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

+ CS(OS) 403/2022

KAIRAVIVIEW (OPC) PVT. LTD. & ORS. Plaintiffs

Through: Mr. Raghav Awasthi, Mr. Mukesh Sharma and Mr. Kunal Tiwari, Advocates for plaintiffs No.1 and 2
Mr. Percival Billimoria, Senior Advocate with Mr. Mukesh Sharma, Mr. Archit Singh and Ms. Rachita Sood, Advocates for plaintiff No.3

versus

HINDUSTAN TIMES/ MINT & ORS. Defendants

Through: Mr. Naman Joshi, Mr. Guneet Sidhu, Mr. Yuvraj Francis and Mr. Zaheb Hussain, Advocates for defendants No.1, 2 and 6
Mr. Soutik Banerjee, Mr. Harsh Jain, Ms. Devika Tulsiani and Ms. Mannat Tipnis, Advocates for defendant No.3
Mr. Sanjay Kumar, Mr. Abishek K. Singh and Mr. Saurabh Kumar, Advocates for defendant No.5

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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27.07.2022

I.A.11712/2022 (for virtual hearing)

1. For the reasons stated in the application, arguing counsel for the plaintiffs no.1 and 2 is permitted to submit his case through virtual hearing.

2. The application is disposed of.

I.A.11711/2022 (Exemption from filing certified copy, left margin copy & typed copies)

3. Subject to the plaintiffs filing the original/typed copies of any dim documents on which the plaintiff may seek to place reliance, within four weeks from today, exemption is granted for the present.

4. The application is disposed of.

I.A. 11709/2022 (O-VII R-14 of the CPC) & I.A. 11710/2022 (O-VI R-17 of the CPC)

5. The present applications have been filed on behalf of the plaintiffs under Order VII Rule 14 of the Code of Civil Procedure, 1908 (CPC) seeking to place on record additional documents and under Order VI Rule 17 of CPC for amendment of plaint.

6. Counsel for the defendant no.2 opposes the present applications on the ground that if the applications are allowed, the objections taken by the defendant no.2 with regard to concealment of facts by the plaintiff in the original plaint shall lose its relevance.

7. I see no merit in the aforesaid objections, as the defendants would be free to take the aforesaid objections in their Written Statements as well as in the reply to the application under Order XXXIX Rules 1 & 2 of CPC.

8. Since summons are yet to be issued in the suit, I see no reason for not allowing both the applications.

9. Accordingly, additional documents as well as amended plaint are taken on record.

10. The applications are disposed of.

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11. Let the plaint be registered as a suit.
12. Issue summons in the suit.
13. Summons are accepted on behalf of the defendants no.1, 2, 3, 5 and 6.
14. Summons be issued to the defendant No.4 through all modes.
15. The summons shall state that the written statement(s) shall be filed within thirty days from the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiffs.
16. Liberty is given to the plaintiffs to file replication(s) to the written statement(s), if any, within fifteen days from the receipt of the written statement(s). Along with the replication(s) filed by the plaintiffs, affidavit of admission/denial of the documents of the defendants be filed by the plaintiffs.
17. List before the Joint Registrar on 3rd November, 2022 for completion of service and pleadings.

I.A. 10816/2022 (O-XXXIX R-1 & 2 of the CPC)

18. The present suit has been filed on behalf of the plaintiffs seeking relief of declaration and permanent injunction, *inter alia*, in respect of a tweet dated 1st May, 2022 (pg. 21-24 of the plaintiff's documents) by the defendant no.3, and article dated 8th May, 2022 (pg. 25-29 of the plaintiff's documents) by the defendant no.2, along with damages.
19. Plaintiff no.2, who is the director of the plaintiff no. 1 company, runs, manages and operates several social media accounts including Youtube, Instagram, Twitter etc., and over the time has gained over 14 million subscribers/followers across Youtube, Instagram and Twitter. It is the case

of the plaintiffs that the plaintiffs frequently upload posts/videos on Twitter, Instagram, Reddit and YouTube and have various sponsorships/collaborations with eminent companies, which is the means of livelihood of the plaintiff no.2.

20. The plaintiff no. 2 had posted a tweet on 1st May, 2022 which is reproduced below:

“

Hinduism is a science based way of life.

On 3 dec 1984, two families remained unaffected from Bhopal gas leak.

They performed regular (हवन), which is a natural antidote to pollution.”

21. While re-tweeting the original tweet of the plaintiff no.2 dated 1st May, 2022, the defendant no.3 has tweeted as under:

*“Ye **bewakoof** hain New India ke influenza.*

*They frequently peddle propaganda but the bright bulbs also **display their idiocy with certitude.***

*Of course, brands like @theagecoffee or @mamaearthindia, and even@GoogleIndia or @Dell_IN, are happy to indulge with these **dodos.**”*

22. In the article dated 8th May, 2022 titled “*Shouldn’t brands stop supporting sordid influencers?*”, the defendant no.2, based on videos posted by the plaintiffs, has made allegations against the plaintiffs of misogyny, child abuse and abuse of their pet dog. The link of article dated 8th May, 2022 has been shared by the defendant no. 2 on her twitter handle, which has been re-tweeted by the defendant no.3. It is the case of the plaintiff that the posting of the aforesaid tweets as well as the articles by the defendants

has caused immense damage to the reputation of the plaintiffs with the sponsors. Defamatory material is causing professional loss to the plaintiffs. In this regard Plaintiffs have placed on record a letter from one of its sponsors.

23. Counsel for the defendants no.1, 2 and 6 submits that an earlier suit was filed on behalf of the plaintiffs no.2 and 3 being CS No.1346/2022 before the Civil Judge, Tis Hazari Courts, which was dismissed by the Civil Judge and the application under Order XXXIX Rule 1 and 2 of the CPC was rejected. Relevant observations from the order dated 6th June, 2022 passed by the Civil Judge are set out below:

*“14. At the outset it is to be observed that plaintiffs ought to have sought the relief of declaration from the court in order to get the said articles declared defamatory in nature qua the plaintiffs. The plaintiffs, in the entire plaint, have not mentioned the portions of the said articles which are allegedly defamatory in nature qua the plaintiffs which are required to be mentioned as per the judgment **Harvest Securities Pvt. Ltd. & Anr. Vs. B P Singapore Pvt. Ltd. & Anr.** (Supra). The plaintiffs have merely stated that the said articles are defamatory in nature qua the plaintiffs. It is not in dispute that fundamental right curtailed in Section 19 of the Constitution of India is not unrestricted. However, the plaintiffs shall prove before the court that the said articles are defamatory in nature and only then Article 19 (2) comes into picture. Moreover, it is difficult to segregate the private life of the public figures from their public life.*

15. In view of my above discussion, the application under Order 39 Rule 1 and 2 CPC stands dismissed. Application disposed of accordingly.

16. The court is of the opinion that the plaint does not disclose cause of action as the plaintiffs have not sought the relief of declaration from the court and the relief of mandatory and permanent injunction sought by the plaintiffs are dependent upon the adjudication of the aspect whether the said articles are

*defamatory in nature or not. Further, the pleadings as mandated by judgment **Harvest Securities Pvt. Ltd. & Anr. Vs. B P Singapore Pvt. Ltd. & Anr.** (Supra) have not been incorporated in the plaint. Therefore, the court is constrained to reject the plaint under Order 7 Rule 11(a) CPC.*

24. It is further submitted that the defendant no.2, before publishing the Article of 8th May, 2022, had written an email on 5th May, 202 to the plaintiff no.2 and 3 asking them to for their comments, to be given by the next day. However, no comments were received from the plaintiffs.

25. Counsel for the defendants no.1, 2 and 6 further submits that the article in question is not defamatory.

26. Counsel appearing for the defendant no.3 has submitted that the tweet of 8th May, 2022 is in the nature of hyperbole and therefore, no injunction may be granted in respect thereof. He further contends that where damages have been asked in a suit for defamation, injunction cannot be granted. He relies upon the judgment of the Supreme Court in *Naveen Jindal v. Zee Media Corporation Ltd.*, (2014) 209 DLT 267 and the judgment of this Court in *Kailash Gahlot v. Vijender Gupta and Ors.*, (2022) 290 DLT 92, to contend that wherein the plaintiffs themselves had quantified damages on account of loss of reputation, interim injunction cannot be granted.

27. Issue Notice.

28. Notice is accepted on behalf of counsels for defendants no.1, 2, 3, 5 and 6.

29. Notice be issued to the defendant no.4 through all modes.

30. Reply(ies) be filed within two weeks.

31. Rejoinder(s) thereto, if any, be filed within a period of ten days thereafter.

32. I have heard the counsels for the parties. I have seen the videos posted by the plaintiffs, the links of which are given in article dated 8th May, 2022 written by the defendant no.2 and which formed the basis of the said article. Piercing the ears of a girl child cannot be termed as child abuse. Allegations of child abuse are serious allegations and cannot be made without due care and verification. It cannot be based on the opinions of the author. Undoubtedly, a person has a right to criticize the views expressed by an individual and such criticism would be covered under right to free speech. However, vicious attacks cannot be made on the character of a person under the guise of journalistic freedom and free speech. In my *prima facie* view, there is nothing in the aforesaid videos to substantiate allegations of child abuse.

33. Similarly, the defendant no.3 may or may not agree with the beliefs of the plaintiff no. 2 as put forth in the tweet dated 1st May, 2022, but the use of terms such as ‘*dodo*’, ‘*bewakoof*’ and ‘*idiocy*’, which are clearly defamatory in nature, on a public platform, cannot be permitted.

34. Ordinarily an interim injunction order cannot be passed in a suit, where there is a claim of damages, but it does not necessarily imply that a Court cannot grant pre-trial injunction or order removal of a published defamatory article, pending trial. Reliance in this regard is placed upon the judgment of a Co-ordinate bench of this Court in *T.V. Today Network Limited v. COGNATE and Ors.*, (2021) 282 DLT 246.

35. At the first hearing of the suit on 18th July, 2022, at the outset, the counsel for the plaintiff, had handed over a copy of the order dated 6th June, 2022 passed in CS No. 1346/2022 by the Civil Judge, Tis Hazari Courts, to the Court, therefore, there was no concealment. From the observations made

in the said order as set out above, the plaint was rejected under Order VII Rule 11(a) of the CPC as the plaint did not disclose a cause of action. The said grounds for rejection have been redressed by the plaintiffs while filing the present suit. Therefore, the plaintiffs are not precluded from filing a fresh plaint in respect of the same cause of action in terms of Order VII Rule 13 of the CPC. The dismissal of the application under Order XXXIX Rules 1 & 2 of the CPC also does not appear to be on merits, but on account of defects in the plaint.

36. From the averments made in the plaint and the documents filed therewith, this Court finds that the plaintiffs have made a *prima facie* case in their favour and in case no *ad interim* injunction is granted to the plaintiffs, irreparable harm and injury would continue to be caused to the plaintiffs. So long as the impugned articles and the impugned tweets continue to be in circulation and visible on social media, they are likely to cause damage to the reputation and career of the plaintiffs. Balance of convenience lies in favour of the plaintiffs.

37. Consequently, an *ad interim* injunction is passed in favour of the plaintiffs and against the defendants, in the following terms:

- i. The defendants no.1, 2 and 6 are directed to take down the article dated 8th May, 2022 (pg. 25-29 of the plaintiff's documents) from its online platform within one week of receipt of this order. The defendants no.1, 2 and 6 are further restrained from posting, circulating or publishing the aforesaid article or any other defamatory material in respect of the plaintiffs on any online or offline platforms.
- ii. The Defendant no.3 is directed to take down the tweet dated 1st May, 2022 (pg. 21-24 of the plaintiff's documents) within one week of

receipt of this order and is further directed to not post, circulate or publish any similar defamatory content against the plaintiffs on any social media or other online/offline platforms.

38. List before this Court on 3rd November, 2022

AMIT BANSAL, J.

JULY 27, 2022

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