

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

INTERIM APPLICATION NO. 2289 OF 2024

IN

SUIT NO. 280 OF 2023

Viswanathan Durgadethan

... Applicant

Versus

Mallika Gupta

... Respondent

Mr. Mohan Bir Singh alongwith Mr. Rahul Jalan instructed by MBS and
Co., Advocate for the Applicant.
None for the Respondent.

CORAM : ABHAY AHUJA, J.
DATE : 9 OCTOBER 2024

P.C. :

1. This Suit has been listed before this Court inasmuch as the same is an undefended Suit. The Suit seeks declaration that the Defendant has defamed the Plaintiff and caused damage to his personal and professional reputation by publishing complaints against him and for permanent injunction and damages.

2. Mr. Singh, learned Counsel, appears for the Plaintiff and submits that since the Defendant could not be served by the ordinary means, this Court had permitted substituted service by publication in two newspapers, viz. Times of India and Navbharat Times, which publication has been effected by publication in those newspapers on 31st August 2024 and draws attention of this Court to the Affidavit dated 5th September 2024.

3. Mr. Singh, learned Counsel, submits that the Interim Application seeks interim relief in terms of prayer clause (b) injunction the Defendant from publishing any defamatory material against the Plaintiff or defaming the Plaintiff in any manner whatsoever in terms of prayer clause (b) until the final hearing and disposal of the suit. That today he is seeking ad-interim relief in terms of prayer clause (b) for his client.

4. Mr. Singh submits that the Plaintiff is the father-in-law of the Defendant who recently retired as a Senior Captain. That the Plaintiff worked as a Pilot for many years, first with Air India and later with Indigo Airlines. That due to his experience, expertise and character, the Plaintiff was selected as a Pilot for prestigious VVIP flights. He was security cleared by SPG and the President of India's Security and was regularly operating as a Executive Commander of the prestigious VVIP

Flights (Air India One) for the Hon'ble President, Hon'ble Vice-President and the Hon'ble Prime Minister of India and enjoyed very good reputation amongst his colleagues, neighbours and the society in general and was looked upto by them. That the Plaintiff was an Additional General Manager (OPS) with Air India Ltd.

5. Mr. Singh would submit that the Plaintiff's son is employed with Air India and the Defendant is employed with Vistara Airlines. That the Defendant got married to the Plaintiff's son Abhishek Durga Dethan on 12th December 2019. However, due to marital discord, the Plaintiff's son and the Defendant have been residing separately since September 2020 and that the divorce proceedings are still pending.

6. It is submitted that on 30th November 2021, the Defendant has sent an e-mail to the Bureau of Civil Aviation as well as its Regional Director, New Delhi informing them of the police complaint viz., First Information Report No.0249 (the "FIR") against the Plaintiff, his son, his daughter and son-in-law. Mr. Singh draws the attention of this Court to paragraphs 2, 3, 4, 5 and 6 to demonstrate to this Court the defamatory material published by the Defendant.

7. Mr. Singh would submit that to call such a reputed professional such as the Plaintiff a menace to the department and the society is grossly defamatory and to make allegations that as part of the

family she was tried to be run down by a car and caused accidents is not only defamatory but also malicious which this Court ought to restrain.

8. Mr. Singh would submit that even the notice sent to the Defendant by the Advocate for the Plaintiff to desist such defamatory communications to a third party/publish false and defamatory material had not been complied with and therefore, left with no option the suit had to be filed for declaration, injunction and damages. Mr. Singh would submit that because of the said e-mail the Plaintiff has missed out an opportunity of being appointed as Airline Flight Inspector with Director General of Civil Aviation causing damage not only to his reputation but also his future prospects.

9. Mr. Singh draws the attention of this Court to an order of a Division Bench of this Court (Coram : G.S. Patel, as His Lordship then was & Neela Gokhale, JJ.) dated 21st March 2023 in Writ Petition (L) No. 7650 of 2023 (Exhibit 'B' at page 31) filed by the son of the Plaintiff against the Union of India for relief to suspend the revocation of the Airport Entry permit required by the son of the Plaintiff to perform his duties and to carry on his job as Pilot with Air India Ltd.

10. Mr. Singh has in support of his contentions that making false allegations against the person in pleadings is also a publication of

defamatory matter, relied upon the decision of the Madras High Court in the case of *Thangavelu Chettiar vs. Ponnammal*¹. Mr. Singh would submit that therefore this Court grant ad-interim relief in terms of prayer clause (b).

11. I have heard Mr. Mohan Bir Singh, learned Counsel appearing for the Plaintiff and considered his submissions.

12. Despite service none appears for the Defendant and accordingly, the submissions and allegations made in the Plaint as well as in the Interim Application as on date remain uncontroverted.

13. A perusal of the e-mail dated 30th November 2021 at Exhibit A, page 29 of the Plaint, which is statedly addressed to the Bureau of Civil Aviation at the Government e-mail ID as well as the Regional Director, New Delhi, Civil Aviation also at the Government e-mail ID and in particular paragraphs 2 to 7 prima facie suggests that there has been a publication which would be defamatory against the Plaintiff as he is also mentioned in the subject of the e-mail as well as named at No.2 before the contents of the e-mail. To send e-mail to the third party viz. the Bureau of Civil Aviation and its Regional Director with respect to the FIR pending investigation, and amongst others, refer to the Plaintiff as a menace to the department and the society and to

1 1965 SCC OnLine Mad 248

make allegations that as part of the family she was tried to be run over by car causing accidents pending investigation appears to be publication of defamatory content particularly considering the Plaintiff's professional achievements and the good reputation he has statedly earned due to the prestigious assignments narrated earlier.

14. Moreover, it has also been recorded in the order of the Division Bench of this Court dated 21st March 2023 (*supra*) that the charge-sheet has been filed, but no charges have been framed and therefore, there is no trial and conviction.

15. Although the decision in the case of *Thangavelu Chettiar vs. Ponnammal* (*supra*) cited by Mr. Singh is with respect to a matter of criminal defamation under Sections 499 and 500 of the Indian Penal Code, 1860, however, the principle that stating of a defamatory matter in a pleading would amount to publication cannot be disputed although the same may not strictly apply to the facts of this case as in the facts of this case the e-mail dated 30th November 2021 has been addressed to the third party viz. Bureau of Civil Aviation and its Regional Director.

16. Being of the prima facie view that the contents of the said e-mail are publication of a defamatory matter, I am inclined to grant relief in terms of prayer clause (b). Accordingly, until the next date, let there be an ad-interim relief in terms of prayer clause (b) to the Interim

Application, which reads thus :

(b) That pending the hearing and disposal of the Suit, the Defendant, her servants and agents be injuncted from publishing any defamatory material about the Plaintiff or from defaming the Plaintiff in any manner whatsoever.

17. The Defendant/Respondent may file reply to this Interim Application within a period of four weeks, with a copy to the other side. Rejoinder, if any, within a period of two weeks thereafter, with a copy to the other side.

18. List on **27th November 2024**.

19. It is made clear that the aforesaid order not to affect the pending criminal proceedings relating to the FIR which are expected to proceed on their own merits.

(ABHAY AHUJA, J.)