

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

**FMA 611 of 2022
CAN 1 of 2022
CAN 2 of 2023**

**X Corp.
Vs.
Naresh Kumar Agarwal HUF & Ors.**

Appearance:

For the Appellant : **Mr. Soumabho Ghose, Adv.
Mr. Nikunj Berlia, Adv.
Mr. Varun Kothari, Adv.
Ms. Mosarat Reyaz, Adv.
Ms. Urvashi Jain, Adv.
Mr. Sounak Banerjee, Adv.**

For the Respondents : **Mr. Ankit Agarwal, Adv.
Mr. Nilay Sengupta, Adv.
Mr. Sujit Banerjee, Adv.**

Judgment on : **19.07.2024**

Harish Tandon , J.

It raises an interesting point in the instant appeal touching upon the provision contained under Section 94 (c) of the Code of Civil Procedure with regard to its scope, applicability and exercises of the jurisdiction by the Civil

Court *vis-à-vis* the adherence of the provisions contained under Order 39 Rule 1 and 2 of the Code of Civil Procedure. The facts may not be adumbrated in details as we feel that summarization of the incidents occurred in course of the proceedings may be apposite and sufficient to address the aforesaid point.

A suit for defamation was initially filed against the defendant nos. 1 and 4 founded upon a posting of defamatory words and/or statements resultantly affecting the reputation and the position held by the plaintiffs/respondents in the society. The allegation pertains to an unfortunate death of a girl who fell from a 3rd floor of the house and succumbed to the injury. Several posts were uploaded on the various electronic social platforms, the opinion which led to such unfortunate incident and the words used taking aid of such platform was perceived by the plaintiff defamatory in nature having impact on the reputation and status acquired by passage of time in the society. Since the said social platform was used by numerous persons, the defendant no. 1 (Jhon Doe) was impleaded to prevent such defamatory words and opinions of the numerous persons in the garb of a justice to be imparted to the victim girl which according to the plaintiff is *per se* defamatory in nature.

Apropos the relief claimed in the plaint, an application for temporary injunction was filed and by an Order no. 2 dated 25.6.2021, the Court passed an ex parte ad interim order of injunction restraining the defendant nos. 2 to 4 from publishing and/or distributing any defamatory and derogatory statements, news, posts and videos in any manner till 31st July,

2021 against the plaintiffs/respondents. The aforesaid defendants were further directed to remove, block and disable the URLs as mentioned in schedules to the plaint forthwith and were further restrained from allowing any publication or displaying in the page operated by the defendant no. 1 in any manner or a form in their respective platform.

Amidst the pendency of the said ad interim order of injunction initially operated against the original defendants, an application for addition of party was filed to implead the defendant nos. 5 to 7 which was eventually allowed. It is averred therein that social media platform provided by the said added defendants are used for publishing a defamatory and/or derogatory statements, news, photos, videos and the defamatory comments has impacted the reputation and the status of the plaintiffs /respondents. After the addition of the defendant nos. 5 to 7 captioned as an application under Section 94 read with Section 151 of the Code of Civil Procedure is taken out to extend the operation of the *ex parte ad interim* order of injunction with further direction upon them to desist from permitting such defamatory and/or derogatory words or statements, news, photos or videos including the comments made therein to be removed and not to permit such defamatory and/or derogatory statements to be uploaded in their platform till the disposal of the suit.

By an Order no. 17 dated 19.2.2022 the said application is allowed in the following:

“that the petition dated 25-11-2021 filed by the plaintiffs u/s 94 r/w section 151 of the CPC is considered and disposed of on hearing the plaintiffs

and the defendants no. 5 and 7 and ex parte against the defendant no. 6 (as nobody turns up on behalf of the defendant no. 6) restraining the defendants no. 5 to 7 from publishing and disturbing any defamatory and derogatory statement, news, posts, videos in any manner by the defendant no. 1 and his men/ agents on their respective platforms against the plaintiffs and their family-members till the disposal of this Suit. The defendants no. 5 to 7 are also directed to remove /block/disable the URLs as mentioned in the schedule A, schedule B and schedule C and are hereby restrained from allowing publication and display of the page operated by the defendant no. 1 and his men/ agents on their respective platform till the disposal of the Suit. They are also directed to disclose the real and legal identity/subscriber information of the defendant no. 1 before this Court within 31-07-2021, in view of Order no. 2 dated 25-06-2021 of this Court.”

For the purpose of record it is made clear that the application for injunction is still pending before the Court and has not been finally disposed of.

Several issues were raised in the course of the hearing at the behest of the added defendant no. 7, the appellant herein, with regard to the powers and the jurisdiction of the Court in passing the injunction order taking aid to the provisions contained under Section 94 (c) of the Code of Civil Procedure. It is sought to be highlighted by the appellant that the Central Government framed the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 on 25th February, 2021 providing the complete mechanism with regard to the due diligence to be observed by the intermediary and the forum for redressal of the grievance and maintenance of an ethics. It is thus contended that the complete an

effective mechanism and the aim of the forum has been provided in the aforesaid Rules. The Court lacks jurisdiction to pass an order in such manner which is apparently in conflict with the provisions contained in the said Rules.

On the other hand, the plaintiff/respondent contends that the social platform provided by the defendant no. 7 appellant is used for posting the defamatory and/or derogatory words or statements. There is no impediment on the part of the Court to pass an order of injunction pending the application for temporary injunction under Section 94 (c) of the Code. It is further submitted that a criminal proceeding is pending and the matter is *sub judice* and therefore, any defamatory or derogatory statement if allowed to be posted by using the social platform i.e., the defendant no. 7/appellant, would create a negative impact on the fair, transparent and just adjudication thereof. It is further submitted that the Rule does not create any fetter on the jurisdiction of the Court to pass a preventive order in the form of an injunction necessitated by a circumstances as disclosed therein.

On the backdrop of the aforesaid submissions so advanced, it is manifest from the impugned order that the Court, in fact, taking aid of the powers conferred under Section 94 (c) of the Code proceeded to pass an order of temporary injunction. In order to ascertain the scope, jurisdiction and the powers to be exercised by the Court taking aid of Section 94 of the Code of Civil Procedure, it would be apposite to quote the aforesaid provisions which runs thus:

“Section 94 - Supplemental proceedings:-

In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.”

It admits no ambiguity that the Court reserved the power to grant temporary injunction under Clause (c) of Section 94 of the said Act in order to prevent the ends of justice from being defeated with further rider that if it is so prescribed. The Code of Civil Procedure is primarily divided into two parts, one contained the substantive provisions and the other the procedure contained in the schedule thereof. The substantive provisions are further divided in different parts and Section 94 of the Code is contained in part (VI) which is relatable to a supplemental proceedings. Part (III) of the Code includes within its folds, the incidental proceedings and therefore, the first

and foremost duty which we think is to find out the distinction between the incidental proceedings and the supplemental proceedings. It is no longer *res integra* that the different expressions used in the statute carry a different meaning and its applicability has to be adjudged in a different situation. Ordinarily the incidental proceedings are perceived in aid of the final reliefs and at times may have some bearing on a final decision to be taken in the suit. The supplemental proceedings cannot be construed to have any impact on the final decision of the suit as the opening words used therein conveys the intention of the legislators that it is so enacted to prevent the ends of justice from being defeated. Such being the apparent distinction between the incidental proceedings and the supplemental proceedings, the Court exercises jurisdiction in a different situation as contemplated therein.

The Apex Court in ***Vareed Jacob vs. Sosamma Geevarghese & Ors., reported in (2004) 6 SCC 378*** succinctly laid down the distinction between the incidental proceedings and the supplemental proceedings in the following:

“54. Parliament consciously used two different expressions "incidental proceedings" and "supplemental proceedings" which obviously would carry two different meanings.

55. The expression "ancillary" means aiding; auxiliary; subordinate; attendant upon; that which aids or promotes a proceeding regarded as the principal.

56. The expression "supplementary proceeding" on the other hand, would mean a separate proceeding in an original action, in which the court

where the action is pending is called upon to exercise its jurisdiction in the interest of justice.

57. The expression "incidental" may mean differently in different contexts. While dealing with a procedural law, it may mean proceedings which are procedural in nature but when it is used in relation to an agreement or delegated legislation, it may mean something more; but the distinction between an incidental proceeding and a supplemental proceeding being obvious cannot be ignored."

It leads to another question whether the power exercised by the Court under Section 94 of the Code is independent of the Rules contained in the Schedule has been considered in the said judgment by a majority view that the expression "if it is so prescribed" has to be given its full meaning and effect and incongruity can be seen that such power is circumscribed and brindled by the Rules covering the situation in the following:

"11. The above discussion shows that the source of power of the court to grant interim relief is under Section 94. However, exercise of that power can only be done if the circumstances of the case fall under the rules. Therefore, when a matter comes before the court, the court has to examine the facts of each case and ascertain whether the ingredients of Section 94 read with the rules in an order are satisfied and accordingly grant an appropriate relief. It is only in cases where circumstances do not fall under any of the rules prescribed that the court can invoke its inherent power under Section 151 CPC. Accordingly, the courts have to grant relief of attachment before judgment, if the circumstances fall under Order 38 CPC. Similarly, courts will grant temporary injunction if the case satisfies Order 39. So depending on the circumstances falling in the prescribed rules, the power of the court to grant specified reliefs would vary. Therefore, each set of

rules prescribed is distinct and different from the other and therefore, one cannot equate rules of temporary injunction with rules of attachment before judgment although all are broadly termed as interlocutory orders.”

The ratio culled out in the aforementioned decision leaves no ambiguity that the power of the court conferred under Section 94 (c) of the Code is not independent to any rules prescribed therein; in other words, while granting an order of temporary injunction, the court must follow the ingredients provided under Order 39 Rule 1 and 2 of the Code of Civil Procedure. Any other interpretation would render the expression “if it is so prescribed” appearing in Section 94 of the Code redundant and/or meaningless. The substantive provisions contained in the Code which comprised of several sections are the source of the power to be exercised by the Court; on the other hand, the schedule which is a repository of various orders and Rules are the procedure to be adhered to by the Court while exercising such power. A distinction has to be borne in mind that the source of power and the procedure for exercise of such power are two distinct facets in dispensation of justice. It is complementary to each other and cannot be regarded to supplant the source and the manner in which such power is to be exercised.

Reverting to the instant case, although the Trial Court has made a finding with regard to the balance of convenience and the irreparable loss and injury but passed an order solely on the ground that the *ex parte* order of injunction is still operating and have not been challenged as such the said *ex parte ad interim* order of injunction should also operate against the added respondents including the appellant. The only finding on the *prima*

facie case is based upon the existence and operation of said *ex parte ad interim* order of injunction and we do not find any independent finding having made in this regard. The Court must bear in mind that the *ex parte ad interim* order of injunction is passed on the basis of the facts discerned from the plaint as well as the temporary injunction application pleaded against the party impleaded in the suit which may not be the same in relation to a party subsequently added in the proceedings. Furthermore, the averments and/or allegations made in an application under Section 94 of the Code for the purpose of passing a temporary injunction, be it interim or otherwise, has to be decided on the basis of those facts. More particularly, whether it is so warranted to prevent the ends of justice from being defeated until the final adjudication is made in the said suit. The existence of a *prima facie* case against the defendants at the time of passing the *ad interim* order of injunction may not be the same against the added respondents and therefore, an independent finding is required to be made in relation thereto and it would not be proper on the part of the Court to trace the existence of a *prima facie* case solely on the ground that an *ex parte ad interim* order of injunction passed at a time when those defendants were not impleaded as a party, being still operated, can be regarded as the existence of such *prima facie* case. Furthermore, the applicability of the Rules as relied upon by the appellant is also to be considered whether it overrides the power of the Civil Court to pass an order of temporary injunction in view of the fact that the complete and effective mechanism for redressal of the grievance have been provided therein.

In view of the findings made hereinabove, the order impugned in the instant appeal cannot be sustained.

The same is hereby set aside.

The Trial Court is directed to reconsider the said application filed under Section 94 (c) read with Section 151 of the Code of Civil Procedure afresh and shall dispose of the same within 2 weeks from the date of the communication of this order by recording reasons keeping in mind the law as enunciated hereinabove. It goes without saying that none of the findings would be construed as persuasive impact on the merit of the respective contentions at the time of deciding the said application afresh. Both appeal and applications are disposed of.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Partha Sarathi Sen, J.)