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IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 28 OF 2024

MR. CHURCHILL BRAZ ALEMAO

Son of Late Shrubraz Alemao

Aged 74 years, Politician, Married, Indian National, Resident of H.No.150, Novangully Varca, Salcete, Goa – 403 721

.... Applicant.

V/s.

1. BHANUSHALI STUDIOS LTD.

Having office at 12th Floor, 1216, B & C Wing C/66, G Block, One BKC, Opp. Bank of Baroda, Bandra, Mumbai Maharashtra-400 051.

2. BOMBAY FABLES MOTION PICTURES,

Having Office D4, N S Road No.10, Jaihind Society, JVPD Scheme, Vile Parle (W), Mumbai, Maharashtra-400049.

3. Mrs. Sejal Shah,

Director, Major of age, Indian National, Having Office D4, N S Road No.10, Jaihind Society, JVPD Scheme, Vile Parle (W), Mumbai, Maharashtra-400049.

.... Respondents.

Mr. Subhodh Kantak, Senior Advocate, along with Mr. Jitendra Supekar, Ms. Yulette Coutinho, Mr. Roger D'Souza, Ms. Neha Kholkar, and Ms. Saicha Desai, Advocates *for the Applicant*.

Mr. V. Dhond, Senior Advocate along with Mr. Nikhil Vaze, Mr. Prashant Gawali, Ms. Savani Vaze, Mr. A.S. Kunde, Ms. Vedanshi Shah, Ms. Mahalaxmi Ganapathy, Ms. Karishma Rao and Mr. Tanmay Bhawe, Advocates *for the Respondent Nos.1 and 2.*

Mr. Mayur Khandeparkar with Mr. Nikhil Vaze, Mr. Prashant Gawali, Ms. Savani Vaze, Mr. A.S. Kunde, Ms. Vedanshi Shah, Ms. Mahalaxmi Ganapathy, Ms. Karishma Rao and Mr. Tanmay Bhawe, Advocates *for the Respondent No.3.*

CORAM : VALMIKI MENEZES, J.

DATED : 30TH APRIL, 2025.

ORDER:

1. In this appeal, under Order 43 CPC, the Original Plaintiff has challenged two orders, both dated 20.07.2024 passed by the Court of the Civil Judge Senior Division at Margao in Special Civil Suit No.14/2024/III. The first order rejects an application for temporary injunction (at Exhibit 4 before the Trial Court) while the second order rejects an application (at Exhibit 15 before the Trial Court) moved under Section 151 CPC.

2. In the application at Exhibit 4, the Plaintiff/Appellant herein sought for an order of temporary injunction to restrain the Respondents/Original Defendants from carrying on any further production of the Suit Movie and from releasing the same in theatres or OTT platform or any other source in India or abroad, including from release of its trailer; the second application at Exhibit 15 is one purporting to be under Section 151 CPC and seeks a direction for screening of the Suit Film in the presence of the Trial Court, the Plaintiff, his family members before release of its poster, teaser and movie itself

and a committee of experts to be appointed by the Court, which committee would view the film and submit a report to the Court.

3. An order on Exhibit 15, which essentially invokes the inherent powers of the Court under Section 151 CPC, is not an appealable order in terms of Order 43 CPC and this appeal, in that context, would not be maintainable. To that extent, this appeal would stand dismissed.

Considering that the appeal would be maintainable only against the order dated 20.07.2024 rejecting Exhibit 4 (for an order of temporary injunction), I would restrict myself to considering the challenge thrown in this appeal to this order.

4. The facts, which would be relevant to the decision of this appeal, are the following:

- a. A plaint came to be lodged (Special Civil Suit No.14/2024/III before the Civil Court wherein the Appellant/Sole Plaintiff claims the following reliefs:

A. That this Hon'ble Court be pleased to grant permanent injunction against the Defendants from carrying on any further production of the suit movie and from releasing the same in theatres and/or OTT Platform and/or any other source in India or abroad including trailer of the suit movie.

B. That this Hon'ble Court be pleased to grant temporary injunction against the Defendants from carrying on any further production of the suit movie and from releasing the same in theatres and/or OTT Platform and/or any other source in India or abroad including trailer of the suit movie.

C. That this Hon'ble Court may be pleased to direct the Defendants to pay to this Plaintiff a sum of Rs.100,00,00,000/- (Rupees Hundred Crore Only) by way of damages or compensation for defamatory act and for Commission and omission as detailed as above along with interest @12% per from the date of filing of the suit to actual realization thereof.

D. This Hon'ble Court may be pleased to grant permanent injunction restraining the Media houses and publishers from making any further defamatory statements/articles in respect of the Plaintiff and the entire Alemao family members and/or publish any article in relation to the upcoming movie/suit movie in print media and on Internet including reporting of proceeding before this Hon'ble Court.

E. This Hon'ble Court may be pleased to grant temporary injunction restraining the Media houses and publishers from making any further defamatory statements/articles in respect of the Plaintiff and the entire Alemao family members and/or publish any article in relation to the upcoming movie in print

media and on Internet including reporting of proceeding before this Hon'ble Court.

F. This Hon'ble Court may be pleased to grant ad-interim relief in terms of prayer clause B and E.

G. This Hon'ble Court may be pleased to grant ex parte ad-interim relief in terms of prayer clause B and E.

b. The reliefs prayed for are based on the following averments made in the plaint:

- i. That the suit is filed in the Plaintiff's personal capacity and also in his representative capacity, representing the entire Alemao Family, which consists of four brothers i.e. the Plaintiff, Joaquim, late Alvernaz and late Ciabro and also includes their spouses and children.
- ii. The Plaintiff claims to be a prominent personality in the State of Goa, having held the position stated in the table at paragraph 3 of the plaint, and more particularly having been elected as a member of Legislative assembly of Goa for several terms since 1989, having been appointed as the Chief Minister of the State and a Cabinet Minister for several terms.
- iii. That in the month of December, 2023, the Plaintiff came across various news articles in respect of a film produced by Defendant

No.1 and Defendant No.2, and directed by Defendant No.3; the news articles stated that the film was based on the life of a retired Customs Officer Costao Fernandes and more particularly his fight against gold and smuggling syndicates in Goa during the 1990's. That the news articles referred the incident in his life involving alleged confiscation of 250kgs of gold from late Alvernas, and these news items/articles were published on various sections of Social Media and Internet, which are detailed in paragraph No.6 of the plaint. The details of these articles are stated in paragraph No.7 of the plaint, and according to the Plaintiff, from these articles, the film being produced was solely based on the narrative given by Costao Fernandes, in complete ignorance of various judicial proceedings that were initiated in respect of the incident, and which are contained in various judgments of this Court and of the Supreme Court.

- iv. That the movie is solely based on the judgment of the Supreme Court dated 14.10.1994, order dated 14.10.1994 passed by the Collector of Customs, order dated 13.12.2004 passed by CESTAT; according to the Plaintiff the film does not take into consideration the judgment of this Court dated 11.10.2017 passed in Customs Appeal No.3 of 2005 to 07 of 2005, order dated 31.10.2000 passed by the Chief Judicial Magistrate, order dated 17.07.2003 passed by this Court in Criminal Revision Application No.8 of 2001 and the order dated 16.04.2004 passed by the Supreme Court, thus the film is a production not

based on the complete narrative or rather based on an incomplete narrative of the facts of the particular incident and is in the nature of detaining the Plaintiff and his family members harming his reputation, his public image and his political status.

- v. The plaint, in paragraph Nos.9 to 23 averred the details of each of these judgments or orders of various Courts, which could be referred to at a later stage of this judgment. It is the Plaintiff's case that based upon the totality of all these judicial pronouncements, exonerating the plaintiffs of criminal charges and charges under the Customs Act, it could also be concluded that no gold was ever confiscated or recovered by the said Costao, and hence the narrative of the basis of the film, that the Customs Department have managed to establish a gold smuggling case against the Alemao Clan is false. The Plaintiff claims that the film, if released, has the potential to impact the public opinion of the Plaintiff in a negative manner; it is claimed that the film, if allowed to be produced and released would portray the Plaintiff and his family as a "Villain" and would allow the producers to make commercial gain at the cost of the reputation and political career of the Plaintiff and of his family members. Two articles, the first in the daily newspaper "The Goan" dated 06.12.2023 and the second in the daily newspaper "O Heraldo" dated 04.12.2023 are referred to in the plaint. The plaint however does not contain any averment that any notice was sent by the Appellant to these two publishers of the articles.

- vi. That a legal notice dated 20.01.2024 was addressed to the Defendants in the suit calling upon them to provide the entire script of the movie and to refrain from further production of the film or releasing the film on any platform, without the written consent of the Plaintiff. In reply to the legal notice, the Advocate for the Defendants on 30.01.2024 stated that they are in the process of receiving instructions from the Defendants.
- vii. Along with the plaint, an application for temporary injunction at Exhibit 4 of the record of the trial Court was filed, relying upon the averments made in the plaint, seeking an order of temporary injunction against the Defendants from carrying out further production of the film, releasing the film on releasing its trailer; prayer clause B in the application sought a temporary injunction to restrain the Media Houses and Publishers (generally) from making any further defamatory statement or publishing any articles in respect of the Plaintiff and the Alemao Family.
- viii. For completeness of facts which are found in the records, the two newspapers referred to in the plaint that had published the articles i.e. O Herald and The Goan were not impleaded in the plaint nor any reliefs sought in the plaint against them. After the Suit came to be filed the defendants no.1 and 2, through their advocates sent to the plaintiff a detailed reply dated 14.03.2024, to his notice dated 20.01.2024. Thereafter, a legal notice dated 05.04.2024 came to be addressed by the plaintiff to “The Goan”

newspaper alleging defamation by publishing their news item about the film in December 2023; A reply to this notice was sent by the editor of “The Goan” to the plaintiff on 02.05.2024 claiming that the story carried in their press report was based upon information provided by the producers of the film.

- ix. By way of an additional affidavit dated 10.06.2024, filed several months after lodging the plaint, notice dated 05.04.2024 addressed to “The Goan” was placed on the record of the trial Court, which called upon the newspaper to remove article dated 06.12.2023 from its website and to issue a written apology to the Plaintiff, to be published in his newspaper and his website. However, there is no record of any notice being issued by the plaintiff of similar nature to the ‘O Heraldo’ newspaper after publication of its article dated 04.12.2023 referred to in the plaint.
- c. After service of summons on the Defendants, defendants no.1 and 2 filed affidavit in reply dated 06.05.2024. The following pleadings are found in the affidavit in reply of Respondents no.1 and 2:
 - (i) That the plaint proceeds on inferences drawn from newspaper articles and reports or comments made publically by third parties who have not seen the film. It is averred that the comments in these articles are based on the understanding of the incident involving the plaintiff and his late brother Alvernaz, by the publishers of the

articles. It is further averred that neither the publishers of the two newspapers in which the news articles were carried nor Costao Fernandes, the Customs Officer involved in the incident have been joined as parties; (para 6)

- (ii) Only one article amongst those referred to by the plaintiff claims that the film is going to be made on “sensational incident”. That none of the publishers of the news items are joined as party defendants in the Suit, even though relief against media houses and publishers are sought, both in the plaint and in the application under Section 151 CPC. (para 6)
- (iii) The Defendants claim that they have neither published nor caused to publish any of the news items or offered any quote or comment of statement that may be construed defamatory, nor have the defendants published any material whatsoever in relation to the film that could occasion prejudice to the complainant - (para 7).
- (iv) In para 9, these defendants clarify that the suit film is a fictionalized work inspired by the narration in the decision of the Supreme Court of India of 20.02.1996, of a real life incident involving the plaintiff, his late brother (Alvernaz) and Costao. It further states that the film does not purport to be a true story and is a fictional account in which the real life incident may have inspired the film.

The reply avers that the film contains a specific disclaimer that any resemblance to persons, past or present is purely incidental.

- (v) In para 11 the defendants submit that the contention of the plaintiff that he has been “exonerated” by the Court or that the Courts have concluded that the version of facts, as claimed by Costao was false, is incorrect. It was further averred that the conclusion in the criminal proceedings was that the charge was not established to the degree required to be established, and was not a finding of innocence.
- (vi) In para 12(d) it is averred that defendant no.3 (who is the director of defendant no.2 and a producer), had come across a vast array of stories featuring smuggling syndicates during the 1980s and 1990s, and sometime in late 2020 conceived the idea of a film inspired by the life of a Customs Officer, Costao Fernandes, who was charged with murder and subsequently acquitted by the Supreme Court after a six year trial. That the judgment of the Supreme Court and that of this Court, which are in public domain recite in an interesting and graphic manner, facets of the incident involving Costao in which a person lost his life. These defendants claim that the film is merely a narrative based on Costao’s version of events,

with creative liberties of fictionalization and dramatization.

- (vii) In the same paragraph, the defendants claim that the judicial proceedings make reference to these events; it was further averred that the film was about the travails of a Government servant of high integrity, unfairly targeted by his own employers, who chose to prosecute him unfairly for murder, for an act that happened when he was discharging his official duties.
- (viii) In para 7(e), these defendants claim that out of abundant caution, in December 2020 they got in touch with Costao himself, to acquire his life rights in respect of a feature film, after which, and based on the facts recorded in Court orders, the defendant no.2 began penning down a screenplay for the said film.
- (ix) In para 7(g), the defendants claim that being particularly intrigued by the criminal trial faced by Costao for the allegation of murder of the plaintiff's brother, a thorough investigation was conducted about Costao and based on what the Court held, the film was made.
- (x) It was averred in para 7(l) that the film was inspired by a true story based on a narration of events recorded in Court proceedings, though it does have an element of

fictionalization and dramatization of events that Costao asserted were true.

- (xi) It was further averred in para 7(l) and 7(m) that the Suit film is neither a documentary nor purports to be one, and adequately protects the plaintiff since it contains an explicit disclaimer. It is further the case of defendants that it is their endeavour to show Costao's version of his life, share his truth and give some insight into the trial and tribulations faced by him during his tenure; that the entire film, though based on Costao's version, has been dramatized for entertainment purpose.
- (xii) In para 11(p) the defendants claim that the film has its own independent rendition of Costao's life, more particularly the legal battle faced by him. In para 13 the defendants deny that there is any effort to "villainize" the plaintiff or his family members.
- (xiii) In para 18 the defendants plead that the film does not involve any alleged "recovery" of 250 kgs. of gold by the investigating agencies and does not name or shame any member of the plaintiff's family. It avers that at no point does the film make any express reference to the plaintiff by name.

(xiv) In para 23, it is the defendants' case that the film does not refer to any gold being recovered by any investigating agency or Costao.

(xv) At para 26 the defendants specifically deny that they had released any statement to the Press.

5. An affidavit in reply on behalf of Respondent no.3 dated 06.05.2024 came to be filed, wherein Respondent no.3 states that she is the Director, Producer and Co-founder of the defendant no.2. She claims to have directed several feature films and as a writer-director with several years of experience she claims, that she, along with another designated partner of defendant no.2, one Bhavesh Mandaliya developed a script inspired by the incident referred to in the judgments of this Court and the Supreme Court which was ultimately made into the suit film, the averments in the affidavit, in sum and substance are the same as those contained in the affidavit of defendants no.1 and 2.

6. An affidavit in rejoinder and an affidavit in reply came to be filed by the plaintiff in May 2024.

7. The Trial Court, after considering the pleadings of the parties, decided the application for temporary injunction at Exhibit 4, rejecting the same. The findings of the Trial Court are concised below:

(a) That the plaintiff has sought an order of restraint on the assumption that the film which is yet to be released, would be defamatory of the plaintiff and of his deceased brother. The court considered that it would not grant injunctive relief before the fictional

work is viewed and properly examined in its entirety. It relied upon the judgment of the Delhi High Court in Ruba Ahmed (referred below) to arrive at this conclusion.

(b) It has recorded a finding that the plaintiff has not been able to bring on record any concrete material which suggests that the film contains defamatory material and portrays him or his deceased brother or their family in poor light. It concludes that the entire case is based on news reports circulated in the social media which are neither authored by the defendants or published at their behest. After examining the articles, the Trial Court has concluded that the news articles are based upon either an anonymous source or on the own initiative of the concerned reporter. It also concludes that the reports are not based on interviews of the defendants about the film nor the news items quote the defendants or actors cast in the film as the source of information for the publication.

(c) The Trial Court, on considering the provision of Section 5-B of the Cinematograph Act 1952 which requires a film to be certified by the Film Certification Board prior to its release, and has concluded that the Central Board of Film Certification (CBFC), would examine the film and consider whether it contained defamatory material. The Court concluded that the plaintiff could avail of the opportunity of making a representation before the Board putting up his case.

(d) The Trial Court concluded that the defamation of a deceased person (Alvernaz) does not give rise to civil right of action and common

law in favour of the surviving family or relatives who are not themselves defamed.

(e) On the basis of the aforementioned findings, the Trial Court held that no prima facie case was made out by the plaintiff. It further held that since the film is yet to be released, and since the defamation has not even happened, there would be no irreparable loss or injury occasioned to the plaintiff. The Trial Court then held that the defendants have invested nearly Rs.20 crores in the making of the film. The news articles which form the basis for filing a suit were published in October and December 2023, and the suit was filed on 11.03.2024. It considered this delay and held that substantial prejudice would be caused to the defendants if a temporary injunction was granted against them and on this count, held that the balance of convenience rests with the defendants.

SUBMISSIONS

8. Mr S. S. Kantak, learned Senior Advocate appearing for the appellant has advanced the following submissions:

- (a) He has taken me through the averments made in the plaint and the affidavit in reply and submitted that the pleadings of the defendants suggest that the film is a biographical picture (biopic); he submits that there is a clear admission in the reply at paragraphs 10 and 11 thereof that the film seeks to portray Costao's version of the events contained in the judgments. He further submits that if the film is portrayed as a biopic, it had to include and portray the fact that the plaintiff was discharged in a customs case, by a judgment of this Court in *Ciabro*

*Alemao & Ors. v. Commissioner of Customs, Mormugao Customs House & Anr*¹. He further submits that the film has to necessarily also portray and include scenes that would be reflective of the findings of this Court in a criminal case brought before the Chief Judicial Magistrate in *Union of India c. Churchill Alemao & Ors*². He would submit that the non-inclusion and portrayal in the film of the findings rendered by this Court of the innocence of the plaintiff and his deceased brother, as also the fact that the plaintiff and his other brothers were discharged in a criminal case, where the Court records that no gold was found, would result in the public carrying an impression that the plaintiff was a smuggler or indulged in such an activity. The non-inclusion of the facts/findings contained in these judgments, in the narrative of the film would result in defamation of the plaintiff.

- (b) The learned counsel submits that the right to reputation has now been recognized as a facet of the fundamental right of the citizen under Article 21 of the Constitution of India and this right has been held to be on a higher pedestal, when balanced against the right/freedom of speech claimed under Article 19 of the Constitution of India. He elaborates that the fundamental right of freedom of speech claimed in the production of a film by the defendants would be always subservient to the plaintiff's right to his reputation; From the pleadings in the reply, it is submitted, that it would be evident that the film being Costao's version of the incident referred to in the various cases, the Court would not wait until the film was published/released, but would

¹ 2017 SCC OnLine Bom 8811.

² Criminal Revision Application No. 8 of 2001, High Court of Bombay at Goa.

prevent the release of such film as it is likely to cause serious injury to the plaintiff's reputation. The learned counsel relies upon the following judgments in support of these submissions:

- (i) **Indian Express Newspapers (Bombay) Pvt. Ltd. & Anr. v. Dr. Jagmohan Mundhara & Anr.**³
- (ii) **Subramanian Swamy v. Union of India, Ministry of Law & Ors.**⁴
- (iii) **Telugu Desam Party v. Union of India**⁵

(c) It was submitted that the Suit is in the nature of a Quia Timet action, requiring a preventive injunction to be issued by the Court to restrain the likely defamation to the plaintiff from being caused, by the release of the film. The learned counsel has taken me through the various paragraphs of the judgment of this Court in *Ciabro Alemiao (supra)* wherein this Court has quashed and set aside the Order dated 14.10.1994 issued by the Collector of Customs, holding the plaintiff guilty of smuggling gold and imposing fines, and the Order dated 13.12.2004 passed by CESTAT, upholding the aforementioned order of the Collector of Customs dated 14.10.1996. He contends that in that judgment, this Court has referred to the incident of stoppage of the Contessa Car driven by the plaintiff's brother Alvernaz, the scuffle between Costao and Alvernaz and the death of Alvernaz during the scuffle, it has also concluded that no gold/contraband was found nor was such value of contraband ever determined, to enable the Customs Authorities to claim penalty from the plaintiff.

³ 1984 SCC OnLine Bom 256.

⁴ (2016) 7 SCC 221.

⁵ W.P. No. 34681 of 2023, The High Court of Telangana at Hyderabad.

Reference was also made to various passages from the judgment of this Court in *Union of India v. Churchill Alemao & Ors.* (supra) to emphasize that in a criminal case instituted under the Customs Act against the plaintiff and others, this Court has, on considering the material produced along with the charge-sheet, found that there was no evidence of recovery of any gold nor was there evidence to determine the value of such gold. The plaintiff and other accused in the case were discharged by the Chief Judicial Magistrate, which order was upheld on the basis of the aforementioned findings by this Court.

The learned counsel then submits that the trailer of the film has now been released and suggests that the film is a biopic of Costao. He further submits that the trailer discloses that the name of the film is “Costao” and does not portray or show or even in some manner refer to the specific findings of this Court in the Customs Appeal in *Ciabro Alemao* (supra) and the Criminal Revision against the order of discharge in *Union of India v. Churchill Alemao & Ors.* (supra). He has urged that even if the trailer is not part of the record of the Trial Court or this Court, reliance could be placed on the same, since it is now part of the public domain.

- (d) He further submits that even if the incident referred to in the film is restricted to the one between Costao and Alvernaz, references been made to the family of the plaintiff or to Alvernaz or to the plaintiff as being part of a gang of smugglers would entitle the plaintiff to maintain an action for damages and for defamation. He further submits that the plaintiff has a right to maintain an action against the defendants, both, in his personal capacity and in his capacity as the brother/family

member of his late brother Alvernaz. Reliance was placed by the learned counsel on *Babuji Rawji Shah v. S. Hussain Zaidi & Ors.*⁶.

- (e) The learned counsel for the appellant then submits that the plaintiff had no occasion to file any objections to the certification of the film before the Board, under Section 5-B of the Cinematograph Act, 1952 since the plaint was filed on 08.03.2024, after which a statement was made on 22.03.2024 before the Trial Court, by the defendants that they would not release the film until its production was complete. He further submits, that in any event, in terms of Section 5-B of that Act, there is no mechanism for filing objections to the certification, or for the Board to conduct a hearing of such objections.
- (f) During the course of the arguments, on 25.04.2025, the defendants produced the certificate under Section 5-B, certifying the film to be released as a “biographical film”. The certificate also states that the film was certified for “Theatrical Release”. Referring to the certificate issued by the Board, the learned counsel submits that the film has been released as a biopic film, which supports the plaintiff’s case that the same is a biopic of Costao’s version of the incident. He submits that even if the names of the characters in the film are different from that of the plaintiff or his deceased brother, if the film is Costao’s version of the incident referred to in the judgments, leaving out those parts, which in the opinion of the Courts, exonerated the plaintiff and his family, would result in a defamation of his family, as the plaintiff is a well-known public figure, who is familiar to the viewing public in Goa. He further submits that the incident being well-known, in the absence of

⁶ 2022 SCC OnLine SC 1892.

also including the findings exonerating the plaintiff of the customs and criminal case, the public would carry an impression that the plaintiff and his family were smugglers and during the incident referred to in the judgments, gold was found in the luggage compartment of the said Contessa car.

- (g) The learned counsel submits that the plaintiff does not implead publishers of the news items or make a claim for damages or seek restraint from publishing articles about the film, only because the reply of the publishers states that the news articles carried were not at their instance. He refers to the reply of the publishers to the notice issued by the plaintiff, wherein the publishers have disclosed that the source of their information was the producer of the film. According to the learned counsel, there was no cause of action against the publishers, because ultimately the news articles were taken down from the website of the publishers.
- (h) The learned counsel submits that in the light of the aforementioned submissions, and the judgments cited before the Trial Court, the finding that no prima facie case was made out is perverse and contrary, not only to the record but to the law as laid down by various Courts. The counsel submits that in action for defamation, the Courts need not wait for release of the film, but from the facts stated in the reply itself, a case for preventive injunction had been made out. It was submitted that the Court has failed to exercise its jurisdiction to grant a temporary injunction in favour of the appellant.

9. Countering these submissions, Mr V. Dhond, learned Senior Advocate and Mr Mayur Khandeparkar, appearing for the Respondents/original defendants have submitted as under:

(a) That preventive action in a suit for defamation is not maintainable before the film is released. It is submitted that unless the film is viewed by the plaintiff and by the Court, there is no material before the Court to arrive at conclusion that the film contains material that is defamatory of the plaintiff or any member of his family. Reference was made to the specific averments in the reply to contend that the defendants have considered the findings in the judgment of the Supreme Court in the *Costao Fernandes v. State*⁷ and in the two judgments of this Court in *Ciabro Alemão* (supra) and *Union of India v. Churchill Alemão & Ors.* (supra) and have used the narration in the said judgments as the base for the storyline in the film. Reference was also made to the averments in the reply wherein the defendants have stated that the film does not allege or show recovery of gold by the investigating agencies, but is a film to highlight and dramatize the travails of a customs officer named Costao Fernandes who was involved in the incident. The learned counsel submitted that the film was not a documentary but was a fictional film as is borne by the disclaimer in the film that the characters are purely fictional. That the movie is for entertainment and the storyline was inspired by the life of Costao which is referred to in the judgments and as narrated by Costao himself. It was further submitted that only a small part of the film may touch the life of the plaintiff but without referring to by name or even

⁷ (1996) 7 SCC 516.

depicting the characters with a likeness of the plaintiff or any of his family members. The learned counsel has taken me through the various paragraphs of the judgments referred to above and placed reliance on the following case law to buttress these submissions:

(i) **Sh. Raghu Nath Pandey & Anr. v. Sh. Bobby Bedi & Ors.**⁸

(ii) **Krishna Kishore Singh v. Sarla A Saraogi & Ors.**⁹

(b) The learned counsel further submitted that the balance between the fundamental right to the freedom of speech under Article 19 and the right to one's reputation and privacy under Article 21 have been considered in various judgments. Reference was made to the following judgments in particular:

(i) **Bloomberg Television Production Services India Private Limited & Ors. v. Zee Entertainment Enterprises Limited**¹⁰

(ii) **Ruba Ahmed & Ors. v. Hansal Mehta & Ors.**¹¹

(iii) **Satya Prakash Choudhry v. Yash Raj Films Private Limited**¹²

(iv) **Krishna Kishore Singh v. Sarla A Saraogi & Ors.**¹³

(c) It was then submitted that even though there may be no specific mechanism provided by the rules under the Cinematograph Act for filing of objections to an application for certification of the film under Section 5-B of the Act, nothing prevented the plaintiff to file such

⁸ CS(OS) No. 1212/2005 and IA No. 6787/2005, The Delhi High Court.

⁹ 2023 SCC OnLine Del 3997.

¹⁰ 2023 SCC OnLine SC 426.

¹¹ 2022 SCC OnLine Del 3368.

¹² Appeal from Order No. 937 of 2023 with Interim Application No. 17298 of 2023 in Appeal from Order No. 937 of 2023, The High Court of Judicature at Bombay.

¹³ 2023 SCC OnLine Del 3997.

objections, which would have been considered by the Board. It was further submitted that the provisions of Sec.5-B of that Act also empowered the Board to consider whether a film contained defamatory content which would result in rejection of such certification. Having not taken this opportunity, the Trial Court has rightly rejected the application after considering the inaction on the part of the plaintiff and the plaintiff's conduct.

The learned counsel then referred to the various averments in the plaint and the lack of any relief sought against the publishers of the articles, which primarily form the basis for filing the suit. The learned counsel pointed out that the plaint contains the extracts of those articles but does not refer to the action taken by the plaintiff against the publishers of those articles. It is further submitted that relief for an action of defamation ought to be sought in the plaint primarily against the publishers of the news articles, which is absent in the plaint. It was further submitted, that even prayer clause (b), which is not against any particular defendant, was ultimately given up/dropped. The publishers of the articles not having been arrayed as defendants in the suit, the suit itself ought not to have been entertained, much less, grant of temporary injunction on the basis of news articles which were not even based upon information given by the defendants. No notice to seize and resist from publishing articles in the news media has been issued to the publishing houses referred to in the plaint. Reference is made to the averments in the reply, which categorically deny that the news articles are based upon any interview with, or at the behest of the defendants. Reliance was

placed in support of these submissions on the judgments of *Krishna Kishore Singh* (supra), *Indian Express* (supra).

(d) The learned counsel then made reference to the judgment in *Wander Ltd. & Anr. v. Antox India Pvt. Ltd.*¹⁴ to contend that the findings of the Trial Court rendered, whilst dismissing the application for temporary injunction could not be termed as perverse or not based on the material before it. The view taken by the Trial Court was based upon the record and the conclusions can neither be termed to be arbitrary or capricious or by completely ignoring any settled principles of law regulating grant of injunctions. The learned counsel made reference to the findings in the impugned judgment and submitted that the exercise of discretion by the Trial Court whilst refusing injunction was well-balanced, and based on the principles laid down by the Supreme Court on grant of a temporary injunction. It was further submitted that the scope of appeal before this Court being very limited, this Court will not interfere with the exercise of the discretion by the Court in the first instance or substitute the view taken by that Court, contrary to the principles laid down in *Wander Ltd.* (supra).

10. The point that falls for my determination, is whether the impugned order which dismisses the Appellant's application for temporary injunction calls for any interference.

11. Before proceeding to consider the rival submissions, I must take note of certain events which have taken place subsequent to the passing of the

¹⁴ 1990 (Supp) SCC 727.

impugned order and statements made by the learned counsel, on instructions of their parties. When the matter initially came up for hearing after notice to the Respondents, on 16.10.2024, the Respondents made a statement that the production of the suit film was not complete and that there would be no possibility of release of the film at least till December 2024. Thereafter, based on this statement the matter came to be adjourned from time to time; However, subsequently, the learned counsel for the Respondent submitted that the production of the film was complete and would be submitted to the CBFC for certification, and the producers would aim for releasing the film on 01.05.2025. Further, on 25.04.2025 during the course of the arguments, the Respondents produced the certificate issued by the CBFC and confirmed that the film would be released on 01.05.2025.

During the course of hearing of the arguments, on 17.04.2025 learned counsel appearing for the appellant submitted that the trailer of the film had been released and was in the public domain. It was suggested that this Court should view the trailer which was available on the YouTube Channel, submitting that the trailer itself discloses the name of the main character to be Costao and suggests that the film was in fact portraying, in a defamatory manner, the Alemao family. On 22.04.2025, learned counsel appearing for the Respondents offered to screen the film before me for a private viewing, submitting that this Court would have the advantage of seeing the film and deciding for itself whether any part of it would constitute defamatory material in relation to the appellant. However, considering that neither the trailer nor any events which have taken place subsequent to the passing of the impugned order, and which were brought to the notice of this Court during the hearing have been made part of the record of the Trial Court either by way of

amendment or by any of the parties placing reliance on the same, I have chosen not to view the film prior to passing of this Order.

12. The Supreme Court, in *Wander Ltd.* (supra), has considered the scope and parameters of the jurisdiction to be exercised under Order 43 CPC whilst assessing the correctness of an order of grant or refusal of temporary injunction by the Trial Court. Relevant paragraphs of the judgment are quoted below:

“9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

“.....is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies".

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in

which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

.....

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 the 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. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph :*

“... These principles are well established, but as has been observed by Viscount Simon in Charles Oseption & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.”

The appellate judgment does not seem to defer to this principle.”

13. Thus, an Appellate Court would be exercising limited jurisdiction in terms of Order 43 CPC while examining the impugned order. My endeavour in examining the impugned order would not extend to reassessing the material before the Trial Court to reach a conclusion different from the one reached by that Court if the view taken is reasonably possible on the material on record. As held in *Wander Ltd(supra)*, this Court would be justified in interfering with the exercise of discretion whilst passing the impugned order, only if the discretion is shown to be exercised arbitrarily or capriciously or perversely or where it is passed ignoring settled principles of law. The impugned order would have to be thus tested within these parameters.

14. Before I proceed to consider the rival contentions of the parties and assess the impugned order on its merits, reference needs to be made to certain facts which bare the conduct of the Plaintiff before the Trial Court, as also before this Court. The suit as initially filed, alleges that the cause of action for filing of the suit first arose on 02.12.2023, 04.12.2023 and 06.12.2023 when the news articles referred to in paragraph Nos.6 and 7 of the plaint were first published. The averments in the plaint referred to the articles which are 9 in number, listed in paragraph No.6 of the plaint. According to the Plaintiff, the articles portray to the public at large that the suit film is based on the gold and drugs syndicates in the State of Goa and how the sensational incident wherein Alvernaz was involved, was portrayed. From the averments made in the plaint, though several news articles are referred to, the plaint specifically refers the two articles, one in “The Goan” newspaper and the second in the newspaper “O Heraldo”. According to the averments in the plaint, these two articles, which refer to the making of the suit film and constitute the cause for

filing the suit themselves contain a description of the film which according to the Plaintiff caused the Plaintiff's defamation.

15. It is pertinent to note that despite these specific allegations contained in the plaint, the plaint does not seek any injunctive action against the publishers of the articles nor does it implead them in the suit, even though they would be the first persons who would be responsible, if the Plaintiff's case is believed to be true, to have caused defamation. The plaint seeks a vague and general relief in prayer clause (e) which is reproduced in the application for temporary injunction as prayer clause (B) wherein a restrained order is sought against "media houses and publishers" generally from making further defamatory statements/articles in respect of the Plaintiff and the entire family, by publishing any article in relation to the suit film. This relief is however not specifically pressed for against the two publishers of the articles which the Plaintiff found defamatory and constituted the cause of action.

In fact, the record reveals that a legal notice came to be issued to "The Goan Everyday" with regard to the article dated 06.12.2023 referred in the plaint after the suit was filed (on 08.03.2024). There is no proceeding or legal notice brought on record by which the O Herald newspaper has been called upon to cease and desist from publishing defamatory articles such as the one alleged in the plaint. The only other legal notice which is to The Goan newspaper and the reply dated 02.05.2024 to that notice which is dated 05.04.2024, has been placed on record before the Trial Court; the reply is from the Editor of the Prudent Media Pvt. Ltd. None of these publishers have been proceeded against by the Plaintiff. It must be noted that the legal notices have been issued after the plaint was lodged and after the Defendants had replied to the Plaintiff's legal notice dated 20.01.2024 on 14.03.2024. Thus,

clearly, the Plaintiff had chosen not to proceed with an action for defamation against the publishers of the articles, whose contents, according to the Plaintiff, portray the film to contain defamatory statements or scenes against the Plaintiff.

16. In this context, reference is made to *Krishna Kishore Singh* (supra), in which the Delhi High Court states:

“127. The principles emanating for the above decisions may cumulatively be noted as under:

(i) If a person's name or likeness is used, without his consent, for any purpose, or his life story is written or published without his consent, the person's right to privacy is violated.

(ii) In such an event, the remedy with the person is to sue for damages, and not to seek injunction of the offending publication.

.....

(vii) Where the article, or publication, or movie, is based on prior published material, available in the public domain, which the plaintiff had not chosen at that time to impugn or challenge, no Injunction could be sought by the plaintiff against the subsequent publication or movie, which was merely based thereon. That the prior publications, in which the information figured, were not public documents stricto sensu, made no difference. What was relevant was that the information was available in, and taken from, the public domain.”

17. Following the principles laid down in *Krishna Kishore Singh* (supra), in the facts of the present case, the Plaintiff having not chosen to impugn the publications which formed the source material for the allegation of defamation, and there being no other material, atleast at present, on the record of the Trial Court which could be the basis, for holding the same to be

defamatory of the Plaintiff, prima facie no case was made out for grant of a preventive injunction.

Further, though in the reply of The Goan newspaper dated 02.05.2024, it is stated that the articles were based on the information provided by the producer of the film, the reply denies that the article portrays the Plaintiff as a villain. The pleadings in the affidavit in reply specifically deny that the Defendants have at any point of time communicated with any of the media houses who have published the articles. The Defendants have also claimed that they have not published any material in relation to the film which could occasion any prejudice to the Plaintiff or his family. Prima facie therefore, there was no material before the Trial Court to hold that the Defendants had published any material containing information regarding the film, which could be termed defamatory. The Trial Court has specifically arrived at a finding at paragraph Nos.51 to 57 that there is no material to conclude that any of these articles, which the Plaintiff claims contend defamatory basis were based on information or any communication issued by the Defendants, the finding appears to be based on whatever material is on record and cannot be termed as perverse or not borne from the record.

18. It is the submission of the Appellant that the Plaintiff need not wait for the film to be released to take action for defamation. The submission of the Plaintiff appears to be based upon the premise that the right to one's reputation under Article 21 would stand on a much higher footing than the rights conferred under Article 19 in the freedom of speech, as that freedom would be curtailed if the material sought to be published infringes the Plaintiff's reputation. In the *Subramanian Swamy* (supra), the Supreme

Court was considering a case where the constitutional validity of Section 499 and Section 500 (defamation) of the Indian Penal Code was sought to be challenged on the ground that it was violated of the freedom of speech guaranteed to the Appellant under Article 19(1) (a) of the Constitution of India. Whilst considering the balance between a citizen's fundamental right/ freedom of speech and a citizen's right to reputation under Article 21 of the Constitution of India, the Supreme Court has made the following observations:

"49. In Vishwanath Agrawal v. Sarla Vishwanath Agrawal³⁴ this Court observed that reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is a revenue generator for the present as well as for posterity. In Umesh Kumar v. State of A.P.³⁵ the Court observed that: (SCC p. 604. para 18)

"18.... Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property [and as such] it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. The International Covenant on Civil and Political Rights, 1966 recognises the right to have opinions and the right to freedom of expression under Article 19 is subject to the right of reputation of others."

(emphasis in original)

50. In Kishore Samrite v. State of Uttar Pradesh and others³⁴, while dealing with the term "person" in the context of reputation, the Court after referring to the authorities in Kiran Bedi (supra) and Nilgiris Bar Association v. T.K. Mahalingam and another³⁵ held that:-

"58. The term "person" includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name,

the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. "Reputation" is an element of personal security and is protected by the Constitution equally with the right to enjoyment of life, liberty and property. Although "character" and "reputation" are often used synonymously, but these terms are distinguishable. "Character" is what a man is and "reputation" is what he is supposed to be in what people say he is. "Character" depends on attributes possessed and "reputation" on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present."

51. In *Om Prakash Chautala v. Kanwar Bhan and others*³⁶, it has been held that:

"1..... Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on posterity. It is a nobility in itself for which a conscientious man would never barter (2013) 2 SCC 398 (1998) 1 SCC 550 (2014) 5 SCC 417 it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities. When reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the downtrodden and the privileged. The aroma of reputation is an excellence which cannot be allowed to be sullied with the passage of time. It is dear to life and on some occasions it is dearer than life. And that is why it has become an inseparable facet of Article 21 of the Constitution. No one would like to have his reputation dented, and it is perceived as an honour rather than popularity."

52. In *State of Gujarat v. High Court of Gujarat*³⁹, the Court opined: (SCC p. 434, para 99)

"99.... An honour which is lost or life which is snuffed out cannot be recompensed...."

....

133. In *Charu Khurana and others v. Union of India and others*¹²⁴, it has been ruled that dignity is the quintessential quality of a personality, for it is a highly cherished value. Thus perceived, right to honour, dignity and reputation are the basic constituents of right under Article 21. Submission of the learned counsel for the petitioners is that reputation as an aspect of Article 21 is always available against the highhanded action of the State. To state that such right can be impinged and remains unprotected inter se private disputes pertaining to reputation would not be correct. Neither this right be overridden and blotched notwithstanding malice, vile and venal attack to tarnish and destroy the reputation of another by stating that curbs and puts unreasonable restriction on the freedom of speech and expression. There is no gainsaying that individual rights form the fundamental fulcrum of collective harmony and interest of a society. There can be no denial of the fact that the right to freedom of speech and expression is absolutely sacrosanct. Simultaneously, right to life as is understood in the expansive horizon of Article 21 has its (2015) 1 SCC 192 own significance. We cannot forget the rhetoric utterance of Patrick Henry:-

“Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death!”

135. The thoughts of the aforesaid two thinkers, as we understand, are not contrary to each other. They relate to different situations and conceptually two different ideas; one speaks of an attitude of compromising liberty by accepting chains and slavery to save life and remain in peace than to death, and the other view relates to “qualified civil liberty” and needed control for existence of the Patrick Henry, *Speech in House of Burgesses on 23.3.1775 (Virginia)* Alfred Howard, *The Beauties of Burke* (T. Davison, London) 109 society. Contexts are not different and reflect one idea. Rhetorics may have its own place

when there is disproportionate restriction but acceptable restraint subserves the social interest. In the case at hand, it is to be seen whether right to freedom and speech and expression can be allowed so much room that even reputation of an individual which is a constituent of Article 21 would have no entry into that area. To put differently, in the name of freedom of speech and expression, should one be allowed to mar the other's reputation as is understood within the ambit of defamation as defined in criminal law. Balancing of Fundamental Rights.

137. Having bestowed our anxious consideration on the said passage, we are disposed to think that the above passage is of no assistance to the petitioners, for the issue herein is sustenance and balancing of the separate rights, one under Article 19(1)(a) and the other, under Article 21. Hence, the concept of equipoise and counterweighing fundamental rights of one with other person. It is not a case of mere better enjoyment of another freedom. In Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and others v. The State of Gujarat and others¹²⁷, it has been observed that a particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right (1975) 1 SCC 11 by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between competing claims of different interests. In Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others¹²⁸ the Court has ruled that Articles relating to fundamental rights are all parts of an integrated scheme in the Constitution and their waters must mix to constitute that grand flow of unimpeded and impartial justice; social, economic and political, and of equality of status and opportunity which imply absence of unreasonable or unfair discrimination between individuals or groups or classes. In St. Stephen's College v. University of Delhi¹²⁹ this Court while emphasizing the need for balancing the fundamental rights observed that it is necessary to mediate between Article 29(2) and

Article 30(1), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change.

144. The aforementioned authorities clearly state that balancing of fundamental rights is a constitutional necessity. It is the duty of the Court to strike a balance so that the values are sustained. The submission is that continuance of criminal defamation under Section 499 IPC is constitutionally inconceivable as it creates a serious dent in the right to freedom of speech and expression. It is urged that to have defamation as a component of criminal law is an anathema to the idea of free speech which is recognised under the Constitution and, therefore, criminalisation of defamation in any form is an unreasonable restriction. We have already held that reputation is an inextricable aspect of right to life under Article 21 of the Constitution and the State in order to sustain and protect the said reputation of an individual has kept the provision under Section 499 IPC alive as a part of law. The seminal point is permissibility of criminal defamation as a reasonable restriction as understood under Article 19(2) of the Constitution. To elucidate, the submission is that criminal defamation, a pre-Constitution law is totally alien to the concept of free speech. As stated earlier, the right to reputation is a constituent of Article 21 of the Constitution. It is an individual's fundamental right and, therefore, balancing of fundamental right is imperative. The Court has spoken about synthesis and overlapping of fundamental rights, and thus, sometimes conflicts between two rights and competing values. In the name of freedom of speech and expression, the right of another cannot be jeopardised. In this regard, reproduction of a passage from Noise Pollution (5), In re¹³⁷ would be apposite. It reads as follows: (SCC p. 746, para 11)

"11.... Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of

loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. Nobody can indulge in aural aggression. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. We need not further dwell on this aspect. Two decisions in this regard delivered by the High Courts have been brought to our notice wherein the right to live in an atmosphere free from noise pollution has been upheld as the one guaranteed by Article 21 of the Constitution. These decisions are Free Legal Aid Cell Shri Sugan Chand Aggarwal v. Govt. (NCT of Delhi) 138 and P.A. Jacob v. Supt. of Police 39. We have carefully gone through the reasoning adopted in the two decisions and the principle of law laid down therein, in particular, the exposition of Article 21 of the Constitution. We find ourselves in entire agreement therewith."

We are in respectful agreement with the aforesaid enunciation of law. Reputation being an inherent component of Article 21, we do not think it should be allowed to be sullied solely because another individual can have its freedom. It is not a restriction that has an inevitable consequence, which impairs circulation of thought and ideas. In fact, it is control regard being had to another person's right to go to court and state that he has been wronged and abused. He can take recourse to a procedure recognised and accepted in law to retrieve and redeem his reputation. Therefore, the balance between the two rights needs to be struck. "Reputation" of one cannot be allowed to be crucified at the altar of the other's right of free speech. The legislature

in its wisdom has not thought it appropriate to abolish criminality of defamation in the obtaining social climate.”

145. In this context, the pronouncement in Shreya Singhal (supra) becomes significant, more so, as has been heavily relied upon by the learned counsel for the petitioners. In the said case, constitutional validity of Section 66-A and ancillary thereto Section 69-A of the Information Technology Act, 2000 was challenged on the ground that they infringe the fundamental right to free speech and expression and are not saved by any of the eight subjects covered in Article 19(2). The two-Judge Bench has expressed the view that both U.S. and India permit freedom of speech and expression as well as freedom of the press. So far as abridgement and reasonable restrictions are concerned, both the U.S. Supreme Court and this Court have held that a restriction in order to be reasonable must be narrowly tailored or narrowly interpreted so as to abridge or restrict only what is absolutely necessary. The Court has observed that only when it comes to the eight subject matters in Article 19(2) that there is vast difference. The Court has further observed thus:-

“... In the US, if there is a compelling necessity to achieve an important governmental or societal goal, a law abridging freedom of speech may pass muster. But in India, such law cannot pass muster if it is in the interest of the general public. Such law has to be covered by one of the eight subject-matters set out under Article 19(2). If it does not, and is outside the pale of Article 19(2), Indian courts will strike down such law.”

19. In Telugu Desam Party and the Union of India (supra), a Single Judge of the Telangana High Court hearing a Writ Petition challenging a certificate issued by the CBFC under Section 5-B of the Cinematograph Act, 1952, has considered the balance of the fundamental rights under Article 19 of the Constitution of India against those conferred under Article 21 (Right to

Reputation). That was a case where a certificate under Section 5-B was issued to view the film after imposing a few cuts to certain scenes in the Court before its release. In a challenge to the certification, the Appellant, a political party claimed that its reputation had been diminished and it had been defamed by the depiction of certain parts in the film to be released that held the Appellant in a poor light in the eyes of public. Considering the question of to what extent curbs should be imposed on a freedom of speech to ensure that the right to reputation under Article 21 are not infringed, the Single Judge has made the following observations:

“33. Article 19 of the Constitution of India deals with protection of certain rights regarding Freedom of Speech etc., and Article 19(1)(a) indicates that all citizens shall have the right to Freedom of Speech and Expression, Article 19(2) was Amended by the 1st Amendment to the Constitution on 18.06.1951 w.e.f., 26.01.1950 and after the Amendment the new incarnation is as follows :

“19 (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence”.

34. The Apex Court in Subramaian Swamy Vs. Union of India reported in (2016) 7 SCC 221 held that though Article 19(1)(a) of the Constitution of India gives a fundamental right of speech and expression yet it is circumscribed with certain reasonable restrictions, as the freedom of speech cannot be regarded as so righteous that it would make the reputation of another individual absolutely ephemeral. It is further held that the Court when called upon to decide case of such nature, a balance between the fundamental rights and the reasonable

restrictions imposed by the statutory provisions is required to be made in this regard. It is no doubt true that the right to freedom of speech and expression is always regarded not only as a Constitutional Right but a right inhered in every human yet, such right is not absolute as it is circumscribed with reasonable restrictions. It is thus held that the balancing of a fundamental right with the reasonable restriction is an inviolable constitutional necessity.

.....

35. Reputation being an inherent component of Article 21, "Reputation" of one cannot be allowed to be crucified at the altar of the others right of free speech.

36. It has been specifically contended by the Learned Senior Counsel appearing on behalf of the Petitioner that the Petitioner herein had been demeaned and ridiculed through propaganda material, trailers and teasers. Through posters 2 members of the Petitioner party, herein had been projected as buffaloes which is in violation of Section 5B of the Cinematograph Act and Guideline 2(xviii). The same is evident in the report of the Examining Committee dated 01.11.2023 and also in the letter dated 07.11.2023 addressed by the 4th respondent to CEO.

37. The right to preserve ones reputation is acknowledged as a right in rem i.e., a right against the entire world. Reputation of an individual is an important part of ones life. The observations from an American decision in B.F.Marion Vs. Minnie Davis reported in 55 American LR 171 reads as follows :

"The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to enjoyment of life, liberty and property".

40. It is thus amply clear that one is entitled to have and preserve one's reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter.

42. This Court opines that film makers have no unbridled right to tarnish the image and reputation of any individual or political party or institution. Reputation is the only jewel that cannot be bought and is built over the years and a person who is robbed of it is no less than a destitute."

20. This judgment was affirmed by the Division Bench of the Telangana High Court in Writ Appeal Nos. 56 and 59 of 2024, in which it considered the scope and ambit of Section 5B of the Cinematograph Act. Section 5B of the said Act reads as under :

"5-B. Principles for guidance in certifying films. –

(1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of ²[the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of Court or is likely to incite the commission of any offence.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition."

One of the principles to be considered by the Board while certifying a film for public exhibition it is that the film should not be, in the opinion of

the authority, one which involves defamation, amongst various other parameters.

The Division Bench then goes to affirm, after considering these provisions, that a person whose right of reputation is affected or infringed (including by defamation) has a locus standi to maintain a petition against the certification of a film to be released for public viewing. In deciding this issue, the Division Bench of the Telangana High Court has concluded thus :

“ 32. For the reasons assigned by us in the preceding paragraphs, we agree with the conclusions arrived at by the learned Single Judge. The freedom of expression is a fundamental right in a democratic society which is governed by a rule of law. The Producer has a fundamental right under Article 19 of the Constitution of India which permits him to allude to true incidents with his perspective. The producer has invested money for producing the film and is also required to book the theatres in advance to ensure the release of the movie. The Chairman of the CBFC has already initiated the action for constitution of the Revising Committee. Therefore, in the facts and circumstances of the case, it is directed that the Chairman shall re-constitute the Revising Committee, if not already constituted, and the Revising Committee shall view the movie and duly communicate its decision for certification of the film to the appellants on or before 09.02.2024.”

21. In the case of **Bloomberg Television Production Services India Private Limited & Ors. v. Zee Entertainment Enterprises Limited**¹⁵, the Supreme Court considered the challenge to an order of temporary injunction in a suit concerning defamation in a media platform. Here again, the Supreme Court, considered the balance required to be maintained, while granting or refusing such preventive orders, between the fundamental right / freedom of speech enjoyed by the journalist and fundamental right to one's reputation guaranteed under Article 21. In considering this issue it has held as under:

¹⁵ 2023 SCC OnLine SC 426.

*“7. 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. The constitutional mandate of protecting journalistic expression cannot be understated, and courts must tread cautiously while granting pre-trial interim injunctions. The standard to be followed may be borrowed from the decision in *Bonnard v. Perryman*. This standard, christened the 'Bonnard standard', laid down by the Court of Appeal (England and Wales), has acquired the status of a common law principle for the grant of interim injunctions defamation suits. The Court of Appeal in *Bonnard* (supra) held as follows:*

“But it is obvious that the subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess/and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim Injunctions.”

(emphasis supplied)

....

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. 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.

10. Increasingly, across various jurisdictions, the concept of 'SLAPP Suits' has been recognized either by statute or by courts. The term SLAPP stands for 'Strategic Litigation against Public Participation and is an umbrella term used to refer to litigation predominantly initiated by entities that wield immense economic power against members of the media or civil society, to prevent the public from knowing about her participating in important affairs in the public interest. We must be cognizant of the realities of prolonged trials. The grant of an interim injunction, before the trial commences, often acts as a 'death sentence' to the material sought to be published, well before the allegations have been proven. While granting ad-interim injunctions in defamation suits, the potential of using prolonged litigation to prevent free speech and public participation must also be kept in mind by courts.

11. The order of the trial Judge does not discuss, even cursorily, the prima facie strength of the plaintiff's case, nor does it deal with the balance of convenience or the irreparable hardship that is caused. The trial Judge needed to have analysed why such an ex parte injunction was essential, after setting out the factual basis and the contentions of the respondent made before the trial Judge. The trial Judge merely states, in paras 7-8. that the court has gone through the record available as on date and noticed certain precedents where an ad-interim injunction was granted. Without even cursorily dwelling on the of the complaint, the ad-interim injunction granted by the trial amounts to unreasoned censorship which cannot be countenanced."

22. Thus, the conclusion which can be drawn from the aforesaid case law are the following:

a. The right to one's reputation is guaranteed to every citizen under Article 21 of the Constitution of India, and it forms an integral facet of the right to life.

b. That Court's granting order of temporary injunction to restrain publication of material claimed to be defamatory or claimed to diminish the reputation of a person must strike a balance between the freedom of speech guaranteed to the publisher and the right to reputation guaranteed to a citizen claiming such right; the right to reputation standing on a higher pedestal as compared to the freedom of speech.

c. Whilst considering whether to grant an interim order of restraining publication of any material through print or film medium, it is necessary for the Court to consider whether the Claimant having such right to reputation has established the content of the publication (in this case the suit film) to be malicious and palpably false.

d. The concept of 'SLAPP Suits' ('Strategic Litigation against Public Participation') has been recognized either by statute or by courts. While granting ad-interim injunctions in defamation suits, the potential of using prolonged litigation to prevent free speech and public participation must also be kept in mind by courts.

23. In the facts of the present case, as pleaded in the plaint and the reply, the injunction sought is to restrain release of a film; neither the Plaintiff nor the Trial Court have viewed the film to be able to conclude that the same

contains scenes which defame the Plaintiff or members of his family and depict the Plaintiff as a villain or a smuggler or a person involved in such activity, and thus diminish his reputation in the eyes of public. The Plaintiff is also not able to plead in the plaint that the film contains such scenes that would be considered inserted by the producers with a malicious intent or whose content is palpably false in relation to the Plaintiff. The allegations in the plaint are entirely based on news items which have been denied by the Defendants to be at their behest. The findings of the Trial Court in this regard, which are found in paragraph No.50 of the impugned order, are based on the correct premise that the injunction sought is on the assumption that the film would be defamatory of the Plaintiff or his family.

24. In the case of *Satya Prakash Choudhry v. Yash Raj Films Private Limited*¹⁶, the Bombay High Court, whilst considering an appeal rejecting an interim order of injunction to restrain the release of a film, has also considered the stage at which such an application for injunction ought to be considered i.e. whether the same lies after release of the film. Relevant paragraphs are quoted below:

“18. Insofar as the Appellants' submission that the Appellants given the facts of the present case were entitled to a pre-screening of the web series in order for the Appellants to ascertain as to whether the web series was prejudicial to the Appellants' interest, he submitted that the Appellants had no such right given the web series was the property of the Respondent. He then reiterated that the web series was a work of fiction which was only inspired by true events. He submitted that the web series was not a documentary or a narration of true events, hence the Appellants had no such right to a pre-screening thereof. He submitted that the Appellants were neither named and/or identified in

¹⁶ Appeal from Order No. 937 of 2023 with Interim Application No. 17298 of 2023 in Appeal from Order No. 937 of 2023, The High Court of Judicature at Bombay.

the said web series nor were the Appellants attributed with the blame of causing the gas leak. Crucially he submitted that to permit a pre-screening would lay down a dangerous precedent as in every work of fiction any party who claimed to be affected by such work would then similarly demand a pre-screening. Mr. Malhotra in support of his contention that the prayer for a pre-screening in the facts of the present case was wholly misconceived, placed reliance upon a judgment of the Hon'ble Delhi High Court in the case of Ruba Ahmed & Ors. Vs. Hansal Mehta & Ors in which the Hon'ble Delhi High Court held thus.-

“83. Much has been argued about the adamancy of the defendants to not give a pre-screening of the movie to the plaintiffs. It is argued that such adamancy only confirms the apprehensions of the plaintiffs of the movie being derogatory and defamatory towards two daughters of the plaintiffs. However, this argument again does not hold any merit for the simple reason that if any aspect of the movie despite the assurances and the disclaimer given by the defendants is found to be defamatory, the remedy can still be sought by the plaintiffs after the movie is released. No balance of convenience is made out in favour of the Plaintiffs”

Basis this he submitted that the question of granting any pre-screening did not arise. Basis the above, he submitted the present Appeals ought to be dismissed.

19. After having heard learned counsel for the parties as also considering the case law cited. I have no hesitation in dismissing both Appeals for the following reasons viz.

i. It is well settled that those seeking to injunct the release of a film or work of a like kind must necessarily approach the Court with expedition and not at the eleventh hour. It is also important to note that in the present case, the Appellants are seeking to stay the release

of the web series not on the basis of any action in copyright etc. but solely on the ground that airing such web series could potentially cause grave prejudice to the Appellants in pending legal proceedings. In this context it is crucial to note that the Appellants were clearly aware as far back as 25th November 2022 that the Respondent was producing and releasing the web series titled "The Railway Men- The Untold Story of Bhopal 1984". The Respondent in terms in its letter dated 25th November 2022 specifically informed the Appellants as follows, viz.

"3. We state that we have produced the web series - The Railway Men- The Untold Story of Bhopal 1984, we have produced this Series based upon a story that has been created and inspired/derived from material that is available in the public domain. Such material contains accounts of events that unfolded during the Bhopal Gas Tragedy of 1984. (Incident). In creating the Series YRF has taken due care in portraying the Incident based on the factual material available in the public domain. YRF has collated and reviewed multiple non-proprietary and non-confidential resources such as articles, papers, books, etc., of Indian and foreign origin/publication to create the Series, all of which form a part of the public domain and are already readily available to the public at large over the last 3 decades."

The Appellants were thus put to notice that the web series would contain accounts of the events that unfolded during 1984 gas leak. Therefore, the Appellants contention that it was only upon viewing the trailer of the web series that the Appellants became aware that the same contained a depiction of events/cause leading upto the gas leak is plainly untenable. The Appellants were aware of and thus ought to have moved earlier, if they were likely to be so aggrieved by such portrayal of events. The did not.

ii. Additionally, the entire premise for seeking a stay of the release of the said web series is the same may adversely affect the Appellants'

legal proceedings. This is prima facie untenable for three reasons. (a) that the Appellant already stand convicted in connection with the Bhopal Gas Tragedy (b) the Trial having come to an end in the year 2010, the contents of the trial and judgement were available in the public domain and (c) the Learned Counsel for the Respondent has produced the disclaimer which will precede the airing of each episode which specifically caveats " This series is a work of fiction, inspired by real events". Given this, I find that the Appellants have, in my view at this stage, not satisfied the very high threshold test required to stay the release of the said web series.

Also, no case ever suggesting any harm or prejudice is likely to be caused to the Appellants has been made out. Also I must note here that for the Appellant to be entitled to an injunction at this stage, it was incumbent upon the Appellants to have apart from acting expeditiously to have also made out a very strong and compelling, prima facie case that the web series contains defamatory, slanderous, or libellous material. In the present case, it was not even the contention of the Learned Counsel that the web series was in any manner defamatory etc., of the Appellants the only submission was that the portrayal of the cause/events surrounding the gas leak would adversely affect the Appellants in their legal proceedings. Such a contention for the reasons noted above, is plainly untenable. It cannot be disputed that the Bhopal Gas Tragedy was a most terrible and unfortunate event which made headlines and continued to remain in the news not only Nationally but also Internationally for several years. The gas leak and the events that surrounded it have been discussed and examined over the years and form the basis of a host of material which includes documentaries, books, article, films, videos etc. all of which are in the public domain. Hence even assuming that the web series touches upon this aspect in passing, the Appellants can have no right to an injunction staying the release of the web series on this count.

iv. Also, the Appellants insistence on a pre-screening of what is stated to be a "a work of fiction, inspired by real events" is untenable. The web series is neither a documentary or narration of true facts. It is simply stated to be inspired by true events which I have noted above, are all in the public domain. The right to the Appellants to have pre-screening of a fictional work belonging exclusively to the Respondent is indeed untenable. In the event the Appellant is in any manner aggrieved by the web series or feels defamed etc, after it is aired the Appellants have their remedies in law to seek damages, etc."

25. In **Ruba Ahmed & Ors. v. Hansal Mehta & Ors.**¹⁷, the Delhi High Court has considered whether an order of temporary injunction to restrain release of a film before it has been viewed by the public, could be granted on the surmise that the content of the film was defamatory in nature. *Ruba Ahmed* (supra) was considered by this Court whilst dismissing the appeal in the case of *Satya Prakash Choudhry* (supra), and the relevant portions of the judgment are quoted below:

"73. The third aspect which has been agitated is defamation. Defamation of a deceased person does not give rise to a civil right of action and common law in favour of the surviving family or relatives who are not themselves defamed. A libel on the memory of the deceased person is not deemed to inflict on the surviving relatives of any such legal damage as sustained a civil action for defamation. The defamatory matter must be published concerning the plaintiff. As a matter of sound public policy, malicious defamation of the memory of a dead is condemned as an affront to the general sentiments of morality and decency, and the interest of society demand its punishment through the criminal courts but the law does not contemplate the offence as causing any special damage to another individual, though

¹⁷ 2022 SCC OnLine Del 3368.

related to the deceased, and therefore, it cannot be made the basis for recovery in a civil action. Where one is supposed to stand upon his own merits and where success or failure is entirely dependent upon the accidents of rank of family connection. A defamation of such character however grievous or disturbing can afford no injury that can be measured by a pecuniary standard.

....

78. The defamation, as already discussed above, is a personal right and is not pre-emptive in nature. Without having seen the movie and without there being any basis, the plaintiffs have not been able to explain as to which aspect of the movie is defamatory. The defamation essentially can be asserted only after the movie has been released.

79. In Flynn v. Higham³⁰, Court of Appeal of California, Second District, Division one, held that where the plaintiffs had filed a complaint captioned "defamation of character against the publishing company and various Doe's", wherein the deceased father of the plaintiff was described as homosexual and a Nazi Spy. The theories for recovery of damage was propagated as defamation, intentional infliction of emotional distress and invasion of privacy. It was reaffirmed and reiterated that defamation of a deceased person does not give rise to a civil right of action and common law in favour of family members; libel on a memory of a deceased person is not deemed to inflict on the surviving relatives of the deceased any such legal damage as will sustain an action for defamation.

80. The plaintiffs have not been able to show that there is any prima facie case in their favour for seeking the injunction on any of the aspects agitated by them.

...

82. Much has been argued about the adamancy of the defendants to not give a pre-screening of the movie to the plaintiffs. It is argued that such adamancy only confirms the apprehensions of the plaintiffs of the movie being derogatory and defamatory towards two daughters of the plaintiffs. However, this argument again does not hold any merit for the simple reason that if any aspect of the movie despite the assurances and the disclaimer given by the defendants is found to be defamatory, the remedy can still be sought by the plaintiffs after the movie is released. No balance of convenience is made out in favour of the plaintiffs.”

26. The view taken by the Bombay High Court and Delhi High Court, respectively in *Satya Prakash Choudhry* (supra) and *Ruba Ahmed* (supra) support the view taken by me in the preceding paragraphs, that the relief sought by the Plaintiff in the present suit, and more so for a temporary injunction in those terms, is premature and may be claimed only after viewing the film. Presently, the entire action is founded upon newspaper articles and articles in the electronic media and based upon the contentions in the reply of the Defendants; it is only after the film is released, and if the plaint is amended and injunctive action sought to restrain further public viewing of the film on allegation that contains defamatory and libellous material, could the Plaintiff maintain such an action.

27. Further, the case of the Plaintiff, though not so clearly stated in the plaint, appears to be that the film, which is yet to be released, if viewed by the public, would give them an impression that, according to Costao's version of the incident referred to in various judgments of the Courts, the Plaintiff would be painted as a smuggler of gold and part of a gold syndicate and his reputation would be consequently sullied. His submission appears to be that the unreleased film, according to the affidavit-in-reply contains only one

version of the incident lifted from the judgment of the Supreme Court in *Costao Fernandes* (supra) and a part of the judgment of this Court in *Union of India v. Churchill Alemao & Ors.* (supra) and does not depict the fact that the Plaintiff and his other family members were discharged of criminal offence of smuggling under the Customs Act which was ultimately upheld by this Court, and it further does not depict or portray in its various scenes the fact that the Plaintiff was exonerated in a Customs Appeal, *Ciabro Alemao* (supra), of all charges under the Customs Act.

28. The judgment of the Supreme Court in *Costao Fernandes* (supra), in paragraph No.3 thereof, describes the incident in question. The incident was so described to decide whether the Customs Officer Costao was entitled to claim protection against initiation of a criminal trial under Section 155 Cr.P.C. for causing the death of Alvernaz and whether his attempt to stop the vehicle involved in smuggling activities and the death caused due to resistance by the driver of the vehicle in the scuffle that ensued was part of and in discharge of his official duties.

In the judgment, the Supreme Court refers to Costao, the Customs Officer as a valiant and dutiful officer, who risked his life to fight smugglers, one of whom was in the car involved in the incident. The judgment further records that the result of the incident was smuggling of gold worth Rs.8 Crores was prevented. The judgment further records that the reward for this Officer was having to face prosecution under Section 302 of IPC at the behest of CBI. It further records that a biased investigation at the hands of CBI, which the judgment suggests was because the deceased was the brother of the one time Chief Minister of Goa.

29. In *Union of India vs. Churchill Alemao*(supra), this Court, whilst hearing a criminal revision by the Customs Department, challenging an order of discharge in favour of the Plaintiff for an offence punishable under Section 135(1)(i) of the Customs Act, has upheld the discharge of the Plaintiff from the case. The facts of the incident, the same one referred to by the Supreme Court in *Costao Fernandes* (supra) were recorded with some details by referring to the evidence of witness PW-5 Costao himself. In the narration, the Court records that the brother of the Plaintiff Joaquim and Ciabro was seen along with late Alvernaz on the beach from where certain boxes were landed, which according to Costao, later in the incident contained gold. From Costao's evidence, the Court records that after the scuffle in the car Costao opened the luggage compartment and took out one gold biscuit from one of the battery like boxes and showed the same to the crowd assembled at the spot. This Court ultimately held that the prosecution had not established that the two cars involved belonged to the Accused nor was there even prima facie evidence to indicate that the boxes contained gold biscuits. It was held that Costao had not given the details of the marking of the gold biscuits nor was his evidence that he had shown the gold biscuit to people assembled at the spot corroborated by any other evidence. The Court also held that Costao, not being an expert at valuing the gold involved in the incident, could not establish whether in fact the biscuit shown by him was made of gold.

30. In *Ciabro Alemao* (supra), a Division Bench of this Court was hearing several customs appeals, including the one filed by the Plaintiff, against orders of the CESTAT holding the Plaintiff and some of his family members to be liable to pay penalty for improper importation of goods (held to be gold by

the CESTAT) under Section 112 of the Customs Act. The description of the incident which has been referred to by two Courts on earlier occasions, has also been referred to in paragraph 2 of the judgment. In fact, a reading of paragraph 2 of the judgment refers to the factual background of the appeals “like a script for a high-octane action movie”. Ultimately, the customs appeals were allowed holding that from the evidence and material before the Customs Authorities, there was no proof of and “gold” having been smuggled by the Plaintiff or his family members, nor was there proof, material on record of the value of such “gold”. The judgment in fact holds that there was no gold ever confiscated in the case.

31. It is the submission of the Plaintiff that if the film which is yet to be released, does not include scenes that would inform the viewers that the Plaintiff was in fact discharged of offences for smuggling of gold and later on exonerated in the Customs Case, wherein the Court records that no gold was found, the absence of such scenes would amount to distortion of the real events and would portray to the public, the image of the Plaintiff as a gold smuggler or would diminish his reputation. The submission made seeks an order of injunction to restrain the release of the film until the Defendants would include such scenes to portray the Plaintiff as someone who was exonerated of all these charges. The Plaintiff claims that from the storyline of the film as contained in the media reports and based upon averments made in the reply, the film has skipped depicting all these facts.

32. The contention of the Defendants in the affidavit-in-reply are that the storyline of the film is inspired by the life of Costao and are based on the contents of the judgment of the Supreme Court in *Costao Fernandes* (supra).

The reply further claims that the film has only taken inspiration from the incident but has fictionalised the incident (which consists of seven parts referred to in paragraph 12(d) of the reply), in the film. It is further stated in the reply that the film also partly contains a narrative based on Costao's version of these events, with creative liberties of fictionalisation and dramatization, which is permissible at law. By way of abundant caution, since the film is based on the life of Costao, to avoid any action at Costao's behest for breach of his privacy, the producers have purchased the rights, from Costao to make the film. The reply also claims that an adequate disclaimer has been issued along with the film.

33. For consideration whether the Plaintiff has made out a prima facie case, the Trial Court was required to examine the cause for filing the case and counterbalance this cause with the rights of the producers (the Defendants) to publish a film which the producers claim is a work of fiction and a dramatization of an incident referred to in Court proceedings. The Trial Court was required to consider, in view of the law laid down and referred to above, whether a prima facie case was made out for the grant of injunction and to what extent the order of injunction infringed upon the Defendants' freedom of speech. As held by me earlier, the Plaintiff has not made out any prima facie case and spelt out in what manner his reputation has been affected, based upon news articles which are, not proved to be at the behest and on information given by the Defendants. The film is yet to be released and the Plaintiff is basing his claim on a conjecture that the film would contain defamatory material.

34. The case for an injunction would be required to be based in the pleading of the plaint and not by reading of the reply/defence of the Defendants. Nevertheless, atleast at this stage, before the release of the film, the Defendants have set out a case that the film is a work of fiction, dramatizing an incident which is described in records of various Courts. The Defendants also claim that the film is based on inspiration derived from the facts stated in Court records and from the version of the incident stated by Costao. The claim is that the film is a work purely of fiction and dramatizing the incident to give it a certain entertainment value for viewers. There are enough of safeguards also placed in the form of a disclaimer. Nothing is shown on record to draw any likeness of any character in the film, which is not yet released, or for the Plaintiff to believe from any material that the character has a likeness similar to the Plaintiff or any members of his family.

35. The findings of the Trial Court on this aspect which are recorded in paragraphs 46, 49 and 57 are wholly based on the material on record and the pleadings of the parties. They do not call for any interference in appeal as they cannot be termed perverse. The findings are based on the law, reference to which has been made by me in the preceding paragraphs and have also been referred to by the Trial Court which has applied the principles contained therein whilst deciding the application.

36. For the reasons stated above the appeal is dismissed.

VALMIKI MENEZES, J.