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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 15th September, 2023

+ **CS(COMM) 568/2020 & I.As.12618-20/2020, 2691/2021**

AUDE PRIYA DONATELLE

WACZIARG EP ENGEL & ORS. Plaintiffs

Through: Ms. Swati Sukumar, Ms. Nidhi
 Mohan Parashar and Mr.
 Rohan Chawla, Advocates.

versus

**PAN MACMILLAN PUBLISHING INDIA PRIVATE
 LIMITED & ORS. Defendants**

Through: Mr. D.P Singh, Mr. Manu Mishra,
 Ms. Shreya Dutt and Mr. Imaan
 Khera, Advs. for D-2. (M:
 9891357189)
 Mr Ashish Verma, Ms Salonee
 Keshwani & Ms Pooja Rohatgi, Advs.
 for D-3. (M: 9953944121)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The parties in the present suit are as under:

Plaintiffs	Defendants
Plaintiff No.1 - Ms. Aude Priya Donatelle Wacziarg Ep Engel	Defendant No.1 - M/s Pan Macmillan Publishing India Private Limited
Plaintiff No.2 - Ms. Annick Wacziarg	Defendant No.2 - Mr. Yogesh Vaid alias Yogi Vaid
Plaintiff No.3- M/s Francis Wacziarg Private Limited	Defendant No.3 - Mr. Aman Nath



Plaintiff No.4 - Francis Wacziarg Agencies (P) Ltd.	Defendant No.4 - M/s Amazon Seller Services Pvt. Ltd.
Plaintiff No.5 - Francis Wacziarg Fashion Pvt. Ltd.	Defendant No.5 - India Book Distributors (Bombay) Ltd.
	Defendant No.6 - Mr. Romain Wacziarg
	Ashok Kumar (unknown persons)

3. The present suit is one for permanent injunction, restraining defamation, breach of privacy, copyright infringement, dilution, mandatory injunction, rendition of account of profits and damages.

4. The primary subject matter of the suit is a book titled '*A Remarkable Friendship*', published by the Defendant No.1. According to the Plaintiffs, who are the legal heirs /family of Late Mr. Francis Wacziarg the contents of the book especially in Chapters 16 & 17 have the effect of lowering the reputation of the Plaintiffs. As per the Plaintiffs, the book contained various glaring instances of false and untrue statements regarding the Plaintiff Nos 1 & 2 and their family. In addition, the grievance was that the book also reproduced several letters exchanged between the deceased i.e.Late Mr. Francis Wacziarg and the Defendant No.3, who is stated to have been a companion of the deceased.

5. The relief sought in the plaint is that the book ought to be enjoined and should not be permitted to be circulated including online sales. In addition, there are reliefs for restraining the Defendant Nos. 1 to 5 and 7 from tarnishing and diluting the service mark of the deceased i.e. Francis Wacziarg. The Plaintiffs also claim the copyright in all the letters written



by the deceased to the Defendant No.3 and other relatives/friends, which are in the possession of the Defendant No.3.

6. The prayers sought in the plaint are as under:

“i) A decree for permanent injunction restraining the Defendant Nos. 1 to 5 and 7, their partners/ proprietor, servants, representatives, affiliates and agents or any other person claiming under or through them or acting in concert with them or otherwise, from printing, selling, communicating to the public, distributing, advertising, publishing, circulating, reproducing, offering to sell, directly or indirectly, the Book "A Remarkable Friendship", including online sales;

ii) A decree for permanent injunction restraining the Defendant Nos. 1 to 5 and 7, their partners/ proprietor, servants, representatives, affiliates and agents or any other person claiming under or through them or acting in concert with them or otherwise, from tarnishing or diluting the service mark of "Francis Wacziarg";

iii) A decree for permanent injunction restraining the Defendant Nos. 1 to 5 and 7, their partners/ proprietor, servants, representatives, affiliates and agents or any other person claiming under or through them or acting in concert with them or otherwise, from infringing the Plaintiff No. 1 's copyright in the works of Late Mr. Wacziarg, including by printing, selling, communicating to the public, distributing, advertising; publishing, 'circulating, reproducing, offering to sell, directly or indirectly, any of the works of Late Mr. Francis Wacziarg, without written permission of the Plaintiff No. 1;

iv) A decree for permanent injunction restraining the Defendant Nos. 1 to 5 and 7, their partners/ proprietor, servants, representatives, affiliates and agents or any other person claiming under or through them or acting in concert with them or otherwise, from publishing material that is defamatory of Late Mr. Wacziarg and/or the Plaintiffs, including by printing, selling, communicating to the public, distributing, advertising, publishing,



circulating, reproducing, offering to sell, directly or indirectly, the Book 'A Remarkable Friendship';

v) A decree for permanent injunction restraining the Defendant Nos. 1 to 5 and 7, their partners/ proprietor, servants, representatives, affiliates and agents or any other person claiming under or through them or acting in concert with them or otherwise, from printing; selling, communicating to the public, advertising, publishing, circulating, reproducing~offering to sell, directly or indirectly, using/exploiting the personality/publicity rights of Late Mr. Francis Wacziarg without the written permission of the Plaintiff No. 1;

vi) A decree for delivery up to the Plaintiffs for destruction/erasure of all infringing material in the possession of Defendant Nos. 1 to 5 and 7, as well as in the possession of representatives or affiliates, including but not limited to Books already published and in circulation, soft copy of all manuscripts/scanned copies of any letters, printing or reprographic material, promotional material, brochures, pamphlets, advertising material or other articles associated with the Book "A Remarkable Friendship", as well as deletion of all posts on the social media of the Defendant Nos. 1 to 5 and 7;

vii) A decree for rendition of accounts of profits directly or indirectly earned by the Defendant Nos. 1 to 5 and 7 from the sale of the Book "A Remarkable Friendship" and wrongful conduct and a decree for the amount so found due to be passed in favour of the Plaintiffs;

viii) A decree for mandatory injunction directing the Defendant No. 3 to handover all the personal documents of Late Mr. Francis Wacziarg (including the letters written by the Defendant No. 3 to the Plaintiff No. 1 's father and other letters received by the Plaintiff No. 1 's father from the members of the Wacziarg family and personal papers) which are in his power and possession, to the Plaintiff No.1.

ix) A money decree for sum of Rs. 2,00,01,000/- for a decree of damages as valued for the purposes of this suit towards breach of privacy, confidence, trust, damage to reputation and goodwill of the Plaintiffs and Late Mr.



Francis Wacziarg, infringement of copyright caused by the activities of the Defendant Nos. 1 to 5 and 7, violation of the moral rights u/s 57 of the Copyright Act, 1957 and for the unauthorized use of the publicity and personality rights of Late Mr. Francis Wacziarg and tarnishment/dilution of the Service Mark 'Francis Wacziarg' ”

7. During the pendency of the present suit, the publisher entered into a settlement agreement with the Plaintiffs and the suit was decreed qua the Defendant No.1 vide order dated 14th March, 2023. Vide order dated 27th April, 2022, M/s Amazon Seller Services Pvt. Ltd. - Defendant No.4 was deleted from the array of the parties. Accordingly, the Defendant No.1 is no longer arrayed as the party in the suit. On 26th July, 2023, after hearing some submissions, the following order was passed:

“2. After some hearing, Id. Counsel for the Plaintiffs agrees to seek instructions as to what according to the Plaintiffs is the objectionable content which they would like to be removed for the book - 'A Remarkable Friendship'.

3. Let a chart be handed over by Mr. Rohan Chawla, Id. Counsel for the Plaintiffs to the Id. Counsel for the Defendants within a period of two weeks.

4. Both parties shall obtain instructions in respect of the said chart and make submissions on the next date of hearing. The above exercise shall be without prejudice to the rights and contentions of both the parties.”

8. Today, Id. Counsels for the parties have reported that the chart of objectionable content was communicated by the Plaintiffs’ counsel to Defendants’ counsel and broadly, the parties have agreed as to the portions, which are to be deleted. The said chart is taken on record, which has been handed over by the Defendant No.2 in consultation with Defendant No.3. Broadly, most of the portions, which are objectionable by the Plaintiffs,



have been agreed to be deleted. There are some portions, where there is reference to the Neemrana property. It is submitted that there are disputes pending between the Plaintiffs and the Defendant No.3 in respect of the said property.

9. Thus, insofar as the book itself is concerned, the Defendant Nos.2 & 3 are free to publish the book with the deletions as agreed to in the chart dated 15th September, 2023 handed over to the Court today. It is made clear that the publication of the portions, which have not been agreed to be deleted, shall be without prejudice to the rights and contentions of the Plaintiffs. The Plaintiffs shall be free to challenge the position taken in the book or in the letters including in any dispute. The chart as agreed between the parties, is attached to the present order. However, the said chart shall not be uploaded along with the order and shall be available only for the parties for obtaining the certified copies.

10. Insofar as the claim of copyright is concerned, Id. Counsel for the Defendant No.3 agrees that the Defendant No.3 does not intend to publish any of the letters of the deceased, which are in his power and possession in any manner, both either in print or electronic form. The said letters shall, however, remain in the possession of the Defendant No.3. Insofar as any other movables of the Plaintiff which are in the possession of the Defendant no.3, the Plaintiffs' rights to avail their remedies in accordance with law, if so required in future, is kept open.

11. In view of the above, all parties agree that the suit can itself be disposed of. Accordingly, in respect of each of the reliefs sought in the suit are concerned, the following directions are issued, with the consent of parties:



Prayer	Relief
Prayer (i)	Satisfied in terms of the chart attached as Annexure A
Prayer (ii)	Relief is not pressed at this stage. Liberty to sue is reserved by the Plaintiffs.
Prayer (iii)	Satisfied in terms of the chart and the order passed above.
Prayer (iv)	Satisfied in terms of the chart attached as Annexure A
Prayer (v)	Satisfied in terms of the chart attached as Annexure A
Prayer (vi)	The author - Defendant No.2 confirms that all the materials used for writing of the book have already been returned by him to the Defendant No.3. If any material is remaining, the same shall be returned to the Defendant No.3. On behalf of the Defendant No.3 it is assured and undertaken that the Defendant No.3 shall not publish any of the letters or the documents etc., written by the deceased, Mr. Francis Wacziarg, which are lying in his power and possession.
Prayer (vii)	Relief is not pressed at this stage and liberty is reserved.
Prayer (viii)	On behalf of the said Defendant, it is assured and undertaken that he does not intend to publish any of the letters of the deceased, which are in his power and possession in any manner, both either in print or electronic form.
Prayer (ix)	Relief is not pressed.

12. The suit is decreed in the above terms. Accordingly, the decree sheet



be drawn up. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

SEPTEMBER 15, 2023/dk/ks