

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

% **Date of decision: 11th April, 2018.**

+ **CS(OS) 15/2016, OA No.69/2017 & IA No.240/2016 (w/O XXXIX R-1&2 CPC)**

EXIDE LIFE INSURANCE COMPANY LTD. Plaintiff

Through: Mr. Siddharth Agarwal, Mr. Adit S. Pujari, Mr. Faraz Maqbool, Ms. Surabhi Dhar and Mr. Rohan Kothari, Advs.

Versus

MITUN GARG

..... Defendant

Through: In person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted this suit against the now sole defendant Mitun Garg as well as against one Ms. Sana Khan for (i) recovery, jointly and severally, of compensation in the sum of Rs.2,50,00,000/- for the loss sustained by the plaintiff on account of loss of reputation caused by defamatory statements and malicious falsehoods published by the defendants; (ii) permanent injunction restraining the defendants from publishing, communicating and circulating statements which are defamatory of the plaintiff, alleging that the plaintiff aided and abetted the alleged accused and did not take any action upon the complaints of the defendant No.2 Sana Khan; (iii) mandatory injunction directing the defendants to make a public apology in a newspaper with national circulation; (iv) mandatory injunction directing the defendant No.1 Mitun

Garg to remove all such defamatory posts, statements or pictures published on social media; and, (v) for recovery of costs of the suit jointly and severally from the two defendants.

2. The suit was entertained and vide *ex-parte* ad-interim order dated 13th January, 2016, the then defendant No.1 Mitun Garg directed to remove the postings made by him on his Facebook profile and the defendants restrained from, in any manner, similarly defaming the plaintiff. The said order has continued till now.

3. The plaintiff filed replications to separate replies claimed to have been received by the plaintiff from the two defendants, annexing thereto the copies of the replies from the defendants received by the plaintiff. However the said replies were not filed in the court. The defendants No.1&2 however subsequently through advocate filed a joint “reply” to the plaint annexing documents therewith and which is on record. On 21st February, 2017, a new counsel for defendant No.2 sought time to file written statement and which was allowed by the learned Joint Registrar vide order dated 21st February, 2017.

4. The plaintiff preferred a Chamber Appeal being OA No.69/2017, objecting to the order aforesaid of Joint Registrar permitting the defendant No.2 to file written statement. The said Chamber Appeal came before this Court on 17th April, 2017 when it was felt that the suit itself should not linger any further and the counsel for the plaintiff was requested to obtain instructions, whether subject to a decree for permanent injunction being granted, the plaintiff was willing to give up the claim for damages and if not, the justification of such claim. On 28th April, 2017, while the

defendant No.1 appeared in person, the defendant No.2 appeared along with Advocate and stated that on the complaint of the defendant No.2, a First Information Report (FIR) had been registered against the officials of the plaintiff and that the defendant No.2, without prejudice to her rights and contentions was willing to make a statement that she will not publish anything qua the plaintiff in future. The defendant No.1 appearing in person though stated that he had not published anything but stated that he also was willing to make such a statement. However, the counsel for the plaintiff stated that the plaintiff was not satisfied merely with the relief of permanent injunction and wanted to press the suit for damages. On enquiry, whether the plaintiff in its suit for defamation is entitled to damages as a matter of right, the counsel for the plaintiff drew attention to para 18 of *Nadirshaw Hormusji Sukhia Vs. Pirojshaw Ratanji Ratnagar* MANU/MH/0001/1913 but which did not appear to lay down any such absolute proposition. On request of the counsel for the plaintiff, the hearing was adjourned to 5th May, 2017. On 5th May, 2017, the counsel for the plaintiff was heard further and orders reserved.

5. Thereafter, the plaintiff and the defendant No.2 Sana Khan filed IA No.2160/2018 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) and which application was allowed and the suit, insofar as against the defendant No.2 Sana Khan, was disposed of in terms of IA No.2160/2018 with no order as to costs. However, the counsel for the plaintiff stated that the order which had been reserved needed to be pronounced qua the defendant No.1 Mitun Garg, who is now the sole defendant.

6. Thus, the question for adjudication is, whether the present suit for recovery of compensation for defamation should be allowed to proceed to and be put to trial.

7. The plaintiff instituted the suit pleading:

- (i) that the plaintiff is engaged in life insurance business and enjoys tremendous goodwill and stellar reputation; the plaintiff employs over 5,500 persons, 990 of whom are female employees; the plaintiff is an ISO Standard 9001 : 2008 company;
- (ii) that the defendant No.1 Mitun Garg was employed as Manager-Sales Training with the plaintiff from February, 2014 till November, 2015 at the New Delhi Branch office of the plaintiff;
- (iii) that the defendant No.2 was an employee of the plaintiff last posted at the New Delhi Branch office of the plaintiff and at the time of institution of the suit, was under suspension for certain actions;
- (iv) that the defendant No.2 was the complainant in FIR No.131/2015 for offences under Sections 354, 509 & 34 of IPC, of Police Station Barakhamba Road, New Delhi against three employees of the plaintiff;
- (v) that the defendant No.2 “escalated a complaint to the Human Resource Department of the plaintiff company” sometime in April, 2015 relating to an alleged act of sexual harassment;
- (vi) that the plaintiff formed a Committee to enquire into the allegation and the defendant No.2 actively participated in the meetings of the Committee; the Committee could not gather any evidence of sexual advances or humiliating remarks; it was however

established in the inquiry that the employee in question had borrowed money from defendant No.2 which was found to be an act of misconduct; although the money had admittedly been re-paid, the plaintiff company still issued a warning to the concerned official;

(vii) that though the defendant No.2 was placed under another Manager but did not appear to be satisfied and in August, 2015 raised some concerns pertaining to work-allocation and achieving business targets; the Reporting Manager of the defendant No.2 also complained against the defendant No.2, of not bringing any business and creating unhealthy situation in the office;

(viii) that on 24th September, 2015, a meeting was called to discuss the issues being faced by defendant No.2 in relation to her work; the defendant No.2, in her FIR, alleges that individuals present at the meeting used abusive language against her and held her hand in order to drag her out/push her out of the chamber in which the meeting was taking place;

(ix) that the defendant No.2 also called the Police on 24th September, 2015 and a complaint was lodged by the plaintiff also against the defendant No.2 with the Police;

(x) that the plaintiff issued a Show Cause Notice dated 28th September, 2015 to the defendant No.2 and suspended the defendant No.2 pending enquiry;

(xi) that notwithstanding the defendant No.2 being under suspension, she again visited the office premises of the plaintiff at New Delhi and disrupted the functioning of the office by shouting at

company officials, creating a commotion and threatening other employees with police action;

(xii) that on or around 28th November, 2015, the defendant No.1 started publishing wholly incorrect and misleading posts on his Facebook profile, accessible at <https://www.facebook.com/mitun.garg?fref=ts>, wherein the defendant No.1, without naming the plaintiff, claimed that one “deceased girl in Delhi working with one of the reputed life insurance company” needed justice; the defendant No.1 subsequently posted an audio which appeared to be in the voice of the defendant No.2; thereafter on 30th November, 2015, the defendant No.1 threatened to reveal the name of the plaintiff company on his Facebook page and on 1st December, 2015, published the name of the plaintiff and posted as under:

“Avoid 16 Dec 2012” Now time to disclose the name of the company where this incident happened in Delhi. There is no fault of company in this act but company should fire the employees who don’t respect women but this company supported that culprit employees and punished that girl who is sexually harassed by these employees of esteemed organization “Exide Life Insurance, kanchanchenga building, Barakhamba Road, New Delhi.

Girls are safe in Delhi or not???? Kya fir 16 Dec 2012 repeat hotarahega Delhi mein...

Very soon I will share the copy of FIR which was logged after 24 days of incident... Great Delhi Police...”;

(xiii) that thereafter, the defendant No.1 in connivance with the defendant No.2 posted a voice clip on 9th December, 2015 and on 2nd December, 2015, as under:

““Avoid Dec 2012”

Today I will post one video of the deceased girl who molested by 2 Big people in Exide Life Insurance, barakhamba, new Delhi on 24th Dec 2015 but all molesters are still free with Delhi Police help and company's support... But that girl is in trauma and depressed. If justice of our country is that slow and heartless then she should commit suicide and create a example for all the company's who recruited molesters in their company.... Watch this space for these molester's name and phone number.... IF you love your sister and respect rakshabandhan then send one must to them...” (sic)”;

(xiv) that the defendant No.1 also posted on his Facebook page photographs of the FIR lodged by the defendant No.2 against the employees of the plaintiff;

(xv) that thereafter also, the defendant No.1 continued to post on his Facebook page including the following:

“To all the girls. Pls don't join exide life insurance company.... This company don't respect women and all the high post GM and DGMs are women eater and the beauty is if u complaint against them then they will punish girls...” (sic)

“Avoid 16 Dec 2012... simple message to Exide Life Insurance Management.... STOP DOING SEXUAL HARASSMENT AND STOP SPREADING RUMORS OF GIRLS CHARACTER... U ALL ARE ALSO BROTHERS, FATHER AND HUSBAND OF ANY GIRL.

Ladies who are supporting this kind of guys in molestation of girls should change their identity from women to any...Just for money...Shittt...

I hate myself that I spent 2 years in this kind of money where people respect money but disrespect women... I think they didn't born by mother but bought by money...

SO SAD... THIS IS THE ONLY REASON WHY 23 RAPE HAPPENDED EVERY HOUR IN INDIA..."(sic)

"Avoid 16 Dec 2012. Great thinking of Esteemed Organization "Exide Life Insurance"...

In this Company, people feel that all female employees are of a loose character, and that such women can be harassed or bought. They should be behind bars. I have started a war against such violators in order to save such working women. Please support me in this war.

Out of 14 years of working experience in corporate, I realized corporate people don't have heart and emotions. They just become machines and use their down line as per their requirement (Legal or illegal) Will give you some facts and proofs experienced and collected in one of the corporate "Exide Life Insurance" is now known as girl molester training and execution institute in India.

Lets see the truth of what is happening in Exide Life Insurance...."

(xvi) that all the allegations, innuendos made against the plaintiff are utterly false.

8. The defendant No1, in the reply in person, copy of which was forwarded to the plaintiff, i) pleaded that he left the services of the plaintiff because the plaintiff was trying to force him in indulging in unethical and wrong activities like sexual harassment of female employee by seniors;

ii) pleaded, that in October, 2015, the plaintiff transferred him to Mumbai because he was witness to sexual harassment which happened on 24th September, 2015; that he was also offered money to change his statement; iii) pleaded, that he did not post anything and on learning of same had complained to Facebook and also deleted his account. The defendant No.2, in the reply filed in person, copy of which was forwarded to the plaintiff, pleaded, (a) that the plaintiff manipulated facts and conducted a false ICC Committee and tried to protect the accused persons; (b) that the plaintiff's management harassed the defendant no.2 a lot since April, 2015 and forced her to leave the job; (c) that the defendant No.2 requested HR department several times that her Reporting Manager was not supporting her since she had filed a complaint and that she was not being informed about the meetings and trainings for which she was liable like other employees; (d) that during the meeting on 24th September, 2015, the Manager of the plaintiff misbehaved with the defendant No.2 and used abusive language and in pursuance to which FIR was lodged; (e) that on 15th October, 2015, the Advocate of the plaintiff offered to bribe the defendant No.2 to withdraw the case; and, (f) that the plaintiff in the plaint had not given the true version of the incident on 24th September, 2015.

9. The defendants No.1&2, in their joint "reply" filed on 24th December, 2016, have *inter alia* pleaded (i) that the present suit is a counterblast to the complaints made by the defendants; (ii) that the plaintiff had not taken any steps against the officials against whom the defendant No.2 had complained; (iii) that the defendant No.1 was the eye witness of the incident and used to support the defendant No.2; (iv) that the defendant

No.1 was unaware of the posts on the Facebook page pleaded by the plaintiff; (v) that the plaintiff, on resignation of the defendant No.1, seized the laptop provided by the plaintiff to the defendant No.1 and all the passwords were saved in the laptop; (vi) that the said laptop was used by the plaintiff to post the material pleaded in the plaint; (vii) that the defendants have no connection with the posts on the Facebook page, on the basis whereof the suit has been filed; (viii) that no defamatory material had been posted by the defendant No.1; (ix) that the defendant No.1 had also registered complaints against the plaintiff and its officials with the Delhi Commission for Women.

10. The counsel for the plaintiff, in support of the insistence of the plaintiff to pursue this suit for recovery of damages/compensation, now only from the erstwhile defendant No.1 who is now the sole defendant Mitun Garg, argued (a) that the relief of permanent injunction would save the plaintiff in future only and would not compensate the plaintiff for the past acts of the defendant; (b) that the defendant has not shown any remorse; (c) that the plaintiff had caused an inquiry to be conducted on the complaint of the defendant No.2 and in which inquiry, no case of sexual harassment was made out; (d) that once plaintiff is proved to have been defamed, the plaintiff is automatically entitled to damages for defamation; (e) that the plaintiff was however willing to consider accepting apology from the defendant.

11. The defendant appearing in person stated that since the allegedly defamatory posts were not published by him, the question of his apologizing for the same did not arise.

12. The counsel for the plaintiff, during the hearing, referred to:

(I) ***Hindustan Unilever Limited Vs. Reckitt Benckiser India Limited*** ILR (2014) II Delhi 1288 (DB), in paras 61, 62 & 66 whereof a number of foreign judgments holding that a successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for wrong he has suffered and that though good name of a company is a thing of value and though actual financial loss is difficult to prove but that does not mean that no compensation is to be awarded, were cited;

(II) ***Nadirshaw Hormusji Sukhia*** supra but which only held that grant of contemptuous damages is in the discretion of the Court;

(III) ***Mohammad Samiullah Khan Vs. Bishu Nath*** AIR 1928 All 316 holding that it is not essential for a plaintiff to plead and prove special damage and that general damages can be awarded;

(IV) ***Jameel (Mohammed) Vs. Wall Street Journal Europe Sprl*** [2006] UKHL 44 also holding that a company's good name is a thing of value which it is proper for the law to protect and that financial loss is difficult to prove; and,

(V) ***Frank Finn Management Vs. Subhash Motwani*** 2008 (106) DRJ 921, where though it was found that portions of the impugned article were per se defamatory but the plaintiff having failed to show that the same were defamatory to the plaintiff's reputation, the suit was dismissed.

13. The counsel for the plaintiff has also handed over written submissions and in which it has additionally been contended that a suit instituted by way of a plaint is to proceed as per CPC and the Delhi High Court (Original Side) Rules, 1967 and that the plaintiff has a right to expect his suit to proceed as per the CPC and the Rules. It has further been contended that the present suit does not fall within the ambit of situation in which the suit can be disposed of without trial.

14. I have considered the contentions of the counsel for the plaintiff and am of the view that the present is not a suit which should be put to trial on the claim of the plaintiff for recovery of damages. My reasons for holding so, are as under:

(A) The allegedly defamatory statements imputed to the erstwhile defendant No.1 and now sole defendant Mitun Garg are in support of the grievance of the erstwhile defendant No.2 Sana Khan against the plaintiff and its officials and which grievance the said defendant No.2 was canvassing by way of FIR against the officials of the plaintiff and complaint against the plaintiff to the Delhi Commission for Women. None of the allegedly defamatory statements attributed to the defendant No.1 are in any other context or relating to anything else.

(B) The plaintiff also in the suit, claimed compensation in the sum of Rs.2,50,00,000/- jointly and severally from both the defendants. The plaintiff did not segregate the compensation claimed from the defendant No.1 and the compensation claimed from the defendant No.2.

(C) The officials of the plaintiff, against whom the erstwhile defendant No.2 had lodged the FIR, and the defendant No.2, on 27th September, 2017, before the Delhi Mediation Centre, Patiala House Courts, New Delhi, arrived at a settlement and agreed (i) that the plaintiff shall withdraw the present suit against the defendant No.2 only; (ii) that the officials of the plaintiff accused in the FIR shall file a petition for quashing of FIR against them and the defendant No.2 shall cooperate in the quashing proceedings; (iii) that the plaintiff shall issue a fresh relieving letter to the defendant No.2 at the time of quashing of the FIR; (iv) that any proceeding before any Court/forum initiated by either of them against each other shall be deemed to have been withdrawn in view of the settlement.

(D) Though the plaintiff was not an accused in the FIR in prosecution whereof the parties were referred to Mediation, but in the settlement arrived at, undertook obligations as aforesaid and has abided by the said obligations including by filing IA No.2160/2018 under Order XXIII Rule 3 of the CPC jointly with the defendant No.2. It is thus evident that the settlement, though between employees of the plaintiff accused in the FIR and the defendant No.2, had the full support of the plaintiff and was with the consent of the plaintiff.

(E) The damages which were claimed jointly and severally from both the defendants, have not been amended, even after settling with the defendant No.2 and from whom the plaintiff now does not seek to

recover anything. Now the entire damages of Rs.2,50,00,000/- are claimed from defendant no.1 who is now the sole defendant.

(F) The plaintiff having arrived at settlement with the defendant No.2, after orders on the need to put the suit to trial on the claim of the plaintiff for damages had been reserved, is deemed to be fully aware and conscious of the effect thereof on the claim of the plaintiff for damages against the defendant No.1.

(G) The aforesaid has resulted in a peculiar situation. The allegedly defamatory statements claimed to have been published by the defendant No.1 (now sole defendant) make public the complaint of the defendant No.2 against the plaintiff and its officials. The compromise arrived at between the plaintiff and defendant no.2 does not contain any withdrawal of the complaint so made by defendant no.2 against the plaintiff and its officials; all that the defendant no.2 agreed in the compromise was to not prosecute the officials of plaintiff and co-operate in quashing of FIR and not to proceed with complaint against the plaintiff. It is thus not as if there is any admission of the defendant no.2 of the falsity of facts on which FIR was lodged or other complaints made. Interestingly, though the defendant no.2, on 28th April, 2017 had offered to suffer a decree for permanent injunction as claimed, the plaintiff, while settling with defendant no.2, did not deem it necessary to obtain a decree for permanent injunction even against defendant no.2 and chose to withdraw the suit against her.

(H) I have wondered, whether the plaintiff can be permitted to, while settling with the defendant No.2, on FIR at whose instance the officials of the plaintiff were being prosecuted continue with the claim for damages from the defendant No.1, who was nothing but a supporter or mouthpiece of defendant no.2.

(I) To allow the plaintiff to do so will have an adverse effect on the society in general. In future, colleagues and other persons at a workplace will hesitate to come out in support of victims of sexual and other harassment under fear of the management, while buying peace with the victim, to prevent their name from being sullied further, turning its ire towards such supporters, literally leaving them high and dry.

(J) It is the duty of this Court to ensure that its process is not used to do what will adversely affect the society in general.

(K) The plaintiff, engaged in business of life insurance ought to understand so.

(L) The settlement arrived at by the plaintiff with the defendant No.2 has left the defendant No.1, who had filed a joint reply with the defendant No.2, in a situation in which it will be highly inequitable to permit the plaintiff to proceed with the claim for damages against the defendant No.1. As aforesaid, the allegedly defamatory statements allegedly published by the defendant No.1 are nothing but making public the grievance/FIR of the defendant No.2 against the plaintiff and its officials. It is not as if the defendant No.2 made such

grievance against the plaintiff and its officials only to the defendant No.1. The defendant No.2 had taken recourse to legal process with respect to her said grievance and was pursuing the same and reiterating the same including in the reply filed in this suit jointly with the defendant No.1 and till the settlement was arrived at with the plaintiff. The said reply has also not been withdrawn and stands. The grievance of defendant no.2 against plaintiff and its officials thus were in public domain. The defendant, to prove his defence in the said reply has to necessarily examine the erstwhile defendant no.2 and who has been silenced by the plaintiff. The plaintiff, by seeking to proceed with the suit against defendant, cannot be permitted to so steal a march by disturbing the level playing field.

(M) The cause of action in the present suit, pleaded by the plaintiff, was joint and several against the defendants No.1&2. The plaintiff, if were interested in recovery of damages and in proving the falsity of the claims of the defendant No.2, ought not to have settled with the defendant No.2. However, the plaintiff choose to settle selectively with the defendant No.2 only from whose actions the plaintiff was feeling the pinch by its officials being prosecuted and the likelihood of proceedings in the prosecution becoming public.

(N) There is another aspect. The Facebook postings allegedly made by defendant, either publish the complaint of the defendant no.2 or contents thereof or the audio of the defendant no.2 with respect thereto. I have in ***Mahadev I. Todale Vs. Frankfinn Aviation Services Pvt. Ltd.*** (2017) 242 DLT 273, SLP(C) No.28925/2017

preferred whereagainst was dismissed on 10th November, 2017, held as not maintainable, a suit for damages for defamation by publication of complaints made to the Police. It was *inter alia* held that the contents of a FIR are in public domain, with the Police itself being required to publish it; that a complainant pursuing due process of law, even if his/her complaint is defamatory, is entitled to protection from a suit for defamation and this protection is the absolute privilege accorded in the public interest to those who make statements to the Court in the course and in relation to judicial proceedings. In this light also, all that the defendant No.1 was doing was publishing the complaint of the defendant No.2 against the plaintiff and its officials. A Nine Judges Bench of Supreme Court in ***Naresh Shridhar Mirajkar Vs. State of Maharashtra*** AIR 1967 SC 1 held that what takes place in the 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 has 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.

15. It would thus be seen that the plaintiff is not entitled to recover any damages for defamation from the defendant. Once it is so, it does not justify following of the procedure prescribed for a suit in the CPC or in the

High Court (Original Side) Rules. It is a well settled principle that the Courts are not meant to pedantically put the suit through the rigmarole of the trial, even when it is found that the claim therein is deadwood and has no possibility of success. Such suits have to be weeded out from the system of the Court at the earliest so as to not consume the time of the court at the cost of other deserving *lis*.

16. Resultantly, without prejudice to the defence of the defendant Mitun Garg that the allegedly defamatory postings were not posted by him, the suit is disposed of by passing a decree in favour of the plaintiff and against the defendant, of permanent injunction in terms of prayer paragraph (ii) of the amended plaint dated 8th January, 2016, leaving the parties to bear their own costs.

Decree sheet be drawn up.

APRIL 11, 2018
'bs'

RAJIV SAHAI ENDLAW, J.