

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

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Date of decision: 23rd March, 2017

+ CS(COMM) 1651/2016 & IA No.15902/2016 (under Order XXXIX Rules 1&2 CPC).

PRIMERO SKILL & TRAINING PVT LTD Plaintiff

Through: Mr. C.S. Yadav, Mr. Praful Jindal and
Mr. Prem Ranjan Kumar, Advs.

versus

SELIMA PUBLICATIONS PVT LTD & ORS Defendants

Through: None.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit (i) for declaration that the publication of Article in the newspaper "*Dainik Samayik Prasanga*" dated 21st November, 2016 by the defendants is bad in law and contrary to the Pradhan Mantri Kaushal Vikas Yojana; (ii) for permanent injunction restraining the defendants from publishing and reporting any Article/news similar to the Article dated 21st November, 2016; and, (iii) for recovery of damages in the sum of Rs. 1,00,00,000/-.

2. The suit came up for admission on 21st December, 2016 and thereafter on 23rd December, 2016 when after hearing the counsels for the plaintiff at length I was of the view that the suit is not maintainable. Though I was proceeding to dictate the order in the Court but the counsel for the plaintiff stated that he wanted to file some judgments. Permitting written arguments to be filed on or before 5th January, 2017, orders on maintainability of the suit were reserved.

3. The plaintiff has since filed written arguments with copies of three judgments and which have been perused by me.

4. It is the case of the plaintiff in the plaint (i) that the plaintiff is an approved “Training Partner” for the “*Pradhan Mantri Kaushal Vikas Yojana*” (PMKVY), a Skill Certification Scheme launched by the Ministry of Skill Development and Entrepreneurship (MOSDE), Government of India with an objective to enable a large number of Indian youth to take up industry-relevant skill training that will help them in securing a better livelihood; (ii) for achieving the goals enshrined under the PMKVY scheme, the National Skill Development Corporation (NSDC) was established by the Government of India in the year 2008 as non-profit public company under the provisions of the Companies Act, 1956; subsequently on 8th June, 2011 NSDC was transformed into a Private Limited Company with representation from the MOSDE; (iii) that the plaintiff, as an affiliated training partner of the NSDC under the PMKVY, has been allocated targets to provide training throughout India; the plaintiff is engaged in providing training to the unskilled and underprivileged people in order to impart practical knowledge and develop their elementary skills in their respective fields of interest, thereby transforming them into a skilled labour and further by assisting them in getting jobs with the potential employers and ultimately enhance their standard of living; (iv) that the defendant no.1 Selima Publications Pvt. Ltd. is incorporated with the Registrar of Companies, Shillong having its registered office at Silchar, Assam and is the publisher of a newspaper Dainik Samayik Prasanga, a Bengali daily circulated newspaper in the State of Assam and which is also available online at

www.samayikprasanga.in/epaper.php and can be accessed by general public in any part of the world; (v) the defendant no.2 Ms. Jyotsna Hussain Choudhury is the Managing Director of the defendant no.1; the defendants no.3&4 Mr. Taimur Raja Choudhury and Mr. Touhid Raja Choudhury are the Directors of the defendant no.1; the defendant no.5 Mr. Ripon Nath is the Publisher of the newspaper of defendant no.1; the defendant no.6 Mr. Anindya Kumar Nath is the Reporter of the story/article published in the newspaper of defendant no.1 and defendant no.7 Ms. Mili Kalindi is a trainee under the PMKVY who underwent training at the plaintiff's training centre in District Hailakandi, Assam; (vi) that the primary feature of PMKVY is that after the completion of the training of the trainee, NSDC credits a pre-decided amount in consensus with the respective Skill Sector Council in the bank account of the trainee; a fixed ratio from the said amount is automatically debited from the savings account of the trainee and credited to the current account of the training partner as training fees; (vii) further, under PMKVY, Bank of India is the official banking partner of the NSDC and provides banking platform for implementation thereof; as a mandate the training partners as the plaintiff have to open current account with the Bank of India; similarly the trainee/student mandatorily needs to have a savings bank account with the Bank of India at the time of enrollment; the training fee credited to the bank account of the trainee after completion of the training is automatically debited from the savings account of the trainee and credited to the current account of the training partner; (viii) that the plaintiff has established training centres in various Districts of India for training of students in the Job Role "Tea Plantation Worker"; (ix) that one such training centre was set-up by the plaintiff at Serispore Tea Estate, District Hailakandi,

Assam; (x) that the defendant no.7 applied in the PMKVY and since did not have a savings bank account with the Bank of India, an account in the name of defendant no.7 was opened at Hailakandi branch, Assam of Bank of India and on 21st September, 2015 defendant No.7 was enrolled as a trainee at the Serispore Tea Estate Training Centre of the plaintiff; (xi) the defendant no.7 undertook training of 100 hours and her training ended on 26th October, 2015 and on evaluation of training she was declared 'passed'; (xii) that in terms of PMKVY, NSDC on 4th August, 2016 credited Rs.5,000/- in the bank account aforesaid of defendant no.7 and out of the same a sum of Rs.4,500/- was automatically debited from the account of the defendant no.7 and credited in the current account of the plaintiff as the training fee; (xiii) the defendant no.7 however started making enquiries about the transfer of Rs.4,500/- out of her account and though the officials of the plaintiff as well as of the Bank of India fully explained the PMKVY to the defendant no.7 but the defendant no.7 made an uproar about the same and filed a criminal complaint in the Court of the Chief Judicial Magistrate, Hailakandi, Assam and in pursuance where to a First Information Report (FIR) was registered with P.S. Hailakandi Sadar against the plaintiff and against the Manager and Assistant Manager of its Serispore Tea Estate training centre of the plaintiff; (xiv) thereafter the defendant no.7 approached the defendant no.1 for getting the said incident published in the newspaper of the defendant no.1 and the defendants no.2 to 5, without conducting any preliminary investigation on the subject and in collusion and conspiracy with each other, published an article "*Skill Development Training Money usurped in Hailakandi: Garden-Bank Manager, Primero has case in the Court*" in its newspaper dated 21st November, 2016; (xv) that in the said article it has been alleged that the

defendant no.7 has filed a complaint before the Chief Judicial Magistrate Hailakandi, Assam; it has further been stated in the article that the representative of the plaintiff misrepresented and informed the tea estate workers that in lieu of their wastage of time they will get Rs.5,000/- but Rs.4,500/- was credited to the account of the plaintiff and only Rs.500/- remained in the account of the tea estate workers and that though the defendant no.7 already had an account with the Bank of India but another account with the same bank was opened for the said purpose; (xvi) the aforesaid publication of wrong facts is in violation of the guidelines laid down by Editors Guild; (xvii) by publishing only one side of the story, the defendants have tried to malign the image of the plaintiff, its Directors and representatives; moreover an attempt has been made to spread misinformation about the PMKVY; (xviii) the plaintiff came to know about the aforesaid article when one of its employee stumbled upon it on www.google.com at the office of the plaintiff at New Delhi on the website www.samayikprasanga.in/epaper.php; (xix) the news article dated 21st November, 2016 reveals a completely false, misleading and fabricated factual matrix of the entire incident, in complete ignorance of the actual guidelines; the said article highlights that the defendant no.7 along with other 50 tea plantation workers were lured by the representatives of the plaintiff and the Manager of the tea estate for getting enrolled in a skill development programme in order to improve their productivity by assuring payment of Rs.5,000/- in lieu of loss of earning during the training programme; (xx) that the entire article seems to be a sinister design to defame the plaintiff and its Directors and to demean PMKVY; (xxi) that the actions of the defendants amount to defamatory libel and have tremendously damaged the good

reputation and image of the plaintiff company in the eyes of public at large; (xxii) that since the publication and circulation of the impugned article the business associates of plaintiff and public at large have started ignoring/shunning the plaintiff and some have even started questioning the basic purpose of incorporation of the plaintiff; (xxiii) the plaintiff company's image and esteem has suffered tremendously; and, (xxiv) that this Court has territorial jurisdiction to try the suit as the plaintiff is situated at Delhi and working for gain in Delhi and implementing PMKVY in partnership with NSDC from Delhi and since the impugned article can also be accessed at New Delhi and loss of reputation has been suffered by the plaintiff at Delhi.

5. The English translation of the impugned allegedly defamatory newspaper article filed by the plaintiff reads as under:-

“Newspaper: SAMAYIK PRASANGA

Date: Monday Nov 21, 2016

**SKILL DEVELOPMENT TRAINING MONEY USURPED IN
HAILAKANDI**

**“GARDEN-BANK MANAGER, PRIMERO HAS CASE IN
THE COURT”**

Story by Anindya Kumar Nath, Hailakandi, Nov 20.

Tea Garden workers lured with skill development and money usurped. Serispore tea estate's employee Nanda Kalindi's wife's Mili Kalindi has registered a case in Hailakandi Chief Judicial Magistrate's office. In the case, names of Serispore tea estate manager Gurmeet Singh Pahwa, Assistant Manager S. Dhar, Mambai's Primero Skill and Training Pvt. Ltd. Director / Board and Manager, Bank of India, Hailakandi branch, have been mentioned. Case has been registered on November 17th with case number CR 1186/2016.

Mili Kalindi has mentioned in the case that Serispore tea estate manager Gurmeet Singh Pahwa, Assistant manager S. Dhar, Primero Skill and Training Pvt. Ltd., mobilised 50 workers where tea leaves were being weighed. In that congregation, the Primero Kkill representative told those assembled that to improve productivity of tea garden, skill development is being provided and those assembled would be given one week's training. Due to loss of earning for one week, those attending training would be given Rs.5,000/- in their bank account. Despite bank account present, Primero representative said to open bank account in the Bank of India, Shibbari Road, Hailakandi Branch. Mili Kalindi said in the case that Serispore Tea Estate doesn't fall in purview of Bank of India. Tea Estate Manager, Bank of India manager and Primero representative asked and got thumb impressions on the documents. Mili Kalindi and other candidates said they have account in Hailakandi branch in other banks. Bank of India manager, garden estate manager said that other bank accounts would not be acceptable and it should be opened only in BOI, Shibbari Road, Hailakandi branch. As a result trainees in one way were compelled listening to the accused to give thumb impression on various documents. Post this training continued for a week.

After some days of completion of training, Serispore tea estate manager Gurmeet Singh Pahwa informed that Rs.5,000/- has been deposited in every trainee's account. As a result poor hard working tea garden worker had a big happiness in their mind. As per tea estate manager information Mili Kalindi went to Bank of India, Hailakandi branch with her passbook and manager BOI said that on August 4, Rs.5,000/- was deposited in her account and that moment Rs.4,500/- was debited from her account and transferred to Primero Skills account. Remaining Rs.500 is remaining in Mili Kalindi's account. In the case it is mentioned when Mili asked BOI manager how without her sign the money of Rs.4,500/- debited he did not have any answer.

Further, Mili Kalindi on October 5th submitted an RTI and through that came to know how Rs.4,500/- was transferred to Primero's account. RTI was submitted to BOI, Head Office and response came on November 4th in Hailakandi branch. Hailakandi Bank Manager informed Mili Kalindi through letter that on the day of submission of documents of bank accounts of all trainees, account debit contract was signed and also submitted for Rs.4,500/-. As a result BOI manager transferred the money to Primero Skills account. Mili Kalindi did not find it difficult to understand that Serispore tea estate manager Gurmeet Singh Pahwa, Assistant manager S. Dhar, Primero Skills and Training Pvt. Ltd. Director/representatives and Hailakandi branch manager, Bank of India has hatched a plan to usurp her money. Every trainee in the tea garden has been a victim of this plan. Poor, illiterate tea garden workers has been cheated and before training documents has been signed in a deceitful manner to transfer the money. Mili Kalindi has said that Rs.4,500/- per head has been usurped of many trainee candidates. Mili Kalindi with all these accusations has requested to court in CJM, Hailakandi (CR 1186/2016) to investigate and take action.

On the other hand this Sunday evening, Hailakandi Sadar Thana, second officer Abdur Rehman Lascar has informed the reporter that Hailakandi CJM Court has referred case to Sadar Thana. In Thana, case 630/16 has been registered. After receiving the case police woke up and was alerted. In this case IO Abdur Rehman Lascar has said that on Sunday Serispore tea estate manager Gurmeet Singh had come and submitted his side of plea. On the other hand, Mili Kalindi, Mila Kalindi, Ashok Chakha, Moyna Kalindi, Anta Rikiyasan, Foolmonin Majuar, Anima Kalindi, Lakhimoni Rikiyasan, Patiyarobi Das, Chyandmal, Khudiram Rikiyasan, has come to Thana with this issue. IO Lascar has said that on Monday BOI Hailakandi premises would be visited for further investigation. On the other hand, Krishan Mukti Sangram Samiti, Hailakandi District, Secretary Jahir Uddin Lashkar, Serispore Sakha Committee, Secretary Udinbod

Bhudiya, Deputy Secretary Nanda Kalindi and Secretary Abdul Salam Ansari jointly said that tea garden workers are eligible for Rs.4,500/- to be returned has been submitted to garden management.”

6. The plaintiff has not placed before this Court the complaint filed by the defendant no.7 with the Chief Judicial Magistrate, Hailakandi, Assam or the FIR registered thereon. It is however not the case of the plaintiff that what is published in the impugned article is not the true narration of the contents of the complaint or of the FIR.

7. On a reading of the English translation aforesaid of the impugned article it was felt that the defendants no. 1 to 6 therein had in their role as Journalist/News Reporter only reported the filing of the complaint, the registration of the FIR and the investigation thereon by the Police officials as a news event. It was thus enquired from the counsel for the plaintiff as to how the actions of the defendants no.1 to 6 could be said to be defamatory of the plaintiff. It was further put to the counsel for the plaintiff that today's newspapers, at least in Delhi, daily have at least two full pages if not more devoted to filing of the cases in the Courts, orders thereon, happenings in the Court, lodging of complaints/FIRs and whether not the same constitute news events which public has a right to know and whether not the said right of the newspapers, their editors and publishers and of the public would be curtailed if it were to be held that no reporting as news could be made till the final order of the last Court.

8. It was further put to the counsel for the plaintiff, whether not the action of the plaintiff of, despite carrying on business in Assam where all the

defendants are situated and where the newspaper in local dialect containing allegedly defamatory article was published, filing this suit far away in this Court was nothing but an attempt on the part of the plaintiff to shut up and stifle the defendants and to coerce the defendant no.7 to withdraw her complaint and to not pursue / support the FIR. It was further put to the counsel that the plaintiff could have very well taken the action, if genuinely aggrieved, locally and why should the attempt of the plaintiff to drag the defendants to this Court and which the defendants may be unable to do as they do not appear to be persons of much means, be not nipped in bud. Attention of the counsel was also invited to *M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India* (2004) 6 SCC 254 and *Sterling Agro Industries Ltd. Vs. Union of India* AIR 2011 Del 174 incorporating principle of forum convenience in domestic civil law.

9. The counsel for the plaintiff argued that if the plaintiff was entitled to invoke the territorial jurisdiction of this Court, it could not be compelled to invoke the territorial jurisdiction of another Court which may be more convenient to the defendants. However the main emphasis of the counsel for the plaintiff, with reference to the terms of PMKVY and other documents concerning therewith filed by the plaintiff, was that PMKVY itself provides for the procedure of crediting the account of the trainee with Rs.5,000/- and automatically debiting a sum of Rs.4,500/- therefrom and crediting the same to the account of the plaintiff as a training partner and thus the allegations of the defendants published in the impugned article are false and defamatory of the plaintiff.

10. The aforesaid argument of the counsel for the plaintiff misses the charge which the defendant no.7 has levied against the plaintiff and which is the subject matter of legal proceedings initiated against the plaintiff in Assam. The case of the defendant no.7 is that the plaintiff lures the labourers to the training scheme with the promise of their account being credited with Rs.5,000/- and without disclosing that Rs.4,500/- would be automatically debited therefrom.

11. It was further put to the counsel for the plaintiff, whether not complaints to the Police Authorities enjoy absolute privilege and there can be no defamatory action with respect thereto and whether not the remedy in such a case is of action of malicious prosecution only.

12. No reply in this respect was forthcoming from the counsel for the plaintiff nor has anything in this respect been stated in the written arguments filed by the plaintiff and taken on record; rather the said written arguments are a re-production of the contents of the plaint save reliance towards the end being placed on (i) ***Reliance Petrochemicals Ltd. Vs. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd.*** (1988) 4 SCC 592; (ii) ***Sahara India Real Estate Corporation Limited Vs. Securities and Exchange Board of India*** (2012) 10 SCC 603; and (iii) judgment dated 16th January, 2014 in CS(OS) No.102/2014 titled ***Swatanter Kumar Vs. The Indian Express Ltd.*** and copies whereof are annexed to the written arguments.

13. Having given further thought to the matter, I remain of the same view as on the day when the suit had come up for admission, that this suit does not deserve to be entertained and deserves to be thrown out at the threshold to save the defendants, who do not appear to be persons with much monetary

means, from travelling to Delhi, engaging an Advocate, appearing and contesting this suit at Delhi.

14. My reasons therefor are as under:-

- (a) Supreme Court, in ***Youth Bar Association of India Vs. Union of India*** (2016) 9 SCC 473, concerned with a petition under Article 32 of the Constitution of India and while issuing guidelines/directions for supply of copy of FIR has *inter alia* directed that the copies of the FIR (unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under Protection of Children from Sexual Offences (POCSO) Act, 2012 and such other offences) should, within twenty-four hours of the registration of the FIR, be uploaded on the police website, and if there is no such website on the official website of the State Government so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court for redressal of his grievances and that the decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or a person holding equivalent post.
- (b) As per the law aforesaid declared by the Supreme Court, the contents of FIR, irrespective of whether published in a newspaper as a news event or not, are in public domain. Once the Police itself, as per law declared by the Supreme Court is

required to publish the FIR, I fail to see how the defendants no.1 to 6 as editor/publisher of the newspaper or the defendant no.7 as complainant, can be proceeded against in an action for defamation for publishing the contents thereof.

- (c) It is not as if the direction aforesaid of the Supreme Court is without regard to the reputation of the persons complained against in the FIR. The law of defamation, which as far as India is concerned is uncodified and based on common law, has always recognised certain situations as privileged, words spoken or written wherein cannot furnish a cause of action for a claim on account of defamation. Supreme Court in ***Raja Ram Pal Vs. Hon'ble Speaker, Lok Sabha*** (2007) 3 SCC 184 held that the term “privilege in law” is defined as an immunity or an exemption from some duty, burden, attendance or liability conferred by special grant in derogation of common right. The term “privilege” was stated to be derived from an expression “privilegium” which means a law specially passed in favour of or against a particular person.
- (d) The reason is that the law recognises those situations as where a person should have freedom of speech, without being under the fear of being hauled up subsequently for defamation.
- (e) As far back as in ***Golap Jan Vs. Bholanath Khettry*** MANU/WB/0056/1911 it was held by the Division Bench of the Calcutta High Court that though defamation is a good cause of action but even if the complaint to the Magistrate was

defamatory still the complainant was entitled to protection from a suit for defamation and this protection was the absolute privilege accorded in the public interest to those who make statements to the Courts in the course of and in relation to judicial proceedings. The Division Bench of the Madras High Court also in ***Pedda Sanjivi Reddy Vs. Kondasari Koneri Reddi*** AIR 1926 Mad 521 held that the statements made to the police officer which could only be made with a view to their being repeated on oath before the Magistrate as well as statements in the petition presented to the Magistrate have been invested by the common law of England with absolute privilege which attaches not merely to the actual proceedings of any tribunal exercising judicial function, but to all preliminary steps which are in accordance with the cognised and reasonable procedure of such a tribunal. It was also held that the public policy which renders the protection of witnesses necessary for the administration of justice necessarily involves that which is a step towards, and is part of the administration of justice, namely the preliminary examination of witnesses to find out what they can prove, and consequently statements made by a witness to a litigant or his solicitor in preparing proof are absolutely privileged. A subsequent Division Bench of the Calcutta High Court in ***Madhab Chandra Ghose Vs. Nirod Chandra Ghose*** AIR 1939 Cal 477 added that it is a matter of public policy and administration of justice that witnesses giving their evidence on oath in a Court of justice should not have before their eyes the

fear of being harassed by suits for damages; the only penalty which they should incur if they give evidence falsely should be an indictment for perjury. No action for libel or slander was held to lie against Judges, counsel, witnesses, or parties, for words written or spoken in the course of any proceeding before any Court recognised by law even though the words were written or spoken maliciously, without any justification or excuse, and from personal-ill-will and anger against the person defamed. It was emphasised that a witness must be protected for a preliminary statement as well. It was further held that though some hardship may be caused to the person defamed but it would be impossible to administer justice, if people were to be afraid to give their testimony.

- (f) Subsequently, in *Anjana Saikia (Das) Vs. Anuradha Das* 2003 SCC OnLine Gau 321 it was held that though an action for defamation by statement in the FIR would lie but only after the FIR case was decided. Similarly, in *Mahavir Singh Vs. Surinder Singh* 2010 SCC OnLine P&H 9094 also it was held that mere lodging of the FIR, though it may contain false imputation, does not amount to defaming the person against whom FIR is lodged. To the same effect is *Kamlesh Kaur Vs. Lakhwinder Singh* 2008 SCC OnLine P&H 920.
- (g) A learned Single Judge of the High Court of Madras in *A.N. Shanmugam Vs. G. Saravanan* 2015 SCC OnLine Mad 728 held the filing of a suit for defamation in such circumstances to

be a process to escape from criminal prosecution and to make the defendant to come to terms. It was held that if every complainant who lodges the complaint with law enforcing agency is to face civil cases for defamation on the premise that the imputations made in the complaint according to the accused are false, many people fearing such actions on the part of the accused may not come forward to lodge a complaint to the law enforcing agency. It was further held that when an imputation has been made in a complaint made to the law enforcing agency with the belief that such agency would take criminal action against the persons against whom such imputations are made, the same provides a valid exception taking such act outside the scope of tort of defamation. It was held that the lodging of the complaint with the police could not be considered to be publication of a defamatory statement and that if any wrong is committed by lodging a false complaint with the police and thereby setting the criminal law in motion, it may amount to malicious prosecution for which action can be taken only after disposal of the criminal case, wherein a specific finding is given to that effect.

- (h) With respect to malicious prosecution also, I have in *Gangadhar Padhy Vs. Prem Singh* 211 (2014) DLT 104 relying on *S.T. Sahib Vs. N. Hasan Ghani Sahib* AIR 1957 Madras 646 held that action for malicious prosecution is not favoured in law and should be properly guarded and its true

principles strictly adhered to, since public policy favours the exposure of a crime and it is highly desirable that those reasonably suspected of crime be subjected to the process of criminal law for the protection of society and the citizen be accorded immunity for bona fide efforts to bring anti-social members of the society to the bar of justice.

- (i) Thus there is no cause of action for a claim for defamation in favour of the plaintiff against the defendant No.7 for the statements made by the defendant No.7 in the complaint and in the FIR lodged by her.
- (j) A Nine Judges Bench of the Supreme Court in ***Naresh Shridhar Mirajkar Vs. State of Maharashtra*** AIR 1967 SC 1 reiterated that Journalists have a fundamental right to carry on their occupation under Article 19(1)(g); they have also a right to attend proceedings in Court under Article 19(1)(d); and that the right to freedom of speech and expression guaranteed by Article 19(1)(a) includes their right to publish as Journalists a faithful report of the proceedings which they have witnessed and heard in Court. Freedom of speech and expression guaranteed by Article 19(1)(a) was reiterated to include the freedom of press. It was further held that what takes place in Court is public and the publication of the proceedings merely enlarges the area of the court and gives to the trial that added publicity which is favoured by the rule that the trial should be open and public; it is only when the public is excluded from

audience that the privilege of publication also goes because the public outside then have no right to obtain at second- hand what they cannot obtain in the court itself. It was yet further held that if the matter is already published in open court, it cannot be prevented from being published outside the court room provided the report is a verbatim or a fair account.

- (k) I have already hereinabove noticed that it is not the plea of the plaintiff that what has been published by the defendant Nos. 1 to 6 in their newspaper is not a fair account of the complaint and the FIR lodged by the defendant no.7.
- (l) The Division Bench of the High Court of Bombay in ***Saroj Iyer Vs. Maharashtra Medical of Indian Medicine, Bombay*** 2002 (1) Mh.L.J. 737 held that the Medical Council being a Quasi Judicial Tribunal and the inquiry before it being quasi judicial in nature, there can be no blanket ban for public in attending the enquiry proceedings.
- (m) This Court in ***Mother Dairy Foods and Processing Ltd. Vs. ZEE Telefilms Ltd.*** ILR (2005) 1 Delhi 87 was concerned with an application for interim relief in a suit by a major supplier of milk and milk products to restrain a television channel from publishing and telecasting a programme purported to be an investigation into manufacturing of synthetic milk. It was the case of the plaintiff that the programme was created and aired to tarnish its image and reputation with the sole objective of sensationalism and to defame. Finding that there was no plea

of conspiracy and the plea of malafides as set-forth to be lacking in material particulars qua the persons at whose behest the programme was being aired, interim injunction was denied holding that media being a zealous guardian of freedom of expression and speech, has a right to comment vigorously and fearlessly on matters of public interest and the efforts of the T.V. Channels in unearthing and bringing to the notice of public the menace of manufacturing of synthetic milk was a laudable measure for public good.

- (n) I may notice that similarly here, it is in public interest that it be investigated whether PMKVY is being misused to siphon off monies in the name of training, without any real benefit to the purported beneficiaries thereof.
- (o) This Court in *Vineet Jain Vs. NCT of Delhi* (2011) 184 DLT 596 was concerned with the complaint of the offence of defamation by reporting in the media contents of an FIR registered of offences under Section 294/109/34 of the Indian Penal Code, 1860 IPC read with Section 8 of Immoral Trafficking Act and the raid conducted at a hotel in Delhi. It was held that fair reporting pertaining to a matter of public concern, without insinuations and innuendos i.e. a news item containing statements of true facts emanating from a proper source i.e. police is not actionable for the offence of criminal defamation; a fact pertaining to an FIR being registered with reference to the activities found to be carried out from the

Hotel as recorded in the FIR made public by the police, was also held to be not amounting to a criminal defamation.

- (p) The High Court of Bombay also in ***SNP Shipping Services Pvt. Ltd. Vs. World Tanker Carrier Corporation*** 2000(2) Mh.L.J. 570 held that a fair and accurate gist of the findings given by the Court cannot constitute a cause of action for defamation and the plaint was rejected under Order VII Rule 11 of the CPC.
- (q) A Constitution Bench of the Supreme Court, in ***Sahara India Real Estate*** supra relied upon by the counsel for the plaintiff held that the inaccuracy of reporting of court proceedings will be a contempt of court only if it can be said on the facts of a particular case, to amount to substantial interference with the administration of justice; that the privilege granted under Section 4 of the Contempt of Courts Act, 1971 in favour of the person who makes a fair and accurate publication is based on the presumption of 'open justice' in courts which permits fair and accurate reports of Court proceedings to be published. It was held that the media has a right to know what is happening in courts and to disseminate the information to the public which enhances the public confidence in the transparency of court proceedings. It follows from the said judgment that postponement of publication of court proceedings can be applied for to the same court in which the proceedings are pending and not to another court. I am in fact at pains to

understand in what context the counsel for the plaintiff has relied on the said judgment. As far as reliance on *Swatanter Kumar* supra is concerned, the law as expounded and noticed above was noticed therein also but in the facts of that case interim injunction was granted. The same also is of no benefit to the plaintiff. The same is the position of Reliance Petrochemicals Ltd supra.

- (r) Mention may lastly be made of my judgment in *Veer Arjun Newspaper Pvt. Ltd. Vs. Bahori Lal* 2013 SCC Online Del 5096 wherein following the aforesaid law it was held that reporting of contents of a complaint is privileged and does not invite a claim for defamation.
- (s) Supreme Court recently in *Subramanian Swamy Vs. Union of India* (2016) 7 SCC 221 was concerned with a challenge to the vires of Sections 499 and 500 of the Indian Penal Code, 1860 constituting defamation as defined therein as an offence, on the ground of the same being violative of Article 19(1)(a) of the Constitution of India. Negating the challenge, Supreme Court held (i) that while in a democracy, an individual has a right to criticize and dissent but his right under Article 19(1)(a) is not absolute and he cannot defame another person as that would offend the victim's fundamental right to reputation which is a facet of Article 21 of the Constitution and one fundamental right cannot be given higher status in comparison to the other and what is required is proper balancing of the two

and harmonious construction in light of objective of fraternity and fundamental duties envisaged under Article 51A(e) and (j) of the Constitution; (ii) that Article 19(2) envisages “reasonable restrictions”; right to say what may displease or annoy others cannot be throttled; (iii) that there can be no cavil that the right to freedom of speech and expression is a right that has to get ascendance in a democratic body polity but at the same time the limit has to be “proportionate” and not unlimited; (iv) that the restrictions should not be excessive and should be in public interest; (v) the test of reasonableness cannot be determined by laying down any abstract standard or general pattern—it would depend upon the nature of the right which has been infringed or sought to be infringed and the ultimate impact i.e. the effect on the right has to be determined; (vi) that the principles of proportionality of restraint are to be kept in mind by the Court.

- (t) Notice may also be taken of *Shreya Singhal Vs. Union of India* (2015) 5 SCC 1 which was concerned with the challenge to the *vires* of Section 66A of the Information Technology Act, 2000 on the ground of being violative of Article 19(1)(a) of the Constitution of India. It was held (a) that the fundamental right of freedom of speech and expression requires free flow of opinion and ideas and an informed citizenry is a pre-condition for meaningful governance and the culture of open dialogue is generally of great societal importance and the ultimate truth is

evolved by free trade in ideas in a competitive marketplace of ideas; (b) that it is only beyond a certain threshold that Article 19(2) is kicked in; and, (c) that wider reach and range of circulation over internet cannot justify restriction of freedom of speech and expression on that ground alone and that virtues of electronic media cannot become its enemies.

- (u) Applying the tests aforesaid also, no cause of action in favour of plaintiff or against any of defendants is disclosed.
- (v) Supreme Court in ***Pearlite Liners (P) Ltd. Vs. Manorama Sirsi*** (2004) 3 SCC 172 was concerned with a suit for specific performance of a contract of personal service. The same was dismissed by the trial court and the first appellate court on a preliminary issue as to the maintainability thereof but was in second appeal restored by the High Court and remanded for trial. Supreme Court held that once the reliefs claimed of, declaration that the transfer order was illegal and void and of declaration that the plaintiff continued to be in service of the defendant could not be granted by the Court, such a suit should not be allowed to continue and go for trial and should be thrown out at the threshold on the ground of want of jurisdiction of a Court to grant the reliefs prayed for. Accordingly, the orders of the trial court and the first appellate court were upheld and restored and the order of the High Court of restoring the suit and remanding it for trial was set aside. Though in the facts of that case, the suit was dismissed after notice to the defendant and

after framing a preliminary issue but the fact remains that in holding the suit to be barred, no notice of any plea of the defendant was taken. If that is so, then, in my opinion, the suit can also be dismissed without notice to the defendant, if the Court finds that the plaint discloses no cause of action.

15. Though I am also of the opinion that this Court would not have the territorial jurisdiction to entertain the suit as no part of the cause of action has accrued within the jurisdiction of this Court as the defendants are not stated to be selling their newspaper at Delhi and their website is not interactive and the article concerned is in *Bengali* language with which very few Delhiites would be conversant with and the plaintiff has not pleaded that any one at Delhi understood the said article but I refrain from returning a final finding on the said aspect being of the view that the suit of the plaintiff is otherwise not maintainable.

16. The suit is accordingly dismissed.

No costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

MARCH 23, 2017

‘pp’