

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

% **Date of decision: 22nd November, 2017.**

+ **CS(OS) 2056/2010**

**HERITAGE RIVER CRUISES PRIVATE LIMITED
& ANR**

..... Plaintiffs

Through: Mr. Pankaj Bhatia, Ms. Nupur
Goel, Mr. Ashish Chaudhury and
Mr.Dhruv Surana, Advs.

Versus

PANDAW CRUISES PTE LTD & ANR

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The two plaintiffs namely Heritage River Cruises Private Limited (earlier known as M/s Pandaw Cruises India Private Limited) and Raj Singh, who is the Director of the plaintiff No.1, have instituted this suit against the defendants No.1&2 Pandaw Cruises PTE Limited and Paul Graham Robert Strachan, for permanent injunction restraining the defendants from issuing derogatory, defamatory, humiliating, intimidating and baseless statements adversely affecting the business, reputation and goodwill of the two plaintiffs.

2. It is the case of the plaintiffs in the amended plaint dated 12th March, 2012, (i) that the plaintiff No.1 was incorporated in the year 2004 and the plaintiff No.2 is one of the founding Directors of the plaintiff No.1; (ii) that the plaintiffs have been carrying on river cruises in India; (iii) that the defendant No.1, incorporated in Singapore, is carrying on the business of ship management services and the defendant No.2 is a

Director and is in control of the business of the defendant No.1; (iv) that the defendant No.2 is also a founding Director of the plaintiff No.1 and the defendant No.1 was holding 40% of the shares of the plaintiff No.1; (v) that the plaintiff No.1, with the co-operation of the defendant No.1, successfully undertook operations in India till March, 2010; (vi) that owing to the success of the business of the plaintiff No.1, the defendant No.2 wanted to take effective and imminent control over the affairs of the plaintiff No.1 and on being unsuccessful therein, wanted to damage the business of the plaintiff No.1; (vii) that the defendants issued a press release on 7th May, 2010 to the effect that Pandaw Cruises started by the plaintiff No.1 at river Ganges were a disaster and that the defendant No.1 would pull out of India; (viii) that the defendants also got published various defamatory articles in international publications, websites and blogs, levelling scandalous allegations against the plaintiffs; (ix) that the plaintiffs learnt of such publications by the defendants only in August, 2010; (x) that the allegations of the defendants in the said publications are false.

3. The suit was entertained and while ordering issuance of summons thereof, vide *ex-parte* ad interim order dated 5th October, 2010, the defendants were restrained from publishing any information which is derogatory, defamatory and disparaging to the business of the plaintiff No.1.

4. The defendants contested the suit by filing a written statement and to which a replication was filed by the plaintiffs.

5. On 1st October, 2012, the counsel who was earlier appearing for the defendants, sought discharge from appearance. However, thereafter on 8th October, 2012, none appeared for either of the parties, the suit was dismissed in default of appearance. The plaintiffs applied for restoration and which was allowed on 17th October, 2012. On 7th February, 2013, the counsel who was earlier appearing for the defendants, was discharged from appearance and since then, none else appeared for the defendants. The defendants were, vide order dated 7th November, 2013, ordered to be proceeded against *ex-parte* and the plaintiffs relegated to *ex-parte* evidence.

6. The plaintiffs, in their *ex-parte* evidence have examined Mr. Vishnu Sinsiwar, Director of the plaintiff No.1 as PW-1 and on 29th November, 2014, the plaintiffs closed their evidence. The said witness was examined again on 18th September, 2017 to prove authorisation in favour of the plaintiff No.1. The plaintiffs applied for examining another witness and which was allowed on 27th September, 2017. Thereafter, on 14th November, 2017, the plaintiff No.2 was examined as PW-2 and the PW-1 was further examined and the plaintiffs closed their evidence.

7. The counsel for the plaintiffs has been heard.

8. The defendants having chosen to give up the contest to the suit midstream and the defendants even otherwise in law being not entitled to defame or humiliate the plaintiffs, the plaintiffs are entitled to a decree for permanent injunction restraining the defendants from publishing any statements intended to defame the plaintiffs including before the persons

with whom the plaintiffs may have business dealings, save in connection with a legal proceeding or a proceeding before any Tribunal or Authority.

9. As far as the claim of the plaintiffs for damages is concerned, I am afraid, neither have the plaintiffs been able to prove the statements alleged to be defamatory nor have the plaintiffs in their evidence been able to prove having suffered any damage. The statements attributed to the defendants are (a) that Pandaw Cruises started by the plaintiff No.1 on river Ganges proved to be a disaster; (b) that the defendant No.1 would pull out of India; (c) that navigational and security challenges were just too great; (d) that the river proved too high, too low or too fast to safely operate; (e) that grounding, with damage to engines and propellers was frequent and there was a lack of support ashore for repairs; (f) that the close presence of Maoist Revolutionaries in Bihar necessitated the presence of heavily armed Special Forces personnel on the ship; (g) that the company was not able to operate their own vessel; (h) that the crew provided by an Indian partner proved untrained and inexperienced and the defendants had grave concerns as to their ability to respond in the event of a fire or other disaster on board and there were similar concerns over hygiene; (i) that the river cruises carried out in India by 'Pandaw India' are not being run in a professional manner and there is a threat to the running of the cruises in India; (j) that the river is non-navigable; (k) that Raj Singh, through Pandaw India had stolen and has seized the control of the ship 'Pandaw-IV/Bengal Pandaw' which was sent from Burma; (l) that the defendant No.1 is suing Pandaw India for payment of ship and return of ship 'Pandaw-IV/Bengal Pandaw' to the rightful owner; (m) that the

defendants shall obtain an injunction against the plaintiffs for the ensuing season and there shall be no cruises this year.

10. I fail to see, as to how any of the aforesaid statements can qualify as defamatory of the plaintiffs, though may be prejudicial to the business which the plaintiff No.2 was carrying on in India in joint venture with the defendants. I may in this regard also notice, that the plaintiff No.1 which has sued is the said joint venture and the defendants admittedly have 40% share therein. It is also worth noting that the plaintiff No.2 Raj Singh is not a shareholder in the plaintiff No.1. Besides the 40% shares of the plaintiff No.1 held by the defendants, the remaining 60% shares of the plaintiff No.1 are pleaded to be held by M/s Gajraj Wildlife Resorts Pvt. Ltd. which is not a plaintiff in the present suit. The effect even if any of damages suffered to the joint venture business of the plaintiff no.1 would be to its shareholders i.e. defendant No.1 and the said M/s Gajraj Wildlife Resorts Pvt. Ltd. It is inexplicable as to how the plaintiff No.2 Raj Singh, even if a shareholder of the said Gajraj Wildlife Resorts Pvt. Ltd. (though it is not so pleaded) or the face of the plaintiff No.1 (also not pleaded or proved), as to how he has suffered the loss. The affidavit by way of examination-in-chief is nothing but a repetition of the plaint.

11. I have scanned the written submissions, filed on 20th November, 2017, of the counsel for the plaintiffs also and I am unable to find therefrom also the basis of the claim for damages.

12. It cannot be lost sight of that the parties had agreed to carry on business in joint venture and according to the plaint also, carried on the said business for six years. If the defendant No.1, which had lent its trade

mark and trade name to the said joint venture, felt that it was no longer profitable for it to carry on business in joint venture and published the reasons for the same, the plaintiffs cannot have any claim for damages on account of defamation therefrom and if at all the defendants have pulled out of the joint venture contrary to the terms of the joint venture, the remedy of the plaintiffs thereagainst is not by suing the defendants for defamation. Moreover, each of the statements as noted above is at best a reason for the defendants being unable to carry on business and has no reflection on the reputation of the plaintiffs.

13. For the reasons aforesaid, the plaintiffs are not found entitled to any damages and the claim for damages is dismissed.

14. A decree is passed in favour of the plaintiffs and against the defendants, of permanent injunction restraining the defendants from communicating or publishing any statements derogatory, defamatory or disparaging to the plaintiff No.1, save in the course of any legal proceeding or proceeding before any other Tribunal or Authority. The suit, insofar as for recovery of damages and for costs, is dismissed.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 22, 2017

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(corrected & released on 19th March, 2018)