

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

**Reserved on: 16<sup>th</sup> June, 2021**

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**Pronounced on: 27<sup>th</sup> July, 2021**

+ **FAO 153/2021, CM APPL.18660/2021 (by the appellant u/S 151 CPC for interim directions/stay)**

**DR. J.A. JAYALAL, NATIONAL PRESIDENT, INDIAN  
MEDICAL ASSOCIATION** .....Appellant

Through: Mr. Mukul Gupta, Sr. Advocate  
with Mr. Tanmaya Mehta and Mr.  
Nitesh Jain, Advocates

Versus

**ROHIT JHA** .....Respondent

Through: Mr. Sanjeev Uniyal and Mr.  
Dhawal Unial, Advocates

**CORAM:  
HON'BLE MS. JUSTICE ASHA MENON**

### **J U D G M E N T**

#### **[VIA VIDEO CONFERENCING]**

1. The present appeal has been preferred against the order of the learned Vacation Judge, Dwarka Courts, New Delhi dated 3<sup>rd</sup> June, 2021 whereby an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (“CPC”, for short) was disposed of in CS No.1492/2021 filed by the respondent/plaintiff.

2. The facts, as are relevant for the disposal of this appeal, are, briefly, that the appellant is the current National President of the Indian Medical Association (“IMA”, for short), which is a society registered under the Societies Registration Act, 1860. On 30<sup>th</sup> March, 2021, the

appellant had allegedly given an interview to Mr. Morgan Lee of “Christianity Today”, which was published on the website of “Christianity Today”. Certain other articles and interviews were also published, which, according to the respondent/plaintiff, were derogatory of Ayurveda and Hindus. On 29<sup>th</sup> May, 2021, the respondent/plaintiff filed a suit for damages and defamation and sought a permanent injunction against the appellant on the ground of public nuisance and misleading the nation and its citizens, including the respondent/plaintiff. An application under Order XXXIX Rules 1 & 2 CPC was also filed along with the said plaint, which was disposed of by the learned Vacation Judge vide the impugned order dated 3<sup>rd</sup> June, 2021, placed as Annexure A-1 of the record.

3. Mr. Mukul Gupta, learned Senior Counsel for the appellant submitted that the learned Vacation Judge had made erroneous observations as the interviews on which the respondent/plaintiff relied on were fake. Moreover, the very suit was not maintainable and therefore, the appellant had filed an application under Order VII Rule 11 CPC read with Order XII Rule 6 and Section 151 CPC, which the learned Vacation Judge had not considered. The main grievance, as voiced by the learned Senior Counsel, was that the learned Vacation Judge had to consider whether there was any *prime facie* case disclosed, before granting an injunction, and which it had failed to do.

4. It was further argued that the learned Vacation Judge, despite the protestations of the appellant that he had not made the controversial statements attributable to him and on which the entire case of the respondent/plaintiff was based, and had produced documents to establish

this claim, did not consider the same and assumed that the appellant had made remarks attributed to him of wanting to use the IMA to propagate Christianity and had belittled Ayurveda, and had shown the Hindus in poor light. The appellant is also aggrieved by the observations made by the learned Vacation Judge to the effect that the interview, which was admitted to by the appellant and the copy of which was placed on the record, was not harmonious with the provisions of the Constitution of India and that the interview itself was in poor taste.

5. In the written submissions that have been filed, it is further submitted that the learned Vacation Judge while passing the injunction under Order XXXIX Rules 1 & 2 CPC had failed to satisfy itself on the pre-requirements of the existence of a “*prima facie* case”, “the balance of convenience” being in favour of the respondent/plaintiff and against the appellant, and “the irreparable loss and injury” being caused to the respondent/plaintiff, in the absence of an injunction order. According to the appellant, since no damages for defamation, through a class, is maintainable and no injunction can be issued in such matters, the impugned order is liable to be set aside.

6. It was also submitted that the suit was barred under Section 41(f) of the Specific Relief Act, 1963 on the ground of “nuisance”, as final adjudication would be required to determine whether the act of the appellant was in actual fact a “nuisance”. Thus, a final relief seemed to have been granted to the respondent/plaintiff by the impugned order.

7. It was further submitted that there was no material available on the record to suggest that the appellant had ever used the platform of IMA for propagating any religion or was misusing his position as the National

President of IMA. The document relied upon by the respondent/plaintiff was not even accompanied with a Certificate under Section 65B of the Indian Evidence Act, 1872 and no reliance could have been placed on that so called interview. The appellant also placed reliance on an email from the “Haggai International” that the screenshot placed on the record by the respondent/plaintiff with the heading “In the Name of the Great Physician”, was fake and that a cyber complaint had also been lodged by the appellant. In the absence of any *prima facie* case, no injunction ought to have been granted. Moreover, relying on the decisions of this Court as well the Supreme Court in *Ashutosh Dubey v. Netflix*, 2020 SCC OnLine Del 625; *Frank Finn Management v. Subhash Motwani*, 2008 SCC OnLine Del 1049; *A.C. Muthiah v. Board of Control for Cricket in India*, (2011) 6 SCC 617; *Laxmi Raj Shetty v. State of T.N.*, (1988) 3 SCC 319 and *State of U.P. v. Ram Sukhi Devi*, (2005) 9 SCC 733, it was submitted, (i) that no reliance could be placed on a newspaper report; (ii) defamation, through a class of Hindus, was not maintainable in law; (iii) no leave of the court was sought for institution of the suit under Section 91 CPC; (iv) final relief could not have been granted; and, (v) therefore, no injunction could have been granted.

8. It was further claimed that the impugned order was violative of Article 21 of the Constitution of India as “*it had taken away the freedom of life to live freely with reputation that the appellant has*”.

9. Learned Senior Counsel also submitted that the learned Vacation Judge in the impugned order had failed to point out which part of the interview was not in good taste and was not in harmony with the Constitution of India and that every person had a right to praise his or her

religion. It was also submitted that the learned Vacation Judge had made unfair observations without any material to justify them.

10. In these circumstances, the learned Senior Counsel submitted that that impugned order suffered from prejudices and was based on forged documents for which the appellant could not be held responsible and accordingly, the same be set aside.

11. On the other hand, Mr. Sanjeev Uniyal, learned counsel for the respondent submitted that the learned Vacation Judge had made observations with reference to the article in “Nation World News” dated 30<sup>th</sup> March, 2021. As regards the publications on the Christian Website, “Haggai International” and “Christianity Today”, these were a matter of evidence which the respondent would lead and prove the allegations against the appellant. Learned counsel pointed out that on the Christian Website itself, the deletion of the IMA Interview was mentioned. Learned counsel also submitted that the Editor’s note on page 54 of the e-file of this case records that *“this interview has been edited for clarity”* and therefore, this document did not reflect the original interview.

12. Moreover, the appellant kept describing himself as a Christian Doctor in the interview, which was dealing with “Servant Leadership”. In fact, learned counsel pointed to various remarks in the document placed on the record by the appellant as Annexure A-3, to support these contentions. Additionally, he has filed documents that were filed before the learned Vacation Judge as Annexures R-1 to R-5. On the basis of these documents, he has submitted that there was enough material for the learned Vacation Judge to make observations as it did. As regards the Certificate under Section 65B of the Indian Evidence Act, 1872, the

learned counsel pointed out that it was the same situation for the appellant. Hence, the learned counsel prayed that the appeal be dismissed.

13. I have heard the learned Senior Counsel for the appellant and the learned counsel for the respondent and have perused the written submissions as well as the material on record.

14. Several arguments have been advanced on the maintainability of the suit, but since this Court is only considering the orders passed by the learned Vacation Judge disposing of the application under Order XXXIX Rules 1 & 2 CPC, and apparently, the application under Order VII Rule 11 CPC read with Order XII Rule 6 CPC and Section 151 CPC filed by the appellant has yet not been disposed of, these submissions are not being considered while disposing of the present appeal. The argument of the learned Senior Counsel for the appellant on the truthfulness of the version of the interview as filed by the respondent/plaintiff to submit that there was no *prima facie* case, has been met by the argument of learned counsel for the respondent/plaintiff that the documents relied upon by the appellant are themselves doctored.

15. This question of which version is the correct one is to be proved during trial. The version and claim of the appellant cannot be accepted in the face of these counter-claims. At this juncture, reference may be made to the judgment of the Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal** (2020) 7 SCC 1, to note that the learned Trial Court has not even commenced the trial and can still permit both sides to file their certificates under Section 65B of the Indian Evidence Act, 1872, if they have not already done so. There are no grounds to hold that there was no case disclosed for the learned Vacation Judge, now the

Trial Court, to have considered the matter.

16. A perusal of the impugned order reveals that in fact no injunction has actually been issued. The learned Vacation Judge has passed the following orders in paragraph No. 20 of the impugned order: -

*“In view of the observation made herein above, at this stage, accepting the submissions of defendant though no injunction is required to be passed on the assurance given during arguments by defendant to the court that he shall not indulge in such kind of activity. It is expected from him that he will not give any such occasion so that people may believe otherwise or indulge in any activity contrary to the principles enshrined in constitution and shall maintain the dignity of position chaired by him. He shall not use the platform of IMA for propagating any religion and rather shall concentrate for welfare of medical fraternity and progress in medical field.”*

17. Initially, the arguments were sought to be raised to the effect that no such assurance had been given to the learned Vacation Judge. This Court will have to proceed on the basis of what is recorded by the court and if the learned Vacation Judge had misunderstood the submissions, the appropriate means would have been to move an application for review.

18. What stands out is that paragraph No. 20, reproduced hereinabove, is in the nature of an “advisory” and not a “restraint order”. Even in the other paragraphs of the impugned order, the observations that seem to have irked the appellant are only in the nature of general comments, with the court expecting that the parameters of such conduct would be kept in mind by the appellant as he was a person, who was holding a high

position amongst the doctors. It has been submitted that there are about 3 lakhs doctor members of the IMA.

19. The specific grievances have been pointed out in paragraphs No.13, 14, 15 and 16. The learned Vacation Judge on going through the article dated 30<sup>th</sup> March, 2021, published in “Christianity Today”, felt constrained to note that the same was not in good taste. The appellant has sought an explanation from the learned Vacation Judge as to what he found distasteful. There is no merit in such a prayer. It is the judgment of the court that explains the opinion of the court and no Judge can be called upon personally to explain his observations.

20. The submission of learned Senior Counsel for the appellant that paragraphs No. 14 to 16 reflected poorly on the appellant, appears to be too sensitive a response, that does not appear to be justified on the part of the appellant. Even the observations of the court in paragraph No.17, after observing that the appellant had denied having made any comments against Ayurveda and that his remarks were only against “Mixopathy”, that any kind of unguarded or loose comment was not expected from a person chairing a responsible post in IMA, which was a prestigious institution, seems to be a comment which *prima facie* cannot be held to be an “absurd” comment. Any comment, even on “Mixopathy”, as coined by the appellant, may be taken seriously by many of the other members of the medical fraternity and therefore, an expectation of the court that the appellant would be cautious and sensitive to the reactions to his statements, can hardly form the basis of a grievance.

21. On the other hand, in paragraph No.18, the learned Vacation Judge has observed that when the appellant was asked specifically whether the

interview given by him was in his individual capacity or in the capacity of IMA President, an evasive reply seems to have been given. In other words, the appellant himself seemed to be unwilling to take an unequivocal stand before the court, which invited the observations that the appellant is now complaining about.

22. Finally, since no injunction has been issued on the basis of the assurance given by the appellant that he will not indulge in any such activity and that the court expected him to refrain from activity that may become controversial and do everything to maintain the dignity of the position he held, there is nothing for this Court to rectify. The observations of the learned Vacation Judge that everybody should be conscious of the constitutional provisions, is an expectation that is not limited only to the appellant, but is of every citizen of this country.

23. Ultimately, the grievance of the appellant appears to be on the style of the learned Vacation Judge in writing the impugned order and upon the inferences that the appellant seeks to draw, particularly in view of certain media coverage, that the learned Senior Counsel for the appellant alluded to in the course of arguments.

24. There is no merit in the present appeal. The same is dismissed along with the pending application.

25. The judgment be uploaded on the website forthwith.

**(ASHA MENON)**  
**JUDGE**

**JULY 27, 2021/s**