. This itself shows that this document cannot be given any value.

8. It needs to be noted that a conjoint reading of Article 19 and 21 of the Constitution will protect liberty of thought of a person. Such liberty of fault will not only contemplate expression of thought but also will contemplate keeping a thought in mind. General public will be able to take proper decision when every material is made available for their consumption and it is then for them to take a decision as to what thought they want to keep in their mind. If a court issues injunction, the same may have repercussion on the citizen of India as they will not be able to properly choose a thought to keep in mind. Of course, there may be some extreme cases where certain information may be excluded from consideration for arriving at such thought. However, the court will certain require to evaluate the material

brought by the parties to show that if some specific information is not excluded from the public consumption, the same will be detrimental to the thought process of Indian citizen or that such an information has no concern at all with the general public. But such an evaluation can be done only after recording of evidence and not before that.

9. From the arguments of parties and also from the available record I am unable to find any justification to issue interim injunction against publication of articles or published articles. However, during the course of arguments, Ld. Counsel for defendant no.1 to 4 (i.e. the main contesting parties) have assured that his clients are not interested in maligning the reputation of students and also the plaintiff association which came into being only in the year 2022 and that the articles will have necessary clarificatory message incorporated therein. In such circumstances, binding such defendants with the assurances so given, it is held that as at present, the plaintiff has not been able to show any prima facie case to make interference in the process of journalism.

10. **The interim injunction application of the plaintiff is dismissed.**

11. List for framing of issues and for further proceedings on 22.01.2025.

(Rakesh Kumar Singh)
DJ-02/(N-W), Rohini Courts
Delhi/03.10.2024