

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 2090 OF 2023
IN
SUIT NO. 242 OF 2023**

Ankiti Bose ...Applicant

In the matter between

Ankiti Bose ...Plaintiff

Vs.

Mahesh Murthy and Anr. ...Defendants

Mr. Amir Arsiwala a/w Monika Tanna and Ms. Dhara Modi i/by
Singhania Legal Services - Advocate for the Applicant/Plaintiff
Ms. Rama Subramania - Advocate for the Defendant No. 1.

CORAM : S. M. MODAK, J.

DATE : 24th AUGUST, 2023

P. C. :-

1. Heard learned Advocate for the Applicant/Plaintiff and learned Advocate for the Respondent no. 1/defendant no. 1. Reply filed on behalf of the Defendant no. 1 is taken on record. Though defendant no. 2/Respondent no. 2 is served, they have not put in appearance.

2. Perused the application and affidavit-in-reply filed today. Also gone through annexures to the application as well as annexures

to the affidavit-in-reply.

3. The Plaintiff is co-founder of the e-Commerce start-up Zilingo. There is an article published in outlook business magazine in the edition of March 2023 under the caption from 'Vulture Capital to Victim Capital' at page no. 28. It is written by Respondent no. 1.

4. As per learned Advocate for the Applicant, following are the relevant references which connects her and which defames her.

They are as follows:-

- a) There is reference of India's best known start-up and one of them is Zilingo of which the present Applicant is co-founder. Defendant no. 1 is not disputed that the Applicant is co-founder.
- b) In the same article, certain portion is written under the caption "The Founders' Flounders". Under this caption, the writer has written that the founders are not innocent bystanders. There is reference that they have taken out the money in two manners. One legal and another is illegally.
- c) Further there is reference that person who illegally takes out money are well known. There is an indication towards one lady who runs popular fashion portal and took Sequoia's money.
- f) Further there is reference why that lady has transferred the funds and why she has improved her

profile as glamorous CEO type.

- g) Apart from this print media, similar articles are also published on social media. The relevant pages are page nos. 31, 32, 37N, 37P and 38A.

5. According to the Plaintiff, if we read the contents of this article, the writer has put allegation and pointed out finger towards the plaintiff. My attention is also invited to response given by Respondent no. 1 in a print media. It is on page no. 37(O). The defendant no. 1 has referred to a suit filed by the present plaintiff.

6. Pending suit, the present interim application is moved and today there is insistence on grant of interim relief in terms of prayer clauses 'a' and 'b'.

7. Learned Advocate for defendant no. 1 submitted that even if we read the entire article, it cannot be said that the finger is pointed out towards the Plaintiff. Her name is not mentioned.

8. My attention is invited to averment in the affidavit-in-reply and more specifically para nos. 24 and 25. The contention of the defendant no. 1 is that the defendant no. 2 has requested defendant no. 1 to write an article on venture capital scene in India and he has done it and given to defendant no. 2 and further it was edited by staff of defendant no. 2 and then it was published in the

said magazine. If these articles are re-posted and re-tweeted on one's own personal Twitter and LinkedIn account, the defendant cannot be held responsible.

9. Learned Advocate for defendant no. 1 made following submissions:-

- a) If act ascribed are towards unnamed person why the Plaintiff got offended.
- b) If Plaintiff says that the acts attributed are towards unnamed person, there is no ground for the Plaintiff to take action for defamation.

Learned Advocate invited my attention to the reply dated 28/04/2023 on page no. 22 of the affidavit-in-reply.

10. There is reliance by Applicant on one of the order passed by this Court in Interim Application (L) No. 35506 of 2022. Learned Single Judge of this Court has relied upon the observation of this Court in case of ***Shree Maheshwar Hydel Power Corporation Ltd. Vs. Chitroopa Palit and Anr.***¹. In the said order this Court has clarified how there is difference in law of defamation in England and India. If defamer has pleaded that the allegation is justified then such plea can be taken in a Court of England. Whereas law in India is

1 AIR 2004 Bom. 143

concerned, it is clarified that mere plea of justification is not sufficient but writer has to show that he has done it bonafidely and in public interest. Further, it is clarified that writer has to test its veracity.

11. It is contended that no such plea is taken in the affidavit but they have simply said that the allegation does not pertain to the present plaintiff.

Consideration

12. On this background, if the contents of the articles are relooked, what I find is that there is reference start-up Zilingo. There is reference of one lady who runs that popular fashion portal. The article indicates that whatever illegal spending is done, it is by the said lady only. It is undisputed fact that the plaintiff is co-founder of that fashion portal. It is not disputed by defendant no. 1. Whereas it is admitted in affidavit-in-reply, the relationship in between the plaintiff and that fashion portal are not disputed.

13. So, even though it may be true that the name of the present plaintiff is not referred in the article, it is also true that in the affidavit-in-reply they have taken two stands. On one hand they admit the status of the Applicant as co-founder, whereas, on the

other hand, they say that the article does not indicate the present Plaintiff.

14. If the plaintiff is only female co-founder of that fashion portal and even the Defendant No. 1 has admitted it, I think, the Plaintiff has made out the case for grant of interim reliefs. It is not the stand taken by the defendant no. 1 that he has done it bonafidely and in the public interest. When the affidavit-in-reply, the status of the Plaintiff is admitted, the defendant no. 1 cannot escape by merely pleading that the article does not refers to the Plaintiff.

15. So plaintiff has made out the case. If this article will continue to appear in the media, certainly, it is going to affect the image of the Plaintiff. On the basis of the documents placed before me, it can be certainly said that balance of convenience is in favour of the Plaintiff. So I am inclined to allow the application in terms of prayer clauses 'a' and 'b'. *Prayer clause 'a' says about temporary injuncting defendants from publishing in any of the media about the contents/materials which are defamatory about the Plaintiff. Whereas prayer clause 'b' says about deleting that defamatory material from all sort of media.* It is true that in prayer clause 'a' and 'b' there is reference of the Defendant as singular but if we see the

contents of the application, we can very well said that it refers to the Defendants. It is submitted that this is mistake committed inadvertently, and prayer clause 'a' and 'b' can be considered against both the defendants.

16. Prayer clauses 'a' and 'b' reads as under :-

- “a. Pending the hearing and final disposal of the present suit, this Hon’ble Court be pleased to pass an order of temporary injunction preventing and/or restraining the Defendant, his agents, servants, authorized representatives and all others acting under on his instructions from publishing, writing, speaking in any media, including electronic media, or publishing in any manner whatsoever, any content/material which is defamatory about the Plaintiff.*
- b. Pending the hearing and final disposal of the present suit, this Hon’ble Court be pleased to direct the Defendant his agents, servants, authorized representatives and all other acting under on his instructions to delete and/or remove any and all articles, tweets, and /or uploaded posts on any media including electronic media, or publishing in any manner whatsoever, any content/material which is defamatory about the Plaintiff.”*

17. In view of that application is allowed in terms of prayer clauses 'a' and 'b'.

[S. M. MODAK, J.]