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

Date of Decision: 27th November, 2018

+ **FAO(OS) 64/2018**

**THE INDIAN INSTITUTED OF PLANNING
AND MANAGEMENT**

..... Appellant

Through: Mr.Nishit Kush, Adv.

Versus

**DELHI PRESS PATRA
PRAKASHAN PVT LTD & ORS**

..... Respondents

Through: Mr.Amit Gupta, Adv. with Ms.Mansi
Kukreja, Ms.Vidhi Goel, Adv. for R-1 to 4.

Mr.Sajan Poovayya, Sr.Adv. with Mr.Saransh
Jain, Mr.Meka V.Ramakrishna, Adv. for R-6/
Google India Pvt. Ltd.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

: **Rajendra Menon, Chief Justice (Oral):**

1. Challenging an order, interlocutory in nature, dated 16th February, 2018 passed by the learned Single Judge in I.A.No.13152/2017 in C.S.(OS) No.3354/2015 vacating the injunction granted in favour of the plaintiff/appellant herein, this appeal has been filed by the appellant under Section 10 of the Delhi High Court Rules read with Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 ('CPC')

2. The appellant filed the suit in question initially before the Civil Judge, Cachar, Silchar, Assam, in the suit for defamation and injunction filed, sought temporary injunction in a proceedings under Order XXXIX Rule 1 and 2 CPC. The learned Civil Judge, Cachar, Silchar granted temporary

injunction to the appellant. However, on orders passed by the Hon'ble Supreme Court, the matter had been transferred to this Court and registered as CS (OS) No.3354/2015. In the said suit, an application for vacation of the injunction was filed. The injunction granted on 12th April, 2011 having been vacated, this appeal is filed by the appellant.

3. It is the case of the appellant that it is a registered society involved in running academic courses under the name and style of “*The Indian Institute of Planning & Management*” (‘IIPM’). It is alleged that the respondents No.1 to 3 are Managing Editors, Editors and Publishers of a magazine “The Carvan”. The respondent No.4 is author of an article “*Sweet smell of success – How Arindam Chaudhuri made a fortune of the aspirations and insecurities of India’s middle classes.*” It is alleged that the respondent Magazine, apart from carrying morphed images of Sh.Arindam Chaudhuri, Dean of the Centre, has portrayed him in a defamatory manner and addressed him in the said article using derogatory words and imputes false motive to him. Contending that the derogatory comments in the article against Sh.Arindam Chaudhuri projects him in a negative manner before the public at large and are defamatory in nature. Pending the final disposal of the suit in question, an injunction from publishing and circulating the article was sought for which injunction initially was granted by the Civil Judge, Cachar, Silchar, Assam on 12th April, 2011 which has now been vacated by the learned Single Judge.

4. The learned counsel for the appellant took pains in taking us through the article and tried to demonstrate that the same is defamatory in nature and

injunction granted was proper. It was stated that the allegations levelled against the appellant/plaintiff were reckless in nature, made *malafidely* and without proper research.

5. On the contrary, learned counsel for the respondents refuted the aforesaid contentions and produced documents and orders of this Court which have been referred to by the learned Single Judge to say that the appellant has failed to prove *prima facie* that the articles are wrong or false. The defendants/respondents herein in fact invoked the defence of justification of the statements and its truthfulness.

6. We have considered the contentions advanced and on going through the material available on record we find that the learned Single Judge has taken note of the principles of law governing grant of injunction by Courts in India and it had been held that Courts have power to pass pre-publication or pre-broadcasting injunction or prior restraint order in matters which are *sub judice* provided the dual test of necessity and proportionality are satisfied and reasonable or alternate methods or measures are not sufficient to prevent the risk to the plaintiff.

7. After evaluating all the material, it has been found by the learned Single Judge that the article in question is based on statements and interviews given by several persons. They are in fact reproduction of various facts already available in public domain and are also based on findings recorded by various Courts including this Court with regard to functioning of the Institute in question and conduct of various programmes and courses by the said Institute. From para-12 onwards, the learned Single Judge has meticulously referred to various pronouncements by Division

Benches and Single Judges not only of the this Court but also other High Courts, such as, Punjab and Haryana High Court at Chandigarh, High Court of Uttarakhand at Nainital and found that the Institute in question, namely, IIPM has admitted in various proceedings that they were not entitled to confer any degree. It has also been found that the person concerned, namely, Mr.Arindam Chaudhuri, Dean of the Institute has been party to advertisement and publication in the public domain with regard to courses conducted by the Institute. The Institute had been misguiding the public at large and making various statements which are not permissible or correct.

8. Taking note of various aspects of the mater in detail, the learned Single Judge came to the conclusion that the defendants have highlighted and brought on record various materials by way of evidence which are matters of substantial public importance and indicated that the stories published by them are not reckless but they have come out with the defence of justification, truthfulness and fair comment. Based on this material finding, the injunction granted to be not in accordance with the requirement of law and on evaluation of the material available on record holding that justification or truthfulness of a statement published can be a ground to prevent any injunction, the injunction has been vacated.

9. We have gone through the detail order passed by the learned Single Judge, the facts narrated in the plaint, the article and the defence of the respondents and we find that after considering there to be a *prima facie* material to uphold the contention of the defendants that truth or correctness of the statement is their defence, the injunction has been vacated.

10. In the case of ***Khushwant Singh Vs. Maneka Gandhi, AIR 2002 Del 58*** a Bench of this Court had occasion to consider the question of grant of

injunction in action for defamation and after relying upon a judgment in the case of ***Bonnard v Perryman 1891- 95 All ER 965***, the principle culled out by this Court is as under:-

“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.

In the particular case before us, indeed, the libellous character of the publication is beyond dispute, but the effect of it upon the Defendant can be finally disposed of only by a jury, and we cannot feel sure that the defence of justification is one which, on the facts which may be before them, the jury may find to be wholly unfounded; nor can we tell what may be the damages recoverable.”

11. The Hon'ble Supreme Court in the case of ***R.Ragagopal vs. State of T.N. (1994) 6 SCC 632*** also considered similar issue, took note of the following principle laid down in ***Fraser vs. Evans 1969 (1) QB 349***:-

“.....the court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since *Bonnard v.Perryman*. The reason sometimes given is that the defences of

justification and fair comment are for the jury, which is the constitutional tribunal, and not for a judge. But a better reason is the importance in the public interest that the truth should out..... There is no wrong done if it is true, or if [the alleged libel] is fair comment on a matter of public interest.....”

12. On a plain reading of these judgments, it is clear that once truth and correctness of statement made, sought to be derogatory is pleaded in defence, injunction cannot be granted and this is the principle followed by the learned Single Judge in vacating the injunction. This being in accordance with law, we see no reason to make any indulgence into the matter. In fact, the finding recorded by the learned Single Judge is that material available on record shows that there is no substantial evidence at this stage to conclude *prima facie* that the article published by the defendants are reckless in nature in disregard to truth and are not correct. The impugned order of the learned Single Judge suffers from no error warranting reconsideration.

13. The appeal is, therefore, dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

NOVEMBER 27, 2018

‘anb’