

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 662 OF 2019
WITH
CIVIL APPLICATION STAMP NO. 17658 OF 2019

Mr.Kishor Prabhudas Chhabria .. Appellant
Vs.
Bajaj Allianz General Insurance Company Ltd. .. Respondent

Mr.Manoj Shirsat a/w Mr.Abhay Wadhwa I/b Ms.Vanita Giri, for
the Appellant.
Mr. Mayur Khandeparkar a/w Ms.Keya Raval and Ms.Swati
Sutar I/b Dhru & Co., for the Respondents.

CORAM : M.S.KARNIK, J.

DATE : 26th JULY, 2019

P.C. :

. Heard learned Counsel for the appellant. The
appellant by this Appeal challenges the order dated 12/04/2019
passed by the trial Court below Exhibit 21A in SPL.C.S. No. 446
of 2018 striking off his defence for breaching ad-interim order of
injunction dated 03/04/2018. The respondent – original
plaintiff filed the Suit before the trial Court alleging that the

appellant – original defendant illegally uploaded video clip on social media which harms the reputation of the plaintiff. The same is defamatory & derogatory. The respondent filed an application for ad-interim injunction below Exhibit 5. By order dated 03/04/2018, the trial Court granted ad-interim injunction in favour of the respondent restraining the appellant from writing, publishing, circulating, posting, communicating any defamatory communication/ messages/ statements/ e-mails/ web posts/ videos/ photos/ clips through inter-net or otherwise thereby harming the reputation of respondent or its office bearers.

2. The respondent filed an application Exhibit 21A below which the impugned order is passed contending that despite the knowledge of the said order, the appellant intentionally breached the same with malafide intention and further circulated two e-mails and video clip. It was stated that the appellant openly admitted his unlawful acts in his written statement. Therefore the respondent filed application under

Order 39 Rule 11 read with Section 151 of C.P.C. for striking off defence.

3. The trial Court was of the opinion that the appellant disobeyed the order of injunction passed by the trial Court. The trial Court further observed that though striking off defence has drastic effect, but having regard to the conduct of the appellant intentionally disobeying the ad-interim injunction order and circulating two e-mails and video clip after passing of the ad-interim order, shows that the appellant has no regards for the order and procedure of the Court.

4. Learned Counsel for the appellant submitted that the order passed by the trial Court is harsh and drastic. He would submit that respondent was not aware that the ad-interim order passed by the trial Court was continued.

5. Learned Counsel for the respondent submitted that even during the pendency of this Appeal, the appellant had continued to breach the ad-interim order and had resorted to

Dharna outside the head office of the respondent. I had called upon the learned Counsel for the appellant to consider withdrawing all contents which were uploaded in view of the trial Court's ad-interim order before Appeal could be considered on merits.

6. On instructions, learned Counsel would submit that whatever had happened was under some mis-conception and due to some misunderstanding as regards continuance of the ad-interim order of the trial Court. Mr.Khandeparkar however seriously objected to the conduct of the appellant contending that he was well aware of the consequences and the appellant brazenly continued to defy the ad-interim orders of the trial Court. Mr.Khandeparkar therefore submitted that considering the conduct and continued defiance on the part of the appellant of the trial Court's order, the order impugned did not call for any interference. Mr.Khandeparkar also invited my attention to the allegations made by the appellant. Mr.Khandeparkar has filed a limited affidavit-in-reply on behalf of the respondent

bringing on record the various posts and allegations made by the appellant.

7. Be that as it may, on the last occasion when this Court called upon the appellant whether he is willing to withdraw all the contents uploaded prior to the ad-interim order passed by the trial Court and even those contents which were uploaded after ad-interim order is passed, learned Counsel for the appellant on instructions submits that the appellant has already withdrawn all the contents. Mr.Khandeparkar on instructions would submit that most of them have been withdrawn. The appellant submits that in respect of a couple of posts which still remain on site, the appellant has already informed the admin of the concerned sites to withdraw the same. He would submit that there are some technical issues, but he is taking all possible steps to ensure that contents are withdrawn.

8. Learned Counsel for the appellant has filed

additional affidavit on behalf of the appellant stating that appropriate action for deleting all the posts has been taken on his part. Learned Counsel for appellant on instructions submits that he would delete paragraphs 13, 14, 15 of the affidavit. Leave to delete paragraphs 13, 14, 15 is granted.

9 He further submits that due to some misconception, he sat on Dharna and he would adopt to legitimate means to redress his grievances which he has against the respondent.

10. Considering the averments made in the affidavit-in-reply and in view of the submissions of the learned Counsel for the appellant that the appellant would resort to legitimate means to redress his grievance, in my opinion, the order passed by the trial Court deserves to be set aside. In my opinion, one opportunity needs to be granted to the appellant to submit his defence as the order striking of defence has drastic consequences.

11. In this view of the matter, the impugned order is set

aside. It is made clear that in case the appellant commits any breach of the order of the trial Court hereinafter, it will always be open for the respondent to report the same to the trial Court by making an appropriate application whereupon the trial Court may pass appropriate orders.

12. Learned Counsel for the appellant requests that Exhibit 5 pending before the trial Court be decided expeditiously. He submits that he will file reply to Exhibit 5 within 3 weeks from today. In case, the reply to Exhibit 5 is so filed, the trial Court is requested to consider the request made by the appellant for disposal of Exhibit 5 application expeditiously.

13. Appeal from Order is allowed in the above terms. In view of disposal of the Appeal, Civil Application does not survive and the same shall also stand disposed of.

(M.S.KARNIK, J.)