



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

FAO No. 31/2024.

1. E EIGHTEEN.COM LTD,
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT FIRST FLOOR, EMPIRE COMPLEX,
414-SENAPATI BAPAT MARG, LOWER PAREL, MUMBAI
MAHARASTRA,400013.
ALSO AT 18TH FLOOR, TOWER E, SKYARK ONE, PLOT NO. H-10/A,
SECTOR 98, NAIDA DIST GAUTAM BUDHA NAGAR, UTTAR PRADESH,
201301.
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE NAMELY MR.
PUNEESH KOCHAR, LEGAL(ATTORNEY) FOR AND ON BEHALF OF THE
COMPANY.
2. MANSI VERMA
CORRESPONDENT AT E EIGHTEEN.COM LTD. FIRST FLOOR
EMPIRE COMPLEX, 414-SENAPATI BAPAT MARG,
LOWER PAREL, MUMBAI MAHARASTRA-400013.
3. ANKITA SENGUPTA
CHIEF SUB EDITOR AT E EIGHTEEN.COM LTD. FIRST FLOOR
EMPIRE COMPLEX, 414-SENAPATI BAPAT MARG,
LOWER PAREL,MUMBAI MAHARASTRA-40001.

..... Appellants.

-Versus-

FITJEE LTD

A COMPANY REGISTERED UNDER THE COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE AT 29-A, KALU SARAI, SARVAPRIYA, VIHAR, NEW DELHI 110016 REPRESENTED BY ITS AUTHORISED REPRESENTATIVE NAMELY MR. SHIVCHARAN.

..... Respondent.

With

I.A.(Civil) No. 2175/2024

FITJEE LTD

A COMPANY REGISTERED UNDER THE COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE AT 29-A, KALU SARAI, SARVAPRIYA, VIHAR, NEW DELHI 110016 REPRESENTED BY ITS AUTHORISED REPRESENTATIVE NAMELY MR. SHIVCHARAN.

..... Applicant/Respondent.

-Versus-

1. E EIGHTEEN.COM LTD,
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT FIRST FLOOR, EMPIRE COMPLEX,
414-SENAPATI BAPAT MARG, LOWER PAREL, MUMBAI
MAHARASTRA,400013.
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EMPIRE COMPLEX, 414-SENAPATI BAPAT MARG,
LOWER PAREL, MUMBAI MAHARASTRA-40001.

..... Opposite Parties/Appellants.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

Advocates for the appellants	:-	Mr. D. Das, Senior Counsel, Mr. M. Sarma.
Advocate for the respondent	:-	Mr. U. Hazarika, Senior Counsel, Mr. J. Roy, Senior Counsel, Mr. R. Hazarika.
Date of Hearing	:-	09.09.2024.
Date of Judgment & Order	:-	24.09.2024.

JUDGEMENT & ORDER (CAV)

Heard Mr. D. Das, learned Senior Counsel assisted by Mr. M. Sarma, learned counsel for the appellants and Mr. U. Hazarika & Mr. J. Roy, learned Senior Counsel assisted by Mr. R. Hazarika, learned counsel for the respondent.

- 2.** As agreed by learned counsel for both the parties, it is proposed to dispose of FAO No. 31/2024 along with the I.A.(C) No. 2175/2024, by this common judgment and order.

3. This appeal, under Order XLIII Rule 1(r) read with Section 151 of the Code of Civil Procedure (C.P.C.), is directed against the impugned ex-parte interim order dated 19.04.2024, passed by the learned Civil Judge (Senior Division) No. 3, Kamrup (M) at Guwahati in Misc. (J) Case No. 362/2024, arising out of Title Suit No. 204/2024.

4. It is to be noted here that vide impugned ex-parte interim order, dated 19.04.2024, the learned Civil Judge (Senior Division) No. 3, Kamrup (M) at Guwahati had directed the opposite parties/defendants, their agents, representative, assigns or any other person related to them from posting, publishing or circulating any posts that amounts to disparagement of services of petitioner/plaintiff as well as immediately take down the impugned articles dated 12.03.2024, 14.03.2024 & 18.03.2024, or any other similar article or any other posts, write up or material concerning or in relation to these impugned articles against the petitioner till next date fixed.

Background Facts:-

5. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

“The respondent/opposite party as plaintiff has instituted a title suit, being Title Suit No. 204/2024, with a prayer for permanent and mandatory injunction and damages on account of defamation and disparagement, against the defendants, i.e. the present appellants. The contention of the respondent before the learned trial court is that it is a registered company which deal with imparting quality education in order to help students secure admissions in various premier institutes, like Indian Institute of Technology, across India especially for training students for competitive examinations

and it has 78 numbers of centre all over India and also has centers in Doha and Bahrain, which has nearly sixty thousand students with approximately three thousand employees. It also provides online classes, test papers etc. for the students of Assam and North East at present. Whereas, the defendants/appellants deal with providing news in text and through video analysis, data and tools on investing across diverse asset classes, personal finance, the business sector and the economy as well as operate multiple social media pages being Facebook, LinkdIn, X (erstwhile Twitter) etc.

The defendants/appellants had published series of articles dated 12.03.2024, 14.03.2024 & 18.03.2024. The respondent on 12.03.2024, received an email at 7:38 AM regarding an article to be published on appellant's platform, titled:

"FIITJEE holds employee salaries for second month in a row, calls it a 'wake-up call' to make them work harder."

It is stated that appellant No.2, in the said email also requested for clarification on 13 points of queries by 10 A.M. on the same day, on the subject matter of the said mail. In the Article dated 12th March, 2024, the appellants also made a reference to respondent's competitors, such as Allen, Aakash, Physics Wallah and Unacademy referring to them as new-age edtech and use their names with # as "#Physics Wallah" and "#Unacademy, which gives an inference that these articles are motivated. Thereafter, on 14th March 2024, two more articles were published, intensifying the attack on them. The first, at 10:42 AM, questioned the salary issue, while the second, at 5:25 PM, criticized respondent's stance:- **"Brazenly wrong! FIITJEE founder's 'salary is not a right' email not legally sound, say experts"** And the second one

published on 14th January, 2024 at 05.25 pm titled; "FIITJEE मैसैलरी मांगना गलत है, फाउंडरनेऐसादियाजवाबकि कर्मचारियोकादिलदहल गया' with a click-bait image which reads: में सैलरी मांगनेवालों की खैर नहीं FIITJEE. Thereafter, continuing on 18th March 2024, the Appellants published another article titled:- "FIITJEE slammed for ad 'belittling' student who quit institute and got 99.99 in JEE Gains: 'Disgusting.'"

By publishing these articles, according to respondent, the appellants had attempted to damage respondent's reputation, suggesting financial instability and unethical practices, despite being baseless. The respondent also alleges that the deliberate timing and publication of Article in Hindi amplify the defamation and disparagement of the respondent's business and reputation and that such actions aim to alter public perception of the respondent and benefit appellants herein above monetarily. It is also alleged that these articles have led "Digitup" to put the plan of opening a Franchisee Study Centre at Guwahati on hold till further clarification from the respondent/plaintiff. In that connection, a later on behalf of 'Digitup' was addressed to COO of the respondent on 25.03.2024, wherein they have specifically cited articles published by Money Control being the reason of their partner's apprehensions and on account of such publication, the reputation of the respondent/plaintiff has lowered in the eye of general public and among its employees. It is also stated that the damaging impact extends beyond reputational harm, inflicting financial losses and irreparable damage to the respondent's business. By spreading false information about the institution's reputation and credibility, the appellants seek to manipulate the admissions process, depriving deserving students of access to quality

education. Further, Articles are not confined to appellant's website and have spread across various social media platforms, amplifying the damaging effects of false allegations. The virility of these articles exacerbates the harm to the respondent's reputation and underscores the urgent need for corrective action.

Being aggrieved of such publication, the respondent/plaintiff had instituted Title Suit No. 204/2024, before the learned Civil Judge (Senior Division) No. 3, Kamrup (M) at Guwahati, with the following prayers:-

- a. Pass a decree of permanent injunction thereby restraining the defendants, their agents, representatives, assigns or any other persons related to them from posting, publishing or circulating any defamatory articles/posts against the plaintiff herein;
- b. Pass a decree of permanent injunction thereby restraining the defendants, their agents, representatives, assigns or any other persons related to them from posting, publishing or circulating any posts that amounts to disparagement of plaintiff's services;
- c. Pass a decree of mandatory injunction in favour of the plaintiffs and against all circulating the impugned Articles against the plaintiff herein;
- d. Pass a decree of damages on account of defamation of plaintiff and disparagement of plaintiff's services in favour of the plaintiff and against the defendants to the extent of Rs. 5,00,00,000/-;

- e. Pass any other further orders as the Court may deem fit and proper in the facts and circumstances of the case, in favour of the plaintiff,

In the said Title Suit, the respondent also filed a petition, being petition No. 2518/2024, dated 19.04.2024, under Order 39 Rules 1 & 2 read with Section 151 of the C.P.C., for granting ad-interim injunction restraining the opposite parties/defendants, their agents, representative, assigns or any other person related to them from posting publishing or circulating any posts that amount to disparagement of services of petitioner/plaintiff as well as immediately take down the impugned articles dated 12.03.2024, 14.03.2024 & 18.03.2024, or any other similar article or any other posts, write up or material concerning or in relation to these impugned articles against the petitioner.

Upon the said petition, the learned trial court has registered a Misc. (J) Case No. 362/2024.

Thereafter, considering the relevant documents placed on record and hearing learned counsel for the respondent, the learned trial court had passed ad-interim injunction order as aforesaid, having found the triple test in granting injunction i.e. prima-facie case, balance of convenience and irreparable loss, satisfied with, in favour of the respondent/plaintiff. The operative part of the impugned order read as under:-

"10. Upon hearing and perusal of the petition as well as the relevant documents filed by the petitioner, it transpires that there were series of publications in moneycontrol.com portal and in other social media including Facebook, LinkedIn, X (erstwhile Twitter) about the petitioner's institute/company regarding

withholding of employee's salary and touching upon the petitioner's bankruptcy as alleged by the petitioner. It also appears that tuition-cum-coaching institute namely DIGITUP who were intending to open a FIITJEE franchise in Guwahati for upcoming academic session sought clarification on 25.03.2024 from the petitioner company about the said development thereby causing harm to the reputation of the petitioner. It appears that there is a Prima Facie case to be heard. Besides, if the OP/defendant continue to publishing in moneycontrol.com portal and in other social media including Facebook, LinkedIn, X (erstwhile Twitter) about the petitioner's institute/company the petitioner or intends to continue or repeat the alleged publication there is a prospect of such immediate further pressing injury to the petitioner. Thus, the balance of convenience lies in favour of the petitioner/plaintiff. Further, in the event of petitioner/plaintiff is not protected in the interim as prayed for, the petitioner/plaintiff will suffer from irreparable loss and injury. On consideration of the facts and circumstances and the above triple test, I am of the considered opinion that the relief claimed by the petitioner is urgent in nature and the purpose of injunction is likely to be defeated by delay. As such, in the interim the OPs/defendants, their agents, representative, assigns or any other person related to them are restrained from posting, publishing or circulating any posts that amount to disparagement of petitioner/plaintiff's services as well as immediately take down the impugned articles dated 12th March/2024, 14th March/2024 and 18th March/2024 or any other similar article or any other posts, write up or material concerning or in relation to these impugned articles against the petitioner till next date fixed.”

Grounds:-

6. Being highly aggrieved and dissatisfied with the aforesaid ad-interim injunction order, the appellants/defendants have preferred this present appeal with a prayer for staying the impugned ex-parte order, on the following grounds:-

- (i) That, the impugned ex-parte interim injunction order was passed without following the principle laid down by Hon'ble Supreme Court and without exercising caution in granting pre-trial injunction, especially in defamation cases, to avoid impeding free speech;
- (ii) That, the injunction should be reserved for exceptional cases where the answering defendant's defence is bound to fail and that unreasoned censorship through ex-parte injunctions should be avoided and that the impugned order was passed without appreciating the articles in question, which are fair and bonafide comment on a matter of public interest pertaining to the financial matter concerning the respondent;
- (iii) That, the impugned ex-parte interim injunction dated 19.04.2024, is bad in law, arbitrary, perverse and passed without taking into account the statements of the four articles/news reports, which are based on truth, supported by documents/evidence including internal emails of the appellant company and interviews/statements of persons from the appellant company;
- (iv) That, the impugned order was passed without evaluating the meticulous three-fold test for granting interim relief, i.e. prima facie case, balance of convenience and irreparable loss and that the learned trial court applied the threefold test mechanically without assigning detailed reasons for granting the said injunction and without meticulously examining the said four articles;

- (v) That, the impugned order was passed without even discussing the prima-facie strength of the respondent's case, merits of the plaint, and unreasoned censorship which cannot be countenanced, non-giving of legal notice by the respondent to the appellant and the learned trial court has not considered the balance of right to freedom of free speech with right to reputation and privacy and other factors;
- (vi) That, the learned trial court had failed to appreciate the fact that the suit filed by the respondent, which seeks the reliefs on the ground of defamation is not maintainable as it does not disclose any cause of action, as the defamatory words/sentence are required to be set forth ad-verbatim in the plaint, failing which the plaint is liable to be dismissed;
- (vii) That, the impugned ex-parte interim injunction order, dated 19.04.2024, is violative of the appellants' fundamental right to freedom of speech and fundamental right to know the truth in the matter of public interest and public importance guaranteed under Article 19(1)(g) and the suit is strategic litigation against public participation;
- (viii) That, the prayers for damages are imaginary and factionary and the respondent had failed to demonstrate with relevant material/actual proof as to how the said articles have caused direct or indirect harm to their reputation or business in any manner whatsoever;
- (ix) That, despite no office and no cause of action within the territorial jurisdiction of Kamrup (M), the Suit and Misc. (J) Case No. 362/2024 has been filed therein, with ulterior motive, only on the basis of (a) respondent's intention to open up one of its centres within the territorial jurisdiction of learned trial court and (b) residents within the territorial jurisdiction of learned trial court may not be inclined to use the services of the respondent

and on such count, the learned trial court ought to have determined the issue of jurisdiction before passing any ex-parte interim order;

- (x) That, there is no animosity and personal grudge between the appellant and the respondent and the appellant does not know the respondent and that the respondent has not suffered any monetary loss and it cannot be said that they have suffered loss of image, when it is not the case of the respondent that after publication of the aforesaid four articles/news reports the income/business was affected in any way;
- (xi) That, direction to take down the articles or any similar material is bad in law as the same deprives the appellant's opportunity to prove the truth and veracity of the said materials uploaded by the appellants before expunging the same; and
- (xii) That, the publication of Article No. 4 is absolutely incorrect and baseless, as the same has been published on 17.03.2024 and the appellant had published the same only on 18.03.2024 and the said article was uploaded by livemint.com, Republic World.com and The Morning Context.com and as such, the impugned order suffers from manifest illegality and therefore, it is contended to set it aside.

Then hearing both parties this court was pleased to admit the same and in the interim this court was also pleased to stay the impugned ex- parte interim injunction Order dated 19.04.2024. Thereafter, the respondent moved before the Hon'ble Supreme Court against the interim order, dated 12.06.2024 passed by this Court by way of filing SLP (C) No. 13996/2024 (Fiitjee Limited Vs- E Eighteen.Com Ltd & 2 Others) and the Hon'ble Supreme Court declined to entertain the Special Leave Petition as the matter is pending before this Court.

Thereafter the respondent has filed an Interlocutory Application (I.A.) No. 2175/2024 filed by respondent/plaintiff for vacating the interim order dated 12.06.2024 passed in F.A.O No.31/2024. The respondent also raised following preliminary objections:-

- A. The first objection is about the maintainability of the FAO. It is stated that despite having served the copy of suit papers and the injunction order, the appellants failed to place on record and concealed material documents while moving the F.A.O before this court. It is stated that Article No.3 (Hindi version) has not been made as an Annexure in the F.A.O Further, all the social media post including Face book, X etc, are not annexed in the F.A.O. And on material concealment, this FAO is not maintainable.
- B. The appellants have not complied with the impugned ex-parte interim injunction order dated 19.04.2024. To that effect the respondent had filed an application under Order XXXIX Rule 2A before the Trial Court and also filed an affidavit pointing out non-compliance of injunction order. And because of this act of contempt disentitles the appellants from any relief.
- C. The impugned ex-parte interim injunction order dated 19.04.2024 is a reasoned order. The Appellants are seeking to re-assessment to the material to reach a different conclusion which is not permissible.

Submissions:-

7. Mr. Das, learned Senior Counsel appearing for the appellants, while reiterating the grounds mentioned in the memo of appeal, submits that there is no concealment of the fact and non-compliance of the impugned ex-parte interim

order dated 19.04.2024. Mr. Das further submits that before publishing the Article No. 1, one email was sent to the respondent asking their response, but no response was received and therefore, Article No. 1 was published, subsequently the Articles Nos. 2, 3 were published and that Article No.4 was published only after publication of the same by some other organizations. Mr. Das, further submits that the learned trial court has granted mandatory injunction without affording any opportunity to the other side and while doing so the learned trial court had not taken into account the principles laid down by Hon'ble Supreme Court in the case of **Bloomberg Television Production Services India Private Limited and Others -Vs- Zee Entertainment Enterprises Limited** reported in **2024 SCC Online SC 426**. Mr. Das also submits that there was no discussion in the impugned order about the three golden principles of granting ad-interim injunction i.e. (i) prima facie case, (ii) balance of convenience and (iii) irreparable loss. Mr. Das, learned Senior Counsel also submits that no prima-facie case is made out here and the learned trial court had failed to appreciate Page No. 52-57 of the List of Documents at Sl. No.11 submitted by the Respondent/Plaintiff before the Hon'ble Court i.e., emails dated 27.02.2024, 03.03.2024 & 08.03.2024 which were issued by the Managing Director of Respondent/Plaintiff (Fiitjee) Mr. D.K. Goel to his team, and the learned trial court had mechanically recorded that the balance of convenience is in favour of the respondent herein. It had failed to come to any conclusion that whether, the articles published or posts so uploaded are false and as such, same will cause injury. There is no finding to that effect and therefore, considering the balance of convenience mechanically in favour of respondent/plaintiff is nothing but perverse, arbitrary and bad in law. The respondent is required to prove that irreparable injury would be caused if no injunction is granted. But, when the respondent had already quantified the damage in that case, the question of not

granting any injunction will not make any damage to the respondent/plaintiff. That being so, the learned Court ought to have issued notice before granting any ex-parte interim injunction and should provide an opportunity to the appellants to place their case by way of objection and to justify the allegation. As the same has not been done the impugned ex-parte interim injunction Order dated 19.04.2024 is arbitrary and bad in law as the learned trial court had failed to take into account that the contents of the four Articles were neither malicious nor false and as such the impugned order is violative of right to free speech as guaranteed by Article 19(1) (g) of the Constitution of India and as such liable to be set aside. Mr. Das also submits that herein this case the learned trial court had granted mandatory injunction. By referring to a decision of Hon'ble Supreme Court in the case of **Tek Singh vs. Shashi Verma and Another**, reported in **(2019) 10 SCC 678**, Mr. Das submits that for granting mandatory injunction much more than a mere prima-facie case requires to be established by the party, which the respondent herein had failed to establish. Mr. Das also submits that complying of the order of injunction before filing appeal is not the requirement of law and in support of his submission he has referred to a decision of Hon'ble Supreme Court and also in the case of **Modern Food Industries (India) Limited vs. Sachidanand Dass and Another**, reported in **1995 Supp (4) SCC 465**. Referring to another decision of Supreme Court in **Ramdev Food Products (P) Ltd -Vs- Arvindbhai Rambhai Patel and Others** reported in **(2006) 8 SCC 726 (Para 128)**, Mr. Das submits that when the learned Trial Court exercised the discretion arbitrarily, capriciously, perversely ignoring the settled principles of law regulating the grant or refusal of interlocutory injunction, the appellate court can interfere with such order. Mr. Das also submits that herein this case allowing the interlocutory application amounts to allowing the whole suit and on such count also the impugned order is not sustainable. It is further submitted that there is

also delay filing the Title Suit, and that all relevant papers were place on record and even though some papers could not be annexed, the same would have no bearing at all in the finding of the appeal. Therefore, Mr. Das has contended to allow the appeal.

8. Per contra, Mr. Hazarika, learned Senior Counsel appearing for the respondent submits that he has two preliminary objections in respect of maintainability of the appeal. Firstly, Mr. Hazarika submits that there was concealment of fact, as the appellant had deliberately not enclosed 15 numbers of documents out of 21 documents, which were submitted by the respondent before the learned trial court with the suit. Relying upon following three decisions, in **General Manager, Haryana Roadways vs. Jai Bhagwan & Anr**, reported in (2008) 4 SCC 127 and **K. Jayaram & Ors. vs. Bangalore Development Authorities & Ors**, reported in (2022) 12 SCC 815, and **Ramjas Foundation & Another vs. Union of India and Others** reported in (2010) 14 SCC 38, Mr. Hazarika submits that on account of suppression of material fact the appellants are not entitled to any relief. Secondly, Mr. Hazarika submits that there is no compliance of the order of injunction of the learned trial court and even after the order of the learned trial court, the appellant has published the article No. 4 and it had not taken down the Article No.1, 2 & 3 from the website. Mr. Hazarika pointed out that while the order was passed on 09.04.2024, the same was communicated to the appellant on 22.04.2024, and in view of decision of Hon'ble Supreme Court in **Prestige Lights Limited vs. State Bank of India**, reported in (2007) 8 SCC 449, no relief could be granted to the appellants. Referring another decision of Hon'ble Supreme Court in the case of **Wander Limited and Another vs. Antox India Private Limited**, reported in 1990 (Supp) SCC 727, Mr. Hazarika submits that the power of appellate court is very limited in interfering with the order of trial court

being passed in exercise of discretionary power and unless arbitrariness is shown in exercise of such discretion the appellate court cannot interfere and in the case in hand no such arbitrariness is shown. Mr. Hazarika also submits that the suit filed before the learned trial court was not only for defamation, but also for commercial disparagement for levelling unfounded allegations, and that the action for disparagement and defamation is distinct and this aspect has been dealt with by High Court of Delhi in the case of **Gujarat Cooperative Milk Marketing Federation Ltd. and Another vs. Akshar Foods and Beverages and Another** reported in **2022 SCC OnLine Del 4899**, and by Bombay High Court in **Marico Limited vs. Abhijeet Bhansali** reported in **(2022) SCC OnLine BOM 60**, and that the learned trial court also in the impugned order of the had dealt with disparagement, but the appeal is preferred only for defamation and on such count also the appeal is not maintainable. Mr. Hazarika further pointed out that before publishing the Article No. 1, the appellant had sought for response from the respondent, but, the e-mail was sent to the respondent at about 7:38 a.m. in the morning, but the office of the respondent opens at about 10:00 a.m. and before filing any reply, the appellants published the Article at about 10:42 a.m. and the time given to response is inadequate and publishing the Article before the response being received indicate the intention of the appellants. Mr. Hazarika also submits that Annexure 11, 13 & 14 are not part of the record and therefore, the same cannot be looked into. Mr. Hazarika further pointed out that a prima-facie case is made out and the balance of convenience is also in favour of the respondent and there is irreparable loss and having been satisfied with the aforesaid triple test, the learned trial court has rightly restrained circulating further disparagement article against the respondent, otherwise it would be an otiose, and it had assigned reason for granting the same and being speaking and reasoned order, the same warrants no interference of this court. It is the further

submission of Mr. Hazarika that the decision in **Bloomberg Television Production Services India Private Limited and Others, (supra)**, referred by the learned counsel for the appellant is not applicable in the case in hand as the said case relates to only defamation and the case in hand is not only for defamation, but also for disparagement. Mr. Hazarika also submits that there is no delay in approaching the court and every moment subsequent to published the Article, the cause of action has arisen as the Articles are in website and at any point of time one can see the same and also share with others. Under the aforementioned facts and circumstances, Mr. Hazarika has contended to dismiss the appeal.

9. Having heard the submissions of learned senior counsel of both sides, I have carefully gone through the memo of appeal and the interlocutory application filed by the respondent and the documents placed on record and also through the written arguments as well as the case laws referred at the bar.

The Principle Governing Grant of Ex-parte Injunction:-

10. The principles of granting ex-parte injunction was dealt with by Hon'ble Supreme Court in the case of **Morgan Stanley Mutual Fund v. Kartick Das, (1994) 4 SCC 225 at page 241**, wherein Hon'ble Court has laid down following guidelines:--

“36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are-

(a) Whether irreparable or serious mischief will ensue to the plaintiff;

- (b) Whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;
- (c) The court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
- (d) The court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction;
- (e) The court would expect a party applying for ex parte injunction to show utmost good faith in making the application.
- (f) Even if granted, the ex parte injunction would be for a limited period of time.
- (g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.”

11. In the case *Shiv Kumar Chadha v. Municipal Corpn. of Delhi* reported in (1993) 3 SCC 161, Hon’ble Supreme Court had occasioned to emphasize the need to give reasons before passing ex parte orders of injunction in following words:-

“... the court shall ‘record the reasons’ why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the

jurisdiction of the court for grant of an order of restrain against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of Taylor v. Taylor [(1875) 1 Ch D 426 : 45 LJ Ch 373] , and Nazir Ahmed v. Emperor [AIR 1936 PC 253(2) : 63 IA 372 : 37 Cri LJ 897] . This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of Ramchandra Keshav Adke v. Govind Joti Chavare [(1975) 1 SCC 559] .

As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors,

including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed.”

Mandatory Injunction and the Triple Test:-

12. One of the most relied on and unequivocal authority on temporary or interlocutory mandatory injunctions is *Dorab Cawasji Warden vs. Coomi Sorab Warden and Ors.*, reported in (1990) 2 SCC 117, wherein Hon’ble Supreme Court has laid down following guidelines:-

“16. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.”

13. In the case of *Tek Singh* (supra) also it has been held by Hon’ble Supreme Court that much more than a mere prima facie case has to be made out. Thus,

application of this triple test is a prerequisite for the grant or refusal of such injunctions and other factors such as the suppression of material facts on the part of the plaintiff, the conduct and whether monetary compensation is adequate, need to be taken into cognizance while granting an interlocutory mandatory injunction. In the case of **Mahadeo Savlaram Shelke and Ors. vs. Pune Municipal Corporation and Ors** reported in (1995) 3 SCC 33, Hon'ble Supreme Court has held additionally that *public interest* is one of the material and relevant considerations in either exercising or refusing to grant an interim injunction.

The Power Of Appellate Court:-

14. It is well settled that grant of an interlocutory injunction is in exercise of discretionary power. Usually the appellate court will not interfere with it. But when the discretion is exercised arbitrarily, capriciously, perversely ignoring the settled principles of law regulating the grant or refusal of interlocutory injunctions the appellate court can interfere with such order of granting injunction. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Ramdev Food Products (P) Ltd (supra)**. In the case of **Wander Limited and Another (supra)** Hon'ble Supreme Court has held that unless it has been shown to have exercised the discretion arbitrarily by the learned trial court, the appellate court would not interfere with the discretion exercised by the trial court.

15. In the case of **Wander Ltd.(supra)**, Hon'ble Supreme Court has also held that:-

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the 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 injunctions. An appeal against exercise of discretion is said to be an appeal on principle. 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 that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”

Appreciation:-

16. Now, advertent to the facts herein this case I find that the defendants/appellants had published series of articles, within a span of six days, dated 12.03.2024, 14.03.2024 & 18.03.2024. The first Article was published on 12.03.2024, with the titled: **"FIITJEE holds employee salaries for second month in a row, calls it a 'wake-up call' to make them work harder."** The appellants, in the said Article also made a reference to respondent's competitors, such as Allen, Aakash, Physics Wallah and Unacademy referring to them as new- age edtech and use their names with # as **"#Physics Wallah"** and **"#Unacademy"**. Thereafter, on 14th March 2024, two more articles were published. The first, at 10:42 AM, questioning the salary issue, titled - **"Brazenly wrong! FIITJEE founder's 'salary is not a right' email not legally sound, say experts"** And the second one published on 14th

January, 2024 at 05.25 pm criticizing the stance of the respondent, titled; "FIITJEE मैसैलरी मांगना गलत है, फाउंडरनेऐसादियाजवाबकि कर्मचारियोका दिल दहल गया' with a click-bait image which reads: में सैलरी मांगनेवालों की खैर नहीं FIITJEE. And thereafter, on 18th March 2024, the Appellants published another article titled:- "FIITJEE slammed for ad 'belittling' student who quit institute and got 99.99 in JEE Gains: 'Disgusting.'"

17. It also appears that the respondent had received an email at 7:38 AM from the Appellant No.2, wherein clarification was sought for on 13 points of queries by 10:00 noon, on the same day and can wait till 12:00 noon, on the subject matter of the said mail, i.e. "FIITJEE holds employee salaries for second month in a row, calls it a 'wake-up call' to make them work harder." It is the categorical contention of the respondent that the time given for response by the Appellant No.2 is quite inadequate and unrealistic as because the office of the respondent open only at 10 AM. It also appears that the respondent had sent the reply at 14:34:17 PM. But, before that the appellants had published the Article in their portal, i.e. Moneycontrol.Com at about 11:10 a.m., which has 5 lacs registered subscribers.

18. A careful perusal of the said Articles and also the time of publishing the same, the contention of the respondent that the said Articles were gives an inference that they are motivated, cannot said to be without any basis, as because in the said Articles the financial incapacity of the respondent having been highlighted, which not only adversely impacted the reputation, but also the business of the respondent. It is stated that one DIGITUP, a Tuition-cum-Coaching Institute of Guwahati had contemplated to open a franchise of FIITJEE, the respondent herein, for upcoming academic session, but after publication of

the Articles; it had put on hold such venture and sought clarification on 25.03.2024 from the respondent by writing a letter. Thus, the letter of DIGITUP dated 25.03.2024 is a *fait accompli* of harming the reputation and also causing commercial disparagement to the respondent. Mr. U. Hazarika, the learned senior counsel for the respondent, has rightly pointed this out and I find substance in his submission. The learned trial court also, in the impugned order, had referred the same, though of-course, briefly. Under such circumstances the learned trial court had rightly found the prima-facie case in favour of the respondent.

19. Further, it appears that having published the first Article on 12.03.2024, the appellants continued to publish the Articles in Moneycontrol.com portal and in other social media including Facebook, LinkedIn, X (erstwhile Twitter) about the petitioner's institute/company the petitioner, till 18th March 2024. The learned trial court had found that if they continued to publish the same or repeat the alleged publication, there is a prospect of further pressing injury to the respondent and as such the learned trial court, to the considered opinion of this court, had rightly found the balance of convenience and irreparable injury in favour of the respondent herein. Thus, it appears that the learned trial court had rightly found the triple test of granting injunction satisfied. Further, the learned trial court had found the relief claimed by the petitioner urgent in nature, and the purpose of injunction is likely to be defeated by delay, in the event of respondent herein is not protected by granting interim relief (s) the respondent will suffer from irreparable loss and injury. Only thereafter, the learned trial court had granted the interim relief till date fixed.

20. Thus, it appears that the learned trial court had assigned reason while granting the ad-interim relief. Mr. Hazarika, the learned counsel for the respondent has rightly submitted that the impugned order is a well reasoned

order and rightly so. It is a fact that discussion on the factual aspect and the reason assigned are brief. But, there is no requirement of extensive and elaborate discussion of the factual aspect as well as reasoning. As held in the case of **Shiv Kumar Chadha (supra)** the party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. Thus, this court is unable to agree with the submission of Mr. Das, the learned counsel for the appellant that the order impugned is a cryptic order bereft of any reason.

21. Thus, I find that the factors, which should weigh with the court in the grant of ex-parte injunction, so laid down in the case of **Morgon Stanley Fund (supra)**, were taken note of by the learned trial court. In no uncertain term, the learned trial court, in the impugned order, had held that- **in the event of petitioner/plaintiff is not protected in the interim as prayed for; the petitioner/plaintiff will suffer from irreparable loss and injury.** The learned trial court also held that- **on consideration of the facts and circumstances and the above triple test, I am of the considered opinion that the relief claimed by the petitioner is urgent in nature and the purpose of injunction is likely to be defeated by delay.** It also appears that the learned Trial Court had granted the relief for a limited period i.e. till next date.

22. It is however a fact that there is some delay in filing the suit. While the last Article was published in on 18.03.2024, the respondent had approached the court only on 19.04.2024. But, the fact remained that unlike any paper publication, the publication on the internet and website are available as well as accessible to the viewers all the time and the same can be shared in social media platforms and it

continued to repeat every day and capable to download by any viewer and thereafter, can be cross-posted to other social media platform and this fact is apparent from the document annexed with the plaint (Page No. 58 to 109). Mr. Hazarika, the learned counsel for the respondent has rightly pointed this out at the time of hearing and there appears to be sufficient force in the same. Therefore, the injury being caused to the respondent is a continuing one and on such count it cannot be said that there is delay in approaching the court.

23. Though Mr. Das, the learned counsel for the appellants submits that the learned trial court, before granting ad-interim relief, had not complied with the proposition of law laid down in the case of **Bloomberg Television Production Services India Private Limited and Others, (supra)**, yet in view of the discussion and finding of this court herein above, I am unable to agree with the submission of Mr. Das. Besides, the submission is controverted by Mr. Hazarika, the learned counsel for the respondent on the ground that the said case relates to only defamation, whereas, the case in hand is of not only defamation, but also for disparagement and that being so the ratio cannot be applied to the facts herein this case. Having adjudged the submissions of both the parties in the light of facts and circumstances on the record, this court is of the view that there is force in the submission of Mr. Hazarika, the learned counsel for the respondent.

24. Indisputably in the impugned order, the learned trial court had directed to the appellants to take down the Articles from the web-site. This is in mandatory form. Mr. Das, the learned counsel for the appellants has rightly argued on this point. There is substance in his submission that in case of granting mandatory injunction the satisfaction of the court in respect of prima-facie case is much higher in degree than the ordinary prima-facie case. This is well settled in the

case of **Dorab Cawasji Warden** (supra) and also in the case of **Tek Singh** (supra) where it has been held that the plaintiff's case shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction. In the case of **Bloomberg Television Production Services India Private Limited and Others**, (supra) it has been held that 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. It is also held that:-

“9. 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.”

25. In the case in hand, though the learned trial court, while granting ad-interim injunction, had not specifically weighed the degree of satisfaction, yet, having gone through the materials placed on record this court is of the considered view that respondent herein has a strong case for trial which is higher in standard than of an ordinary prima facie case. Indisputably, the appellants had published the first Article without the consent of the respondent. Though the

appellants had sent an e-mail to the respondent seeking response, yet sufficient time was not given to the respondent to respond in respect of the Article being proposed to publish and thereafter got the same published before the response of the respondent. That, the intention of the appellants to cause harm to the reputation and causing disparagement to the respondent becomes *fait-accompl*i from its conduct of publishing the Article before the response being received and also from the timing of publishing the Articles at a time when the parents and students were pondering upon taking a decision to choose the test preparation centers and also its decision to publish one Article in Hindi, so as to outreach the consumers of diverse socio-economic background of the respondent and also making reference to the competitors of the respondent, such as Allen, Aakash, Physics Wallah and Unacademy referring to them as new- age edtech and use their names with # as "#Physics Wallah" and "#Unacademy".

26. Even for the sake of argument, if it is accepted that the trial court had not recorded the higher degree of satisfaction yet, it appears that the learned trial court had exercised the discretion and in view of limited scope of appellate court to interfere with the same, as held by Hon'ble Supreme Court in the case of **Ramdev Food Products (P) Ltd (supra)** and also in **Wander Limited and Another (supra)**, this court is of the view that in absence of arbitrariness being shown in exercising such discretion by the learned trial court, no interference in the same is warranted.

27. Further, it appears that the respondent had responded to the email sent to it by its emails on the same day at about 14:34:17 p.m. explaining the reason of financial re-structuring and incentive schemes leading to holding the salaries. But, the same were not considered by the appellants. The learned trial court had recorded a clear finding that by series of publications in Moneycontrol.com portal

and in other social media including Facebook, LinkedIn, X (erstwhile Twitter) about the petitioner's institute/company regarding withholding of employee's salary and touching upon the respondent's bankruptcy harm to the reputation of the respondent was caused. And it also appears that not only harm to the reputation, but also disparagement of the business of the respondent was also caused thereby.

28. It is well settled in the case of **R. Rajagopal v. State of T.N.**, reported in **(1994) 6 SCC 632**, that none can publish anything concerning the privacy of a person, his family, marriage, procreation, motherhood, child-bearing and education among other matters, without his consent — whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. And this aspect was taken note of in the case of **Bloomberg Television Production Services India Private Limited and Others**, (supra) also, wherein it has been held that in a suit concerning defamation by media platform and/or journalists, and additional consideration of balancing the fundamental right to free speech with right to reputation and privacy must be born in mind.

29. In the instant case, balancing the fundamental right to free speech of the appellant, as guaranteed by Article 19(1)(g) of the Constitution of India with that of the right to reputation and privacy of the respondent, which are implicit in right to life and liberty guaranteed to him by Article 21 of the Constitution of India, this court is of the considered opinion that the balance tilted in favour of the right guaranteed by Article 21 of the Constitution of India.

30. Besides, what has been discussed herein above, this court is also weighed by the following facts and circumstances in arriving at the decision:-

(i) It appears that copies of all the suit papers and the injunction order was served upon the appellants. Despite, the appellants had failed to place on record of the F.A.O before this court all total 15 papers, out of 21 papers, which appears to be concealed. These are page No.9 of the plaint, page No.26, page No. 37 page No. 52, page No. 58 to 105, page No. 106. It is well settled in catena of decisions that suppression of a material fact by a litigant disentitled him from obtaining any relief. Reference in this context can be made to a decision of Hon'ble Supreme Court in **M.C.D. vs. State of Delhi** reported in (2005) 4 SCC 605, wherein, it has been held that a person who do not approach the court with clean hand and or his case is based on falsehood the case of such person should be summarily thrown out at any stage of the trial. Referring to some decisions of Hon'ble Supreme Court in **General Manager, Haryana Roadways vs. Jai Bhagwan & Anr.** reported in (2008) 4 SCC 127 and **K. Jayaram & Ors. vs. Bangalore Development Authorities & Ors,** reported in (2022) 12 SCC 815, and **Ramjas Foundation & Another vs. Union of India and Others** reported in (2010) 14 SCC 38, Mr. Hazarika, the learned counsel for the respondent also argued at the time of hearing that withholding relevant materials would amounts to playing fraud upon the court and the litigants cannot be allowed to play 'hide and seek' or 'pick and choose'. Though Mr. Das, the learned counsel for the appellants submits that there is no material suppression, yet the said submissions left this court unimpressed in view of the discussion and finding recorded herein above.

(ii) Also it appears that the appellants have not complied with the impugned ex-parte interim injunction order, dated 19.04.2024. Mr. Das,

learned counsel for the appellant relying upon the decision of Hon'ble Supreme Court in **Modern Food Industries (India) Limited vs. Sachidanand Dass and Another, (supra)** submits that herein this case stay has already been granted by this court in the impugned order of injunction and as such therein no requirement of compliance. But, the fact remained that before approaching this court, the impugned order of the learned trial court had not been complied with. The order was duly communicated to the appellants via email dated 22.04.2024, with all relevant materials. The appeal was filed before this court on 13.05.2024, and thereafter on 07.06.2024, the respondent had filed an affidavit before this court alleging non-compliance. These are undisputed facts. It is well settled in the case of **Prestige Light Ltd. (supra)** that an order passed by a competent court, interim or final, has to be obeyed without any reservation. When such order is disobeyed or not complied with, the court may refuse the party violating such order to hear him on merit. In the larger interest of justice such step is needed.

FINDING:-

31. In the result, and foregoing discussion and finding this court find no merit in this appeal and accordingly the same stands dismissed. The interlocutory application is allowed and the interim order of stay, passed earlier by this Court, stands vacated forthwith. The parties have to bear their own cost.

JUDGE

Comparing Assistant