

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

% **Date of decision: 23rd May, 2018**

+ **CS(OS) No.3049/2011**

NEW DELHI TELEVISION LTD.

.... Plaintiff

Through: Mr. Arvind Nayar, Sr. Adv. with Mr.
Sarojanand Jha & Mr. Biswajit
Choudhary, Advs.

Versus

M.J. AKBAR & ORS.

.....Defendants

Through: Mr. Arun Monga & Ms. Divya
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted this suit for, i) recovery of Rs.25 crores as damages from the defendants viz. a) M.J. Akbar, b) Sushil Gujral, c) Joyeeta Basu, and, d) Prayaag Akbar, being the Managing Editor, Printer and Publisher, Deputy Editor and owner respectively of 'The Sunday Guardian' newspaper; ii) perpetual injunction restraining the defendants from publishing or causing to be published the contents of the defamatory article or any other similar story concerning the plaintiff; and, iii) mandatory injunction directing the defendants to remove the allegedly defamatory article from their website <http://www.sunday-guardian.com>.

2. The suit was entertained and summons thereof ordered to be issued and vide *ex parte* ad-interim order dated 7th December, 2011, the defendants restrained from republishing or re-circulating the article written on 5th December, 2010 in any form on its internet website or in physical form of newspaper and from uploading any article which shows the plaintiff in bad

light, except the one which had already been published or the material complained against, on its internet website.

3. The defendants contested the suit by filing a joint written statement and to which a replication was filed by the plaintiff.

4. Vide order dated 26th April, 2012, the *ex parte* ad-interim order dated 7th December, 2011 was, without giving any reasons, made absolute during the pendency of the suit.

5. On 3rd September, 2012, the following issues were framed in the suit:

- “1. Whether the plaint has been signed and rectified and the suit is instituted by a competent person? OPD
2. Whether the article titled **NDTV-ICICI loan chicanery saved Roys'** authored and published by the Defendants in their newspaper edition dated December 05, 2010 as well as on their website 'www.Sunday-guardian.com' is defamatory? OPP
3. Whether the Article titled '**NDTV CEO gives reply, Guardian respondents'** authored and published by the Defendants in their newspaper edition dated December 05, 2010 as well as on their 'www.Sunday-guardian.com' is defamatory? OPP
4. Whether the article titled '**NDTV juggles funds, shares abroad, avoids tax'** authored and published by the Defendants in their newspaper edition dated December 05, 2010 as well as on their website 'www.Sunday-guardian.com' is defamatory? OPP
5. Whether the Plaintiff is entitled for a decree for perpetual injunction in the facts and circumstances of the case? OPP
6. Whether the Plaintiff is entitled for a decree for mandatory injunction in the facts and circumstances of the case? OPP
7. Whether the defendants are jointly / severally liable to the Plaintiff damages to the tune of Rs.25 crores or any other sum? OPP
8. Relief.

and the parties directed to appear before the Joint Registrar on 19th October, 2012 for fixing dates for cross-examination of the witnesses of the plaintiff and the plaintiff directed to file affidavits by way of evidence before the said date.

6. The plaintiff did not file any affidavits of evidence by 19th October, 2012. However the Joint Registrar was not holding the Court on 19th October, 2012 and the suit was adjourned to 7th February, 2013.

7. The plaintiff filed IA No.19786/2012 for condonation of delay in filing list of witnesses and which application came up before the Joint Registrar on 31st October, 2012 when notice thereof was ordered to be issued for the date fixed on 7th February, 2013.

8. The plaintiff did not file any affidavits of evidence by 7th February, 2013 also and the Joint Registrar, on the said date adjourned the matter to 15th July, 2013, for consideration of the application of the plaintiff for condonation of delay in filing list of witnesses.

9. No affidavits by way of evidence were filed by 15th July, 2013 either, when noticing the same, the application of the plaintiff for condonation of delay in filing list of witnesses was allowed and the plaintiff directed to file the affidavits of all its witnesses within four weeks therefrom with advance copy to the counsel for the defendants and the suit posted on 4th December, 2013 for evidence of the plaintiff.

10. The plaintiff still did not file affidavits of evidence. However, 4th December, 2013 was declared a holiday and the suit was taken up on 5th December, 2013 when finding, that the plaintiff had not filed affidavits by way of evidence, final opportunity was granted to the plaintiff to file affidavits within eight weeks therefrom with advance copy to the counsel for

the defendants and the plaintiff was cautioned that on its failure to do so, its evidence shall be deemed to be closed. The suit was adjourned to 16th May, 2014 for evidence of the plaintiff.

11. The plaintiff, on 31st January, 2014 filed affidavits of evidence of Mr. Ajay Mankotia, President (Corporate Planning and Operations), Mr. K.V.L. Narayan Rao, Executive Vice-Chairperson and Mr. Anoop Singh Juneja, Authorized Representative.

12. On 16th May, 2014, though the affidavits aforesaid were on record but neither of the said three witnesses whose affidavits had been filed nor any other witness appeared and the only explanation was “that witnesses could not appear due to their professional commitments”. Though the evidence of the plaintiff in terms of earlier order should have been closed but again last opportunity was given and the suit posted to 28th November, 2014. The plaintiff was also directed to file affidavits of other witnesses, if any.

13. The plaintiff did not file affidavit of any other witnesses and on 28th November, 2014 again, no witness of the plaintiff appeared though last / final opportunity twice earlier had been granted to the plaintiff; still, the evidence of the plaintiff was not closed and the suit adjourned for evidence of the plaintiff to 21st July, 2015.

14. The position remained the same on 21st July, 2015 also; no witness of the plaintiff was present. However, taking a plea of possibility of amicable settlement, adjournment was again wangled. The suit was adjourned to 15th December, 2015 for reporting settlement, if any and else for evidence of the plaintiff.

15. Neither any settlement was arrived at till 15th December, 2015 nor any witness of the plaintiff appeared on that date also. Again adjournment to try

amicable settlement was sought. Noting that issues were framed more than three years earlier and since then no evidence had been recorded, yet another opportunity was given subject to costs and the suit adjourned to 29th January, 2016 for evidence of the plaintiff.

16. In spite of the aforesaid, no witnesses of the plaintiff appeared on 29th January, 2016 either. However, the learned Joint Registrar this time, noticing the past happenings in the suit, refused the request for adjournment and closed the evidence of the plaintiff and directing the defendants to file affidavits of their witnesses within four weeks therefrom, the suit was adjourned to 22nd April, 2016 for evidence of the defendants.

17. I may at this stage notice, that considering the nature of the suit and the fact that onus of each of the issues framed was on the plaintiff (onus placed on defendants of issue no.1 is obviously a typographical error), the Joint Registrar on 29th January, 2016 ought not to have, after closing the evidence of the plaintiff, adjourned the suit for defendants' evidence. Surprisingly, the counsel for the defendants also played along and neither made a statement that there was no need for the defendants to lead evidence and the suit be listed before the Court for dismissal, nor took any steps in this regard after 29th January, 2016.

18. Thereafter began the turn of the defendants to delay the disposal of the suit. No affidavits of evidence were filed and no witness of the defendants appeared on 22nd April, 2016. Granting last opportunity to the defendants to file affidavits of evidence within four weeks therefrom, the suit was adjourned for defendants' evidence to 16th November, 2016. The defendants again did not file any affidavits of evidence. No witness of the defendants appeared on 16th November, 2016. On the contrary, the counsels on 16th

November, 2016 stated “that the matter has been amicably settled and a joint compromise application under Order XXIII CPC shall be filed within four weeks”. Believing the same, the suit was ordered to be posted before the Court on 24th January, 2017.

19. It became evident on 24th January, 2017, that the statements of the counsels on 16th November, 2016, of the matter having been amicably settled was just a ruse for adjournment, upon the counsels on 24th January, 2017 stating that, “although at the previous hearing, it appeared that there was a possibility of an amicable resolution of the disputes between the parties” but the counsels had instructions to proceed with the trial. This Court, without noticing the past happenings, on request posted the suit before the Joint Registrar on 10th February, 2017.

20. The counsels, on 10th February, 2017, again conveniently stated that “settlement talks have started again” and sought another adjournment. Directing that if no settlement is arrived at, the defendants may file affidavits of their witnesses within four weeks, the suit was adjourned to 19th July, 2017.

21. As would be evident from the above, the parties, after taking dates from the Joint Registrar / Court on such grounds, forgot about the case till the next date of hearing. The same followed on 19th July, 2017 also. On 19th July, 2017, the counsel for the plaintiff stated that he had been newly engaged and needed time to inspect the record. The counsel for the defendants also sought further time to file affidavits. Not noticing the past conduct of the parties, yet again eight weeks time was given to the defendants for filing affidavits and the suit adjourned to 12th and 13th October, 2017 for evidence of the defendants.

22. The plaintiff, on 8th August, 2017 filed Chamber Appeal being OA No.109/2017 against the order dated 29th January, 2016 of the Joint Registrar closing the evidence of the plaintiff, along with IA No.9054/2017 for condonation of 543 days delay in filing the Chamber Appeal.

23. The application for condonation of delay came up before this Court first on 16th August, 2017, when notice thereof was ordered to be issued.

24. In the meanwhile, the suit came up before the Joint Registrar on 12th October, 2017. The defendants had still not filed affidavits of evidence; however the excuse of the Chamber Appeal having been filed by the plaintiff was taken.

25. The counsel for the defendants, though on 21st September, 2017 had sought time for filing reply to the application of the plaintiff for condonation of delay in filing the Chamber Appeal, but no reply even has been filed.

26. The senior counsel for the plaintiff has been heard on the Chamber Appeal and the application for condonation of delay in filing the same.

27. The arguments of the senior counsel for the plaintiff are three fold with much emphasis, it is argued that the suit is for recovery of large sum of money i.e. Rs.25 crores and valuable rights of the plaintiff are at stake and the plaintiff has paid court fees of nearly Rs.25 lacs thereon. The second argument is that the order dated 29th January, 2016 closing the evidence of the plaintiff fails to take into account the fact that the respondents were also party to the settlement negotiations going on between the parties and had never objected to the adjournments being sought by the plaintiff. It is stated that the parties, till the talks of settlement finally terminated in the month of July, 2017, were hopeful of a settlement. The third argument of course is, of

“no prejudice will be caused to anyone if the plaintiff is granted an opportunity to lead evidence”.

28. Else, the long-winded memorandum of Chamber Appeal and the application for condonation of delay is replete with the proceedings on different dates. The only additional plea I find therein is, that the defendants also took adjournments for their evidence.

29. As far as the first of the aforesaid arguments is concerned, the plaintiff itself, if so hurt and if so aggrieved from the acts of the defendants, ought to have shown the urgency and importance, to which a high monetary value is being given now. The plaintiff, from 3rd September, 2012, when the issues were framed, till 8th August, 2017 when the Chamber Appeal along with application for condonation of delay was filed i.e. for a period of five years, was oblivious of the high monetary value of its right or the hurt suffered by it. It is not as if the suit, owing to some exigencies, had gone off the radar of the plaintiff or its advocate. No default was made insofar as appearance on each date was concerned and on every date, appearance was duly entered. Advocacy and ingenuity was shown on each of the eleven dates of hearing when different grounds were put forward to take adjournments instead of leading evidence of the plaintiff. Thereafter seven dates were taken for defendants' evidence, before the Chamber Appeal was filed. I have already hereinabove observed that the conduct in the said five years is clearly of, forgetting about the suit till the next date of hearing and merely attending the dates of hearing.

30. I have also enquired from the counsel for the plaintiff with respect to the first and the third arguments urged by him, whether a litigant, by paying court fees of lacs of rupees, gets a right to purchase the time of the Court.

Obviously, no answer in the affirmative could be given. Thus, the argument urged of “no prejudice will be caused to anyone” is of no avail. Prejudice is indeed suffered by the Court, which incurs cost of thousands of rupees for each listing of a case. Prejudice is also suffered by the Court by such cases adding to the inventory of the Court and being shown as arrears of pendency in the Court and bringing a bad name to the Court. Prejudice is also suffered by other litigants pursuing / defending their *bona fide* disputes in the Court and who, owing to such non serious litigants as the parties herein are, are unable to get expeditious listings as they deserve. Such conduct of litigants is thus affecting the administration of justice. The argument of ‘none suffering prejudice’ is again self-centered and forgetting that the Courts are public institutions and not fiefdom of the rich who can afford to inflate their claims.

31. Supreme Court, in ***Shiv Kotex Vs. Tirgun Auto Plast Pvt. Ltd.*** (2011) 9 SCC 678, labeled the order of the High Court setting aside in appeal the order non-suiting the plaintiff for not leading evidence, on the ground of “the stakes in the suit being very high, the plaintiff should not be non-suited on the basis of no evidence”, as “misplaced sympathy and non existent justification”. It was held that the plaintiff in that case was itself to blame for the lapse and the suit court had given sufficient opportunity to the plaintiff to produce evidence. In that case, three opportunities were deemed to be sufficient opportunity. Here, as aforesaid, the plaintiff has availed as many as eleven opportunities to lead evidence. It was further held in ***Shiv Kotex*** supra, that the Courts are not obliged to give adjournments after adjournments merely because the stakes are high in dispute and the Courts cannot be a silent spectator and leave the control of the case to the party to

the case who has decided not to take the case forward. Regret was expressed for the litigants seeking dates and the Courts granting adjournment at the drop of the hat. This was held to be the reason for civil disputes dragging on and it was directed that the Courts should become sensitive to delays in justice delivery system and realize that adjournments dent efficacy of judicial process. It was cautioned that if the menace is not controlled, litigant public will lose faith in the system. It was further held that adjournments have grown like cancer, corroding the whole body of justice delivery system. It was directed that no more than three adjournments be granted for leading evidence.

32. Again, in *Gayathri Vs. M. Girish* (2016) 14 SCC 142, it was held that a counsel appearing for a litigant has to have institutional responsibility. It was reiterated that delay gradually declines the citizenry faith in the adjudicatory system and that it is the faith and faith alone that keeps the system alive. Timely delivery of justice was held to be keeping the faith ingrained.

33. The plaintiff in the present case appears to have woken up from its slumber insofar as the present suit is concerned, only on realizing that the game of “tarikh pe tarikh” which it had been playing, was about to come to an end. Need was then felt to file the Chamber Appeal along with application for condonation of delay so that the game can continue.

34. Though the aforesaid reasoning also takes care of the second argument of the senior counsel for the plaintiff but I may add that just like the Court, even under Order XXIII Rule 3 of the CPC is not bound to put its seal of approval to a compromise arrived at between the parties and is entitled to refuse the same if finds the same to be unlawful, so is the Court not bound to

keep on allowing adjournments or not to close the right of any party to lead evidence, merely on the ground that the other party has been agreeing thereto. I reiterate that procedure and time of the Court is not for sale and is not to be regulated by the litigants but is to be regulated by the Court. The plaintiff, owing to the defendants also cooperating with the plaintiff, has already availed undue eleven opportunities spanning over three years four months and 26 days for leading its evidence, when ordinarily not more than two or three opportunities are given. Though such cooperation of defendants earned the plaintiff extra time and opportunities but cannot earn the plaintiff endless time as the plaintiff expects. The Court, before closing the right of plaintiff, had repeatedly cautioned the plaintiff, by imposing costs or by making the opportunity a 'last and final one' and was not required to do any further. CPC, as amended with effect from the year 2002, in Order XVII Rule 1 prohibits adjournment more than three times to a party, during the hearing of the suit.

35. As far as the aspect of settlement talks is concerned, the Chamber Appeal as well as the application for condonation of delay is accompanied with the affidavit of one Ms. Sheena Iype aged about 38 years and who has not even stated her position in the plaintiff company and has merely described herself as an authorized representative of the plaintiff. The said Ms. Sheena Iype has not stated that she was herself negotiating settlement or with whom. No particulars of the settlement talks pleaded have been given. It is not disclosed as to who on behalf of the defendants was attempting to settle, what were the terms of settlement and what was the breaking point for the settlement. Considering the value of its stake in the present litigation which is argued before the Court, the settlement talks if any could not have

been at the level of Ms. Sheena Iype aforesaid. It is not as if any affidavit of evidence of the said Ms. Sheena Iype also had been filed. Moreover, from the fact that the stake in the present suit could be settled shows that it is not such qua which the plaintiff should be given another opportunity as is sought.

36. There is another aspect of the matter. The lawyers of the plaintiff who have been appearing are fully aware and are deemed to be aware of the law of limitation applicable to the filing of a Chamber Appeal. Even if, there were talks of settlement, the same did not prevent the plaintiff from filing a Chamber Appeal within the prescribed time. There is no explanation, save of the settlement talks, for the condonation of delay in filing the appeal and which is no explanation.

37. I am therefore not only unable to find any ground for condoning the delay in preferring the Chamber Appeal but also do not find any ground for granting any further opportunity to the plaintiff to lead evidence.

38. IA No.9054/2017 and Chamber Appeal being OA No.109/2017 are thus dismissed.

39. As aforesaid, the onus of all the issues was on the plaintiff and which the plaintiff has failed to discharge; resultantly, the suit of the plaintiff has to be dismissed and is dismissed.

40. Owing to the conduct of the defendants already noticed above, the defendants are not entitled to any costs.

Decree sheet be drawn.

RAJIV SAHAI ENDLAW, J.

MAY 23, 2018/‘gsr’..