

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.1241 OF 2013
IN
SUIT NO.409 OF 2013**

Parle Agro Pvt. Ltd.	...	Applicant/Plaintiff
versus		
Praveen Kumar and Ors.	...	Defendants

Mr. Pruthviraj N.K., with Mr. Kathleen Lono, Ms. Suchita Thjapar i/by M/s. Khaitan and Co., for Plaintiff.

None for Defendant Nos.1 and 2.

Mr. Nikhil Sakhardande with Mr. Ram Kakkar i/by M/s. AZB and Partners, for Defendant No.3.

Ms. Rhia Marshall Banerjee with Ms. Vaishnavi Chillakuru i/by M/s. Economic Laws Practice, for Defendant No.4.

Mr. Sajan Poovayya, Senior Advocate with Mr. Bharadwaja Ramasubramaniam R. with Ms. Lara Jesani, Mr. Priyank Kapadia, Mr. Shrey Fatterpekar i/by M/s. M. Mulla and Associates, for Defendant No.5.

CORAM: S.J. KATHAWALLA, J.

DATE: 19th AUGUST, 2015

PC.:

1. Heard the learned Advocates for the parties.
2. On 29th April, 2013 this Court had passed the following order :

“(1) An application is made for interim reliefs in terms of prayers (a) to (e) of the Notice of Motion.

2) Though notice has been served on Defendant Nos 1 to 4, none appear for the Defendants.

3) The grievance of the Applicant/Plaintiff is that they are a well

known manufacturer of ready to serve fruit beverages, one of which is sold under the mark "Frooti" and is a very popular product. The Applicant/Plaintiff has produced material to support their claim that the said product is very well received. I have perused a copy of the Certificate of Sales and Advertising figures given by the Chartered Accountant.

4) The 1st Defendant has published the Impugned Statement about the Applicant/Plaintiff's product on his page on Defendant No. 3's website, a copy of which is annexed as Exhibit D.

5) The Applicant/Plaintiff contends that the said statement is false, malicious and defamatory of the Applicant/Plaintiff and by the said statement the said Defendant has disparaged the product.

6) I have perused a copy of the email from NDTV denying that they had published any news item on any channel as alleged in the Impugned publication. I have also perused a copy of the letter addressed by the ACP, Headquarters, Delhi Police denying any association or circulation of the impugned message.

7) In my view the conduct of the 1st Defendant is reprehensible. I am prima facie satisfied that the 1st Defendant has committed the tort of defamation and disparagement. The Impugned Statement is publicized on the websites of Defendant Nos 3, 4 and 5. Defendant No. 2 is the employer of Defendant No. 1 and allowed Defendant No. 1 to use its telecommunications equipment for publication and circulation of the Impugned material.

8) The Applicant/Plaintiff has made a strong prima facie case for the grant of the injunction. If such injunction is not granted,

irreparable harm will be caused to the Applicant/Plaintiff. The balance of convenience is also in favour of the Applicant/Plaintiff's. This is a fit case for grant of mandatory order which is also prayed for in the Motion.

9) In the circumstances, ad interim order against Defendants Nos 1 to 4, in terms of prayers (a) to (e).

10) Liberty to Applicant/Plaintiff to apply for ad interim reliefs against Defendant No. 5 after service.

11) Liberty also granted to Defendants 1 to 4 to apply for variation and/or modification of this order, after giving notice to the Plaintiff's Advocates".

3. Thereafter, on 16th July, 2013 this Court upon realizing the problems faced by Defendant Nos.3 and 5 passed the following order :

"The learned Advocate appearing for the Plaintiffs on instructions states that until hearing and final disposal of the Notice of Motion, in the event of any photograph or statement appearing on the websites of Defendant Nos.3 and 5, which according to the Plaintiff is/are defamatory or disparaging to the Plaintiff's product "Frooti" in any manner, they shall not take out any Contempt Proceedings against Defendant Nos.3 and 5 but shall write a letter to the Defendant Nos.3 to 5 requesting them to delete the defamatory/disparaging material from their websites or move this Court with such a request. The statement is accepted. Stand over to 02-08-2013".

4. The Notice of Motion is now taken up for hearing and final disposal. The Defendant Nos. 1 and 2 are absent. They have not filed their Affidavit in reply to the Notice of Motion and have also not filed any written statement in the above suit. The Notice of Motion is therefore allowed in terms of prayer clauses (a) and (e) which are reproduced hereunder:

“(a) that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass an order and injunction, restraining the Defendant No.1 from making / broadcasting or publishing the impugned statement as appearing in Exhibit D or the Photographs of the Plaintiff's product as appearing in Exhibit D or any other statements that are defamatory of the Plaintiff or disparaging the Plaintiff's product “Frooti” in any manner;

(e) that pending the hearing and final disposal of the Suit, this Hon'ble Court direct the Defendant Nos.3, 4 and 5, their employees, agents, officers, assigns, representatives directing and/or commanding them to forthwith remove/block/delete from the website operated by them any information, data, blogs, posts, or tweets, which are defamatory to the reputation of the Plaintiff; or containing any disparaging statement against the Plaintiff's product “Frooti” in any manner”;

However, it is clarified that in the event of any photograph or statement appearing on the websites of Defendant Nos.3 and 5, which according to the

Plaintiff is/are in any manner defamatory or disparaging to the Plaintiff's product "Frooti", they shall not take out any Contempt Proceedings against Defendant Nos.3 and 5 but shall write a letter to the Defendant Nos.3 to 5 requesting them to delete the said defamatory /disparaging material from their websites or move this Court with such a request.

5. The Notice of Motion is accordingly disposed of.

(S.J.KATHAWALLA, J.)