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IN THE HIGH COURT OF DELHI AT NEW DELHI

DATE OF RESERVE: 25.01.2010

PRONOUNCED ON: 05.04.2010

CS(OS) 596/2005

SEAGRAM INDIA PVT. LTD.

(NOW KNOWN AS PERNOD RICARD INDIA PVT. LTD.)

..... Plaintiff

Through: Mr. Rajeev K. Virmani, Sr. Advocate with Ms. Rashmi Virmani, Ms. Mukta Dutta and Mr. Ashish Kohari, Advocates.

versus

VIPIN SOHANLAL SHARMA

..... Defendant

Through: None

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT

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1. The Plaintiff (hereafter “Seagram”), a private limited company seeks a decree for permanent injunction and damages. Seagram was set up as a wholly owned subsidiary of The Seagram Company Ltd. Canada; its name was changed to Pernod Ricard India Pvt. Ltd. and a fresh certificate of incorporation dated 23.04.2007 was issued by the Registrar of Companies. Seagram manufactures and markets alcoholic beverages in India under diverse trademarks, inter alia, Blenders Pride, 100 Pipers, Something Special, Royal Stag etc.

2. The Defendant and his family members owned the entire share holding in a company that they had set up by the name of Oceanic Distilleries Pvt. Ltd. (ODPL). In February/ March 1997, the Defendant and his family members transferred their entire shareholding in ODPL in favour of the Plaintiff and its nominee and thereafter gradually resigned and ceased to be the Directors of ODPL. The suit alleges that such transfer of share ownership by the Defendant and his family members was duly approved by the Board of Directors entirely consisting of the Defendant, his brother and his mother. It is stated that ODPL's name was changed to Seagram Distilleries Pvt. Ltd. (SDPL) by the Registrar of Companies. The suit states that three years after the share transfer, the Defendant and his family members filed a suit in the Bombay High Court seeking an injunction to restrain the Plaintiff from acting as shareholder of ODPL. The application for *exparte*, and later, temporary injunction was denied.

3. Seagram submits that after the lack of success in securing temporary injunction, the Defendant started a malicious vilification campaign to defame it, by addressing letters to various persons, officials, departments and authorities of the Central Government and Government of Maharashtra, besides others by making false, defamatory, disparaging, derogatory and scandalous allegations and imputations against the Plaintiff alleging fraud, dishonesty, forgery, cheating, misrepresentation, violation of law and fraudulent takeover of ODPL. The Plaintiff served a legal notice dated 29.12.2004 upon the Defendant calling him to refrain from making defamatory allegations. In its reply dated 15.01.2005, the Defendant's Advocate admitted and confirmed having made and published various imputations and allegations against the Plaintiff and insisted on continuing to make the same.

4. It is claimed that the defendant deliberately persisted with publication of the false and defamatory imputations and disparaging remarks, to cause distress and to hurt the plaintiff's reputation. Such false imputations expose the plaintiff to contempt and ridicule and cause damage to its business. Besides, such imputations and allegations amount to a malicious falsehood. By making and writing the said letters to various persons, officials, departments and government authorities, the Defendant caused immense loss of reputation and goodwill to the Plaintiff and is liable to compensate the latter for the same. Hence the Plaintiff claims from the Defendant damages, which are restricted at Rs.50,00,000 only.

5. After the suit was instituted, and summons were issued, the defendant entered appearance on 11.12.2006. It was submitted on his behalf that he had no intention to malign the plaintiff and that he would not make any defamatory or disparaging statement. The Court accordingly recorded such an undertaking. The defendant also proceeded to file a written statement. At subsequent stages, the defendant started defaulting in appearance and representation in the present proceeding. He was accordingly set-down *ex-parte* on 25.04.2007, on which date, the interim order recorded previously was made absolute.

6. The plaintiff, in support of its case, submits that the defendant's allegations about forgery of the records and related imputations are false. The imputations are said to have been contained in the letters dated 27.08.2004 and 30.10.2004, addressed to the Central and State Government authorities. Paras 24 and 25 of the suit read as follows:

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24. In the said letter dated 27-8-2004, the Defendant has alleged, inter-alia, as follows:-

“I would like to bring to your good selves kind notice of the illegal and unauthorized 100% take-over of my company Oceanic Distilleries Pvt. Ltd. (now called Seagram Distilleries Pvt. Ltd.). The take over of the unit is without the consent of the promoters and the company Seagram India did not seek FIPB approval.....”

“....In the midst of implementation of MOU, the intention of the management of Seagram changed and failed to honour the commitments, and took over the control of ODPL fraudulently....”

“While the complaint made by me resulted in an enquiry which continues or has apparently met the fate of all transgressions committed by Seagram for evident reasons, the current appeal to you is disparate from the civil matter filed by us in Mumbai High Court – it is a criminal act whose facts have fully come to light now...”

“...This clinching evidence as stark as day goes beyond doubt the criminal act (forgery) perpetrated by Seagram (India) Ltd. in the 100% hijacking of Oceanic Distilleries (P) Ltd....”

“....The company thus far, given the famed Custom evasion case of Rs.40 crores plus as in 1998, illegal take-over of Oceanic Distilleries Pvt. Ltd., various tax evasions, it seems the MNC takes decisions at will, policies followed by them are made with scant and at times brutal respect for the laws of the land and acts perpetrated and controlled.....”

“...The crux of the forgery and fraud is that the very share certificates that were transferred to Seagram India Ltd. were done so by one Mr. Sunil Mehdiratta....”

25. In the said letter dated October 30, 2004, the Defendant has alleged, inter-alia, as follows:-

“.....I refer to my representations dated 27th August and 8th September 2004 concerning violation of foreign investment policy guidelines in the takeover of Oceanic Distilleries Pvt. Ltd. as well as violations of various laws of the land and in particular the manner in which the fraudulent takeover was executed by Seagram.”

“....Whereas in the case of Oceanic Distilleries, Seagram never sought permission from FIPB to takeover on lease/buy shares but had fraudulently taken over the unit....”

“....Whereas in case of Oceanic 100% shares with controls were wrested fraudulently and the crux of the fraud is explained in the succeeding paragraphs....”

“...1. Forged the share transfer....clear act of crime/cheating by Seagram..”

“There is a clear case of Seagram cheating the Indian promoters..”

“Such evasion of duty are well planned and documented, like illegal/fraudulent take overs.....illegal takeover, forgery, misrepresentations, evasions of duty, taxes and many more by company to an independent agency to investigate as only that could expose the company nexus with the part of our Government machinery that is hand in glove.....”

“It is very lengthy, costly and time consuming to get justice from judiciary...”

“...we fear justice could be jeopardized by artificial paper trails/documentation created by company in all cases....”

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7. It is submitted that by notice dated 29.12.2004, the defendant was asked to retract and withdraw the various imputations and insinuations against the plaintiff by addressing suitable letters to the concerned Departments and also requested to refrain from making further imputations. These facts are mentioned in para 26 of the suit.

8. It is apparent from the above that the allegations or defamatory imputations which are said to constitute libel pertained to the statement that ODPL was not taken-over with the consent of its promoters; such control was taken-over “fraudulently” and that the defendant’s complaint into these matters led to an enquiry. It is alleged that the defendant

further stated that the plaintiff was involved in a customs evasion case that concerned Rs.40 crores. Seagram also alleges that the defendant's statement that it did not take FIPB's permission to purchase the shares and that it fraudulently took-over the unit by filing share transfer forms and indulging in forgery, are all serious and libelous imputations.

9. The plaintiff relies upon the deposition of its Vice-President – Mr. Gopi. G. Nambiar, who filed an affidavit and deposed as PW-1. He exhibited the resolution, authorizing him to depose on behalf of the plaintiff.

10. The plaintiff relies upon the allegations in the suit as well as the deposition of PW-1, who in turn exhibited several documents. Seagram relies upon minutes of the meeting of the Board of Directors of ODPL dated 10.03.1997 (Ex.PW-1/7); minutes of the meeting of the Board of Directors of ODPL dated 02.06.1997 (Ex. PW-1/8); the Balance Sheet of ODPL for the year ending 31.03.1997 (Ex.PW-1/9); Minutes of meeting of the Board of Directors of ODPL dated 16.09.1997 (Ex. PW-1/10), Annual Return of ODPL for the year ending 31.03.1997 (Mark-A) etc. Reliance is also placed upon an order dated 27.03.2007 of the Bombay High Court, marked as PW-1/17, and another order dated 03.10.2000 (PW-1/19), to say that the affairs of ODPL, regarding the share transfer and the transfer of management was legal and justified and consequently, the imputation about plaintiff having indulged in wrong-doing or acts of fraud, forgery etc. are unfounded and false. The plaintiff also relies upon the copy of an order of this Court

dated 27.08.2001 (in CWP 1348/2001), exhibited as PW-1/27 and two other orders, both of the Customs Excise and Service Tax Appellate Tribunal dated 25.03.2003, Ex. PW-1/28 and Ex. PW-1/29 dated 29.06.2005, to submit that imputations with regard to Customs evasion by Seagram are false since the case and proceedings initiated by the Customs authorities was either quashed or set-aside by the appropriate competent Courts or forums.

11. Neither the originals nor copies of the two letters dated 27.08.2004 and 30.10.2004, which are said to be the imputations have been produced. Extract portions of the letters have been reproduced in the course of judgment. It has been alleged in the suit that the defendants, in reply to the legal notice, admitted about writing letters and also about its imputations. Reliance is placed upon the notice issued by the plaintiff dated 29.12.2004. The relevant extract of the said letter/notice issued on behalf of the plaintiff (Ex.PW-1/21) reads as follows:

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3. *Our clients have recently learnt that having failed to obtain any favorable orders from the Hon’ble High Court, you have been addressing letters to various departments and authorities of the Government of India as well as the Government of Maharashtra, inter-alia, commenting on the matters that form the subject matter of the said Suit No.1110 of 2000. While the matter is sub-judice, you have cast serious doubts on the justice system in the country. Your allegations, couched as your doubts and fears on the judicial system in the country, tend to lower the authority of the Court, besides interfering with and obstructing administration of justice and tantamount to criminal contempt of Court. Our clients reserve their right to initiate appropriate action in this regard.*

4. *Our clients verily believe that in the letters as aforesaid, you have been making false, defamatory and scandalous allegations and imputations of fraud, dishonesty, forgery, cheating, misrepresentations, violation of law etc. against our clients. You have also been making false imputations against our clients alleging, inter-alia, fraudulent take over of Oceanic Distilleries Pvt. Ltd., violation of the rules and regulations of the Government of India, forgery in the matter of transfer of shares etc.*

5. *Various imputations and allegations made by you against our clients, as set out herinabove, are false to your knowledge, defamatory and tend to lower the reputation and image of our clients in the estimation of others, expose them to contempt and ridicule, and cause them damage in their business. Besides, such imputations and allegations are a malicious falsehood.*

6. *Our clients have taken a serious note of the vilification campaign launched by you against our clients. It is imperative that such imputations and insinuations are retracted and withdrawn forthwith.*

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12. The relevant portions of the defendant’s reply dated 15.01.2005 (Ex.PW-1/24) are as follows:

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3. *With reference to para no.3 my client states that he denies having made any comments on the matters that form the subject matter of the said suit no.1110 of 2000. My client states it is within his rights to complain to authorities against the violations of his rights and the laws of the land perpetrated by your client. My client specifically denies that he has cast any, much less serious doubts on the justice system of India. My client specifically denies that he has made any allegations or expressed any doubt or fear on the judicial system of this country and denies that he made any attempt to lower the authority of the Court or interfered with or obstructed the administration of justice and denies that my client committed any contempt of Court much less any criminal contempt. My client desires to assure your client that any action on the part of your client shall be adequately met with at your clients cost and consequence.*

4. *With reference to para no.4, my client denies that he has been making false, defamatory, scandalous allegations and imputations against*

your client. My client states that all that is stated by client against your client are truth and only truth and correct facts. My client further states that as your client failed to mention the specific statements of imputation and publication my client is unable to deal with the same specifically.

5. With reference to para no.5, my client denies that he made any imputations against your client but have stated correct facts. My client further denies that the same are false to the knowledge of my client or defamatory or tend to lower the reputation and alleged image of your client in the alleged estimation of others or exposes your client to contempt and ridicule and denies that the same has caused damage in their business. My client further denies that alleged imputations and allegations are malicious falsehood. My client states that the allegations made in the said notice by your client is made with a malafide intention and ulterior motive.

6. With reference to para no.6, my client denies that he has undertaken or launched any vilification campaign against your client and therefore there is no any question of my client making any retraction or any withdrawal.

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13. To succeed in a claim for defamation – be it based on libel (written allegations) or slander (verbal or oral allegations) the plaintiff has to establish the nature of the imputations; the person or person to whom they were addressed, or spoken, and the likelihood of injury caused to his or its (the plaintiff's) reputation. The plaintiff has relied on several judgments to show that as a corporate body, it has reputation, which can in a real sense, be affected or tarnished (*Ram Jethmalani –vs- Subramaniam Swamy* 126 (2006) DLT 535; *A.L. Mehta –vs- NIIT* 2009 (109) DRJ 47; *Union Benefit Guarantee Co. Ltd V Thakorlal P.Thakor and Ors* AIR 1936 Bom 114) . It has also relied on decisions to say that the defendant's allegations have no element of fair or honest comment, or that they are untruthful.

14. To my mind, the singular feature about this case is that the plaintiff has not produced the primary material by which it claims to have been defamed. The notice issued to the defendant

(Ex. PW-1/21) adverts to certain letters. It however, curiously is lacking in any particulars about the letters; no dates when those letters were sent, nor even to which department or authority they were sent, are disclosed or revealed in the plaint. Similarly, the extracts of two letters, in the plaint are not complete. The plaintiff has not established as to who were the addressees of those letters. These aspects are not matters of idle speculation, but are important, because the defendant, in the reply to the plaintiff's notice (Ex. PW-1/24) denies having made any defamatory allegations or imputations. Even though the defendant was set down *ex-parte*, the written statement filed by him, which is on the record, does not contain any admission. Instead, the defendant suggests that he cannot comment about the contents, of the letters, since he was not furnished a set of the documents filed along with the suit.

In *Slim –vs- Daily Telegraph* 1968 (2) QB 157, the Court of Appeal had observed:

“The decision as to defamatory meaning which words are capable of bearing is reserved to the judge, and for this reason, and for this reason, and no other, is called a question of law. The decision as to the particular defamatory meaning within that category which the words do bear is reserved to the jury, and for this reason, and no other, is called a question of fact.”

15. The perils of assuming that a comment or statement is inherently defamatory were undermined in a very recent judgment of the Court of Appeals (*British Chiropractic Association –vs- Dr. Singh*, 2010 EWCA Civ 350 (decided on 1-4-2010)). The court is also mindful of the circumstance that the likelihood of damage is not an abstract inference to be drawn but based on empirical evidence, about the imputations, to whom they are addressed, and the measure of injury they cause (Ref. *Shevill v Presse Alliance SA* [1995] 2 AC 18). In this context, the absoluteness of the requirement of having to establish publication of the thing alleged, and not just anything, or invite the court to infer a state of affairs, (in action for damages for libel) was

emphasized as follows, in *Jameel –vs- Wall Street Journal Europe* 2006 UKHL 44 (by the House of Lords):

“The tort of libel has long been recognised as actionable per se. Thus where a personal plaintiff proves publication of a false statement damaging to his reputation without lawful justification, he need not plead or prove special damage in order to succeed. Proof of injury to his reputation is enough.”

16. There can be no doubt that a company or a corporation can, by slanderous imputation, or libelous references, suffer tremendous injury; *Jameel* underlines this aspect:

“the good name of a company, as that of an individual, is a thing of value. A damaging libel may lower its standing in the eyes of the public and even its own staff, make people less ready to deal with it, less willing or less proud to work for it. If this were not so, corporations would not go to the lengths they do to protect and burnish their corporate images. I find nothing repugnant in the notion that this is a value which the law should protect. Nor do I think it an adequate answer that the corporation can itself seek to answer the defamatory statement by press release or public statement, since protestations of innocence by the impugned party necessarily carry less weight with the public than the prompt issue of proceedings which culminate in a favourable verdict by judge or jury. Secondly, I do not accept that a publication, if truly damaging to a corporation's commercial reputation, will result in provable financial loss, since the more prompt and public a company's issue of proceedings, and the more diligent its pursuit of a claim, the less the chance that financial loss will actually accrue.”

17. At the same time, defamation, particularly libel, should not be premised on assertion, and mere pleading. In this case, the plaintiff has, inexplicably not produced the letters, containing the alleged imputations, nor explained why they are unavailable. Curiously even copies of the complete letters were not brought on the record, despite the defendant having been set down *ex-parte* almost three years ago. Further, the plaintiff has produced documents at three different stages, apart from the list of documents filed along with the suit. No attempt to move the court to produce secondary evidence, was made. The plaintiff also did not produce any independent

witness in support of the allegation about the publication of libel. Seagram's position is that the letters contain defamatory imputation; yet, who were the addressees of those letters is not revealed; they or their representatives were not examined, nor were the letters sought to be produced by such persons from their offices. That such statements, seen in the manner suggested, constitute libel, cannot be doubted. Yet, judgments cannot to be premised on inferences to be drawn unproved facts. As the old adage goes, the plaintiff has to stand on its legs, in regard to the allegations in the suit, on which relief is claimed. For these reasons, the court concludes that the allegations concerning defamatory imputations have not been established. Consequently, the claim for damages has to fail.

18. As regards the relief of injunction, the allegations for this claim are not independent; in fact, the claim for a decree for injunction is consequential. Here, the law is clear. In India, unless a compelling state interest, or imminent likelihood of breach of confidentiality which would injure the plaintiff gravely, are established, pre-publication injunction, where damages can be claimed, are not available. This court, in *Khushwant Singh –vs- Maneka Gandhi* AIR 2002 Del 58, following the ruling in *Silkin v. Beaverbrook Newspapers Ltd. and another* (1958) 2 All ER 516; *Fraser vs. Evans & others* (1969) 1 All ER 8 held that pre-publication injunction cannot be granted by courts. In these circumstances, the injunctive relief claimed in the suit, is impermissible.

19. The suit has to, for the above reasons, fail; it is accordingly dismissed, leaving the plaintiff to bear its costs.

(S. RAVINDRA BHAT)
JUDGE

APRIL 5, 2010