

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 28TH DAY OF JANUARY 2020

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.A.No.549 of 2019
in
C.S.No.339 of 2019

1. D.Raghav Krishna
122B, Gill Nagar Extension
Chennai 600 094.

2. Pradiyun Giridharan
91/1, Konnur High Road,
Ayanavaram, Chennai 600 023.

3. Shweta Sada
91/1, Konnur High Road,
Ayanavaram, Chennai 600 023.

4. Devid Pradeep Nissanka
3A, Indra Gandhi Street, Bharathi Nagar
Polichalur, Chennai 600 074.

: Applicants/Plaintiffs

-Versus-

R.Hemavathi
32, Casa Major Road,
Egmore, Chennai 600 008

And also at
No.123, St.Marys Road,
Chennai 600 028.

: Respondent/Defendant

Original Application praying that this Hon'ble Court be pleased to

<https://hcservices.ecourts.gov.in/hcservices/>

grant an order of interim injunction restraining the Respondent/Defendant

their men, agents, servants, representatives and anyone claiming under Respondent/ Defendant from insinuating any statements or remarks disparaging or denigrating, directly or indirectly, the applicants/plaintiffs and/or their business, carried on under name and style Volt Venturres pending disposal of the suit.

This Original Application coming on this day before this Court for hearing, the Court made the following Order:-

This application is filed for an interim injunction to restrain the respondent from insinuating or making statements disparaging or denigrating the applicants/plaintiffs or their business, which is carried on under the name and style, Volt Venturers, pending disposal of the suit.

2. I heard the learned counsel for the applicants and the learned counsel for the respondent.

3. The learned counsel for the applicants submitted that the applicants are tenants in the premises owned by the respondent and that the lease deed was executed on 01.10.2018 for a period of 9 years divided into three terms of three years each. Pursuant to the lease deed, she submitted that ten months rental advance was paid to the respondent and monthly rent was also fixed at Rs.1.5 lakhs along with monthly maintenance at Rs.10,000/- p.m. Within 15 days of execution of the lease deed, she submitted that the landlady issued an eviction notice and also disconnected

the water supply. Consequently, the applicants instituted a suit so as to not to be dispossessed except in accordance with law and the respondent initiated proceedings for eviction. She further submitted that this application has been filed on account of disparaging statements that were made by the respondent to the effect that the applicants are using the premises for carrying on illegal activities such as a commercial sex hub under the guise of a spa. In support of her submissions, she relied upon paragraph-12 of the affidavit. She also relied upon a police complaint dated 22.03.2019 and in particular, paragraphs 5, 8 and 14 of the said complaint. In addition, she pointed out that a complaint had been made to the Corporation of Chennai for the purpose of cancelling the licence granted to the applicants to carry on business but a copy of the said complaint was not filed because it is not available with the applicants. For all these reasons, she submitted that the applicants are entitled to an interim injunction as prayed for.

4. In response, the learned counsel for the respondent-landlady submitted that the relief requested is widely couched as it covers insinuation. In order to substantiate the contention, that such orders should not be passed at the interlocutory stage unless exacting standards are satisfied. In that regard, the learned counsel referred to the landmark

he referred to internal page 284 of the Law Report wherein the Court held that unless it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed and therefore, the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily while considering the grant of an interim injunction.

5.He also relied upon a judgment of this Court in O.A.Nos.18, 25, 40, 41, 42, 43 & 44, 152, 204 and 275/2019 dated 03.06.2019 wherein this Court followed the principle in **BONNARD V. PERRYMAN** case. He also pointed out that this Court relied upon the judgment of the **Delhi High Court in Tata Sons Limited v. Greenpeace International & Another, reported in 2011 SCC online Del 466 at para-26**, wherein it was held that granting an injunction would freeze the entire public debate and that such an order would not be in public interest.

6.The next contention of the learned counsel was that the applicants have not provided any particulars or details with regard to the allegations that disparaging statements were made. In specific, he pointed out that the entire case of the applicants turns or hinges on paragraph-12 of the affidavit and paragraph-14 of the police complaint. As regards paragraph-12, he pointed out that there are no details therein as to what were the alleged

disparaging statements and to whom the said statements were made.

7. In this connection, he also pointed out that the respondent is no longer residing in the said building and that, therefore, the likelihood of making any disparaging statement is also quite remote.

8. With regard to the lodging of the police complaint, the learned counsel relied upon several judgments so as to establish that such complaints are subject to privilege and cannot be the basis of an action for defamation. In this regard, he relied upon a judgment of this Court in **M/S.BAPALAL & CO., V. A.R.KRISHNASWAMY IYER** in 50 LW 519, wherein the Court held that the report given to the police alleging the commission of crime is absolutely privileged. It is not necessary to refer to all the judgments that were cited. It is sufficient to refer to the recent judgment of this Court in **A.N.SHANMUGAM AND OTHERS V. G. SARAVANAN** [2015-1-L.W. 806] wherein, at paragraph-13, this Court held that a complaint made to a law enforcement agency to take action against the persons against whom such imputations are made, would provide a valid exception taking such acts outside the scope of the tort of defamation and that only if the complaint is subsequently dismissed, the affected persons have a right to institute proceedings for malicious prosecution. For all these reasons, the learned counsel submitted that this application is bereft of

merit and is liable to be dismissed.

10. By way of rejoinder, the learned counsel for the applicants submitted that the principle in **BONNARD V. PERRYMAN** is that an interim injunction should not be granted in any action for defamation unless it is clear that the defence is bound to fail. In this case, she pointed out that the defence of the respondent is not genuine and that this is evidenced by the fact that the respondent had not made any statements in the counter affidavit to the effect that the applicants are using the premises as a cat house or carrying on illegal activities in the leased premises. Therefore, she submitted that the applicants have made out a case for the grant of interim relief.

10. I considered the submissions of the learned counsel for the respective parties and examined the records.

11. The short question that arises for consideration is whether the applicant has made out a case for the grant of pre-trial restraint on the alleged slander. The case of the applicants is built largely on the statements made in paragraph-12 of the affidavit and lodging of the police complaint

by the respondent. As regards the lodging of the police complaint, as

correctly submitted by the learned counsel for the respondent, such statements are subject to privilege and cannot constitute the basis of an action for defamation. Therefore, this application should be decided mainly on the basis of the statements in paragraph-12.

12. On perusal of paragraph-12, I find that it is stated therein that the respondent lodged a complaint to the Corporation of Chennai calling upon them to cancel the licence. A copy of the said communication to the Corporation of Chennai is not on record and the learned counsel for the applicants submitted that the said communication is not available with the applicants. It is further stated therein that the police complaint had been lodged by the respondent to the effect that the premises is being used as a cat house. The said police complaint is privileged as stated earlier. In addition, it is stated that the respondent is disparaging the applicants by stating that the premises is used for illegal activities and that the respondent confronted customers and misinformed them that the demised premises are being used for unlawful activities and that such acts caused immense disrepute and gravely impacted the business of the applicants. As regards these allegations, I find that there are no specifics or particulars with regard to the customers to whom such disparaging statements were made or as to when these incidents occurred. There is also no prima facie evidence that it

impacted the business in any manner.

13. Keeping in mind the basis of the application, namely, the statements in paragraph-12, I find that the applicants have not made out a case for grant of pre-trial injunction in an action for alleged defamation and such order would violate the principles laid down in **BONNARD V. PERRYMAN**, which were followed by several judgments, thereafter, including by this Court. Accordingly, this application is dismissed.

Sd./-S.K.R.J
28.01.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 20/02/2020

COURT OFFICER(O.S.)

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