

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ F.A.O. (OS) No. 294/2010

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Reserved on: 4th May, 2010

Decided on: 28th May, 2010

FIITJEE LIMITED

..... Appellant

Through: Mr. Anil K. Khaware, Adv.

Versus

NITIN JAIN & ORS.

.... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE A.K. PATHAK

1. Whether the Reporters of local papers Not necessary
may be allowed to see the judgment?

2. To be referred to Reporter or not? Not necessary

3. Whether the judgment should be Yes
reported in the Digest?

A.K. PATHAK, J.

1. Appellant (Plaintiff) filed a Suit for permanent and mandatory injunction, inter alia, praying therein that the

Respondents (Defendants) be restrained from publishing and distributing the offensive and defamatory portion of the book as detailed in the Plaint, particularly at page No. 45 and 186-191 of the book, and also to remove such negative imputations pertaining to the Appellant. An application under Order 39 Rule 1 and 2 of Code of Civil Procedure (CPC) was filed, inter alia, seeking ex-parte ad-interim injunction in the above terms. Vide order dated 13th April, 2010 learned Single Judge, while issuing summons in the Suit and notice of the Application to the Respondents, declined to grant ad-interim ex-parte injunction as prayed for. Aggrieved by non grant of ex-parte injunction Plaintiff has preferred this Appeal.

2. Brief background of the case is that the Respondent No. 1 enrolled himself with the Appellant Company, a coaching institute, sometime in June, 2007 for preparation of IIT-JEE

(Indian Institute of Technology - Joint Entrance Examination) proposed to be held in May, 2009. The Respondent No. 1 appeared in the said examination and topped. On the eve of result of IIT-JEE Respondent No. 1 and his parents (Respondent Nos. 2 and 3) participated in a press conference and gave credit to the appellant and its faculty for the success of the Respondent No. 1. Respondent No. 1 also wrote a letter of appreciation in this regard. It appears that subsequently, Respondent No. 1 penned down a book titled “The Secret of My Success” detailing therein efforts made by him as also paying tribute to the persons who had contributed to his success. The book contained a chapter ‘Role of Parents’ authored by Respondent No. 2 (father of Respondent No. 1.). Book was published by the Respondent Nos. 4 to 6.

3. Grievance of the Appellant, as canvassed by the learned counsel, is that the book contained certain remarks

pertaining to the Appellant were offensive, fallacious defamatory, inasmuch as, same were contrary to the own statement of the Respondents made on the eve of declaration of results. Wherein Respondent Nos. 1 to 3, while talking to the journalists, gave full credit to the Appellant. At that stage Respondent Nos. 1 and 2 had proclaimed that Appellant was the best institute having branches all over India and was their first choice. In the letter also Respondent No.1 had lauded the efforts of FIIT-JEE and its faculty for providing proper coaching to him resulting in his success. Contrary to this, in the book, it was stated that 'Vidya Mandir Classes' situated at Punjabi Bagh was their first choice but due to the distance factor the said idea was dropped and Appellant was joined sometime in June, 2007; that the contents of letter released in National Daily were 70 per cent wrong, inasmuch as, Respondent No. 1 was cajoled by the Appellant to write the same in the manner it had been written; that the Respondent

No. 1 would first acknowledge hard work and contribution of his parents and teachers of his schools and the coaching institute comes last in that regard. It was also stated in the book that as against the declared price money of Rs.1,00,000/- to the Topper, Appellant paid only Rs.75,000/, that too was released after Respondents took several rounds of their office. These excerpts, according to the Appellant, were inserted in the book in order to tarnish the image of Appellant and were defamatory per se. These defamatory remarks and aspersions made in the book were liable to be removed by the Respondents before publishing the same. Thus, injunction against publication and distribution of the book was prayed besides deletion of offending passages.

4. Learned Single Judge considered the above facts and arrived at a conclusion that no prima facie case was made out by the Appellant to seek a gag order against the publication of

the book nor was there any balance of convenience in its favour. That the Appellant was yet to establish that the alleged remarks were defamatory in nature and as such pre-censorship was not permissible, therefore, question of irreparable loss or injury to the Appellant was also not there. Learned Single Judge also placed reliance on ***Khushwant Singh and Anr. vs. Maneka Gandhi*** reported in **AIR 2002 DEL 58**.

5. We find that in this case Application under Order 39 of the CPC has yet to be disposed of and only ex-parte ad-interim injunction has been declined. In the similar circumstances a Division Bench of this Court in ***Super Cassettes Industries Ltd. vs. Punit Goenka and Anr.*** reported in **2009(40) PTC622(Del)** observed that such an Appeal was pre mature. However, since arguments have been

heard at length we venture to delve on other aspect involved in the Appeal.

6. We do not find the view expressed by learned Single Judge to be erroneous, capricious or perverse, necessitating any interference in the Appeal. In ***Wander Ltd. & Anr. Vs. Antox India Pvt. Ltd.*** reported in 1990 Suppl. (1) SCC 727, Supreme Court held that Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunction. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material.

7. In the facts of this case, we are of the considered view that the injunction against publication and distribution is not warranted more so when Appellant can claim damages by leading evidence that the statements made in the book are

untrue and defamatory. Author has narrated the efforts put in by him in achieving the success as well as the contribution made by several persons in that direction. All these facts are within the personal knowledge of the author and his parents. In case the Appellant disputes the same it has to prove to the contrary, for which it has to lead evidence discrediting the version of the author and his parents. In case Appellant succeeds in doing so it may be entitled to damages for which appropriate remedy has to be availed. For the forgoing reason we do not find a prima facie case in favour of the Appellant nor is there any balance of convenience in favour of the Appellant. Since remedy of claiming damages is there it cannot be said that Appellant shall suffer irreparable loss and injury. We concur with the learned Single Judge on this point.

8. In ***Seagram India Pvt. Ltd. (now known as Pernod Ricard India Pvt. Ltd.) vs. Vipin Sohanlal Sharma*** reported in ***MANU/DE/0761/2010***, this Court was held that 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, is not available.

9. In ***Khuswant Singh's case (Supra)*** the author proposed to bring out his autobiography in a book "Truth, Love and Little Malice", which contained a chapter under the heading "Gandhi and Anands". According to the Respondent certain extracts of that chapter were defamatory. A Division Bench of this Court declined to grant pre-publication injunction by observing that the Respondent cannot make a grievance when the remedy is available to him by way of damages.

10. Learned Senior Counsel for the Appellant has placed reliance on ***Maheshwar Hydel Power Corpn. Ltd. vs. Chitroopa Palit and Anr.*** reported in ***AIR 2004 Bombay 143***, ***Sonakka vs. U.R. Anantha Murthy & Ors.*** reported in

AIR 1988 Karnataka 255 and **Magna Publishers Co. Ltd. & Ors. vs. Shilpa S. Shetty** reported in **(2007) 12 SCC 792**.

We have perused these judgments and find that the same are in different context. In **Maheshwar (supra)** a press note was issued by Narmada Yuva Shakti and was widely published in various newspapers containing objectionable and defamatory expression to the effect that officers of the Indian Public Financial Institutions and Industrialists such as S.Kumars have connived to siphon off and loot hundreds of crores of rupees of public money – money that was the lifetime saving of common Indian citizens. Respondents also warned the Institutions and the Project Promoters of this privatized Project – the S. Kumars that the youth of the area would not stand for the unleashing of senseless terror by the S. Kumars and that it is the time for the S. Kumars to withdraw from the Project. Appellant took objection to the use of words ‘connivance’, ‘conspiracy’, ‘siphoning’, ‘loot’, ‘unleashing

senseless terror’/or such similar expressions and sought injunction against the Respondents from publishing such defamatory statements. In these facts it was observed that such a press-note could not have been published without taking reasonable precaution to ascertain the truth and that the statements were based on sufficient material, which could be tested for its veracity. In ***Sonakka’s case (Supra)*** the characters depicted in the book “Avesthe” resembled one Late Sh. Gopalagowda, who was a man of repute holding high position in the society and led a clean public life, during his life time. In these circumstances, Respondents were restrained from re-publishing the book and exhibiting the film based on the book.

11. Keeping in mind totality of circumstances, we find no merit in this Appeal.

12. Appeal is dismissed. All pending Applications also stand dismissed.

A.K. PATHAK, J.

VIKRAMAJIT SEN, J.

May 28, 2010
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