

[2022 LiveLaw \(Del\) 177](#)

**IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MS. JUSTICE ASHA MENON**

7th March, 2022

**CS(OS) 403/2021, I.A. Nos.10839/2021, 10842/2021 & 12535/2021
KAILASH GAHLOT *Versus* VIJENDER GUPTA & ORS.**

Plaintiff Through: Mr. Manish Vashisht, Sr. Adv., Mr. Abhinav Sharma, Adv., Mr. Dhruv Rohatgi, Adv.

Defendants Through: Mr. Pawan Narang, Mr. Neerajm, Mr. Satya Ranjan Swain, Mr. Kautilya Birat and Ms. Pratyashish Mohanty, Advocates for D-1. Mr. Saransh Jain, Ms. Shloka Narayanan and Mr. Shaurya Rai, Advocates for D-2.

ORDER

I.A.10839/2021 (by the plaintiff under Order XXXIX Rules (1) & (2) read with Section 151 CPC seeking ex-parte ad-interim injunction against the defendants) & I.A. 12535/2021 (by defendant No.1 under Order VI Rule 17 CPC read with Section 151 CPC for amendment of the written statement along with the affidavit)

1. The suit has been filed for mandatory and permanent injunction as also for damages for defamation.

2. This order will dispose of two applications, one under Order XXXIX Rules (1) & (2) read with Section 151 CPC, filed by the plaintiff and the second under Order VI Rule 17 CPC read with Section 151 CPC for amendment of the written statement filed by the defendant No.1., moved alongwith the plaint, which seeks the following reliefs:

“1. Granting an ex-parte, ad-interim injunction in favor of the Plaintiff and against the Defendants by directing the Defendant No.1 to immediately archive temporarily from his twitter account all the Tweets/posts made against the Plaintiff on 13.03.2021, 14.03.2021, 15.03.2021, 15.06.2021, 16.06.2021, 17.06.2021, 17.06.2021, 17.06.2021, 18.06.2021, 20.06.2021, 26.06.2021, 27.06.2021, 30.06.2021, 01.07.2021, 04.07.2021, 05.07.2021, 10.07.2021, 11.07.2021, 27.07.2021, 19.08.2021 and 20.08.2021. The details of the said tweets with URLs have been mentioned in Schedule-I with the present plaint.

2. Granting an ex-parte, ad-interim injunction in favour of the Plaintiff and against the Defendants by directing the Defendant No.1 to immediately archive temporarily from his Facebook Account all the defamatory posts made against the Plaintiff, the details of which along with URLs have been mentioned in Schedule-II with the present Plaint.

3. Grant an ex-parte injunction restraining the Defendant No.1 from posting/tweeting any defamatory or scandalous or factually incorrect Tweets/Posts on his Twitter account, Facebook account (i.e. Defendants No. 2 & 3 platforms) and/or any other social media profile, against the plaintiff in respect of purchase of low floor buses from Tata Motors Ltd and JBL Auto Ltd.

4. Grant an ex-parte, ad-interim injunction in favour of the Plaintiff and against the Defendants by directing the Defendant No.1 to stop, till the adjudication of the present suit, posting/tweeting any defamatory or scandalous or factually incorrect Tweets/Posts on his Twitter account, Facebook account (i.e. Defendants No. 2 & 3 platforms)and/or any other social media profile, and/ or print and electronic media against the Plaintiff in respect of purchase of low floor buses from Tata Motors Ltd and JBL Auto Ltd.,

5. Granting an ex-parte, ad-interim injunction in favour of the Plaintiff and against the Defendants by directing the Defendant No.2 and 3 to not allow all or any defamatory or scandalous or factually incorrect Tweets/Posts made by the Defendant No. 1 on their platforms against the Plaintiff in respect of purchase of low floor buses from Tata Motors Ltd and JBL Auto Ltd, which have been mentioned inSchedule-1 and Schedule-11 with the present Plaint, till the final adjudication of the present suit,

6. Grant an ex-parte, ad-interim injunction in favour of the Plaintiff and against the Defendants by directing the Defendant No. 2 and 3 to temporarily take down all or any defamatory or scandalous or factually incorrect Tweets/Posts made by the Defendant No. 1 on their platforms against the Plaintiff in respect of purchase of low floor buses from Tata Motors Ltd and JBL Auto Ltd, which have been mentioned in Schedule-1 and Schedule-11 with the present Plaint, till the final adjudication of the present suit,

7. Any other relief(s) as deemed fit by this Hon'ble Court may be granted in favour of the Plaintiff and against the Defendants.”

3. The plaintiff and the defendant No.1 are members of the Legislative Assembly of Delhi. While the plaintiff is the Minister of Transport, Revenue, Law Justice & Legislative Affairs, Administrative Reforms and Information and Technology for the Government of National Territory of Delhi, the defendant No.1 is the Leader of the Opposition in the House. The suit has been filed by the plaintiff being aggrieved of the various tweets that the defendant No.1 is alleged to have made, which according to the plaintiff, were highly defamatory of him.

4. The whole issue has arisen on account of the placing of an order with M/s Tata Motors Ltd. and M/s JBM Auto Ltd. for supply of low floor buses and the award of the Annual Maintenance Contract to M/s JBM Auto Ltd. The grievance of the plaintiff is that the defendant No.1 has openly accused him of corruption in the deal which had impacted the reputation of the plaintiff.

5. Mr. Manish Vashisht, learned senior counsel for the plaintiff, has submitted that the plaintiff, who is a lawyer by profession with impeccable professional reputation, in order to serve the public joined the Aam Aadmi Party ('AAP') and won from the Najafgarh constituency. He was thereafter made a Minister and has been discharging his public duties with great sincerity and honesty. Yet, it did not take much for the defendant No.1 to tarnish the fair name of the plaintiff without any available material. The learned senior counsel has further submitted that the plaintiff was a law-abiding citizen, with not even a traffic violation, leave alone a criminal case, against him and

as had been declared by him while standing for elections. It was further submitted that the plaintiff belonged to a well-to-do family, with relatives and family members at high positions in the bureaucracy and judiciary. He was one of the wealthiest candidates in the party. With this impeccable character and background, he would not be tempted to indulge in corrupt deals. The allegations of the defendant No.1 were *prima-facie* malicious.

6. As regards the tender for the buses, the whole exercise was on account of the Supreme Court directing the Govt. of NCT of Delhi to convert the entire fleet of buses in Delhi from diesel to CNG propelled buses, to meet emission standards, as applicable under the Central Motor Vehicles Rules, 1989, and the further directions of the Supreme Court for induction of low floor buses fully disabled friendly, including wheel chair bound passengers/commuters. Thus, the buses required by the Govt. of NCT of Delhi had to be manufactured against these specific requirements. After the year 2008, till the year 2018, the Delhi Transport Corporation ('DTC') was not getting any financially viable bids. There were only three manufacturers in India who could manufacture CNG propelled low floor AC buses, namely, (i) M/s Tata Motors Ltd., (ii) M/s Ashok Leyland and, (iii) M/s JBM Auto Ltd.

7. In the past, on account of the requirement for Comprehensive Annual Maintenance Contract ('CAMC') alongwith the supply of the DTC buses, viable bids were not forthcoming. In this background, the council of Ministers, Govt. of NCT of Delhi, vide Cabinet decision No.2713 dated 11th July, 2019, decided to call for synchronized separate bids for buses and CAMC. The tender for CAMC for the buses floated by the DTC in the year 2020 was almost the same, as was for the year 2008. The tender in that year for supply of buses had resulted in the induction of 3125 buses into the fleet of the DTC. Since emission standards have been now upgraded to EURO 6 (Bharat Stage VI) w.e.f. 1st April, 2020, Delhi was the only one place where such buses with strict specifications were required. There was also need for annual maintenance and supply of genuine parts for the entire life-cycle of the vehicle i.e., 12 years.

8. Thus, it was that the DTC invited a tender for the purchase of 1000 low floor buses as well as for their maintenance. The pre-bid conference was held on 26th August, 2020. The period of contract for the said 1000 buses were upto 7,50,000 KMs over a tentative period of 12 years. The techno-commercial bid was opened on 1st October, 2020 and the tender for the supply of buses as well as for their life-time maintenance was awarded on 29th January, 2021/1st February, 2021. LoA (Letter of Acceptance) dated 29th January, 2021/1st February, 2021 for CAMC upto 7,50,000 KMs over a tentative period of 12 years for 700 fully built AC CNG Buses, was issued in favour of M/s JBM Auto Ltd. as its referred proposal was lowest (L-1) out of the qualified proposals. The LoA for the remaining 300 fully built AC CNG buses was issued in favour of Tata Motors Limited. The total cost of the tender for acquiring the said 1000 buses was Rs.875 crores and for the CAMC, it was Rs.3412 crores for the entire period of 12 years/7,50,000 KMs. According to the learned senior counsel, the entire transaction was above board and transparent. It was also pointed out that despite the pressing need for buses, the Govt. had not blindly accepted the rates but had duly

negotiated keeping the 2019 rates as benchmark. The weighted average was fixed at Rs.45.50 per KM, after detailed analysis of rates.

9. Yet, the defendant No.1 in his first tweet dated 8th March, 2021, stated the following:



10. Learned senior counsel submitted that there was no basis whatsoever to suggest that the purchase of 1000 buses was tainted with corruption or was a scam. Thereafter, on 10th March, 2021, according to the plaintiff, another reckless, baseless, spiteful and misstated tweet was deliberately made by the defendant No.1 to malign the plaintiff which is reproduced as below:

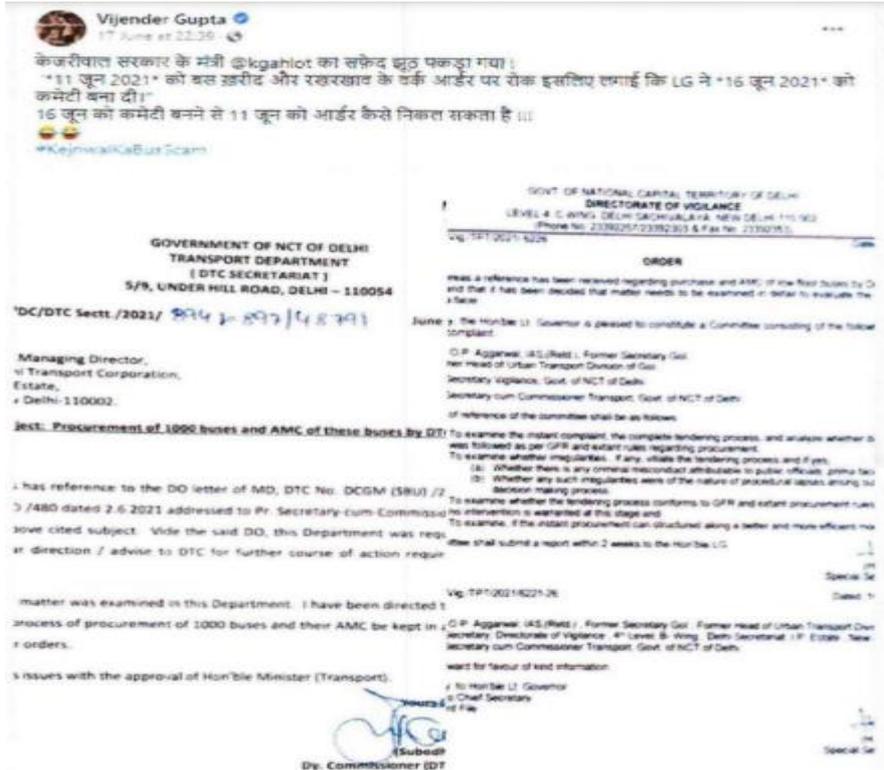


11. A third tweet was made by the defendant No.1 on 15th June, 2021, again without basis and with intent to malign the plaintiff as below:



12. This tweet accusing the plaintiff of having been involved in scam and to have been caught in corruption and the allegation that the Government was trying to whitewash the case was *per se* scandalous and was liable to be taken down with immediate effect.

13. The next tweet is dated 17th June, 2021, alleging that 'white lies' of the plaintiff had been caught. The same is reproduced below:

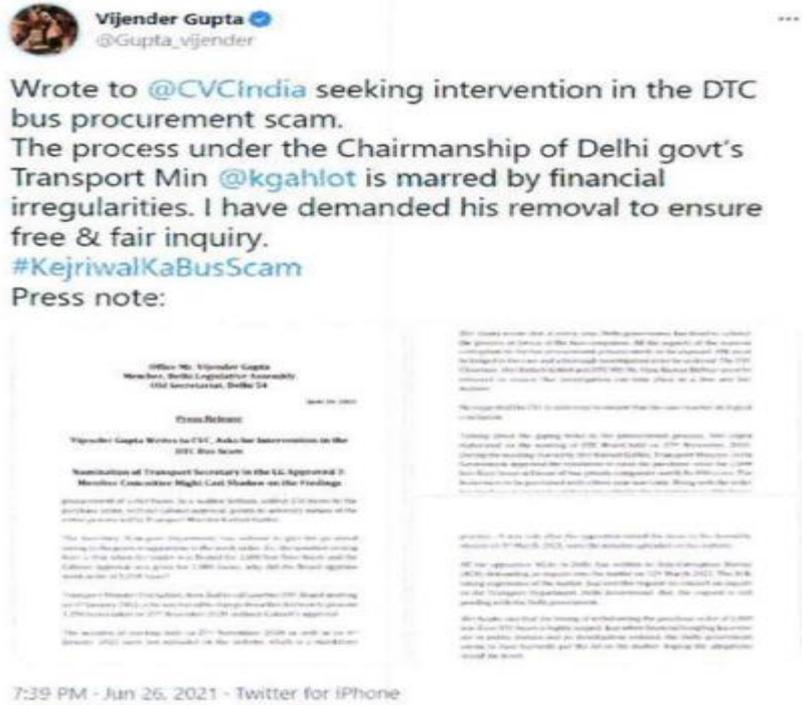




14. Learned senior counsel has submitted that on account of all these kinds of allegations, which though were false, frivolous and incorrect, the Hon'ble Lt. Governor of Delhi constituted an independent Committee of three members to look into these complaints. The DTC filed a comprehensive representation before the Committee explaining the entire process. The defendant No.1 without waiting for the conclusion of this inquiry by the Three Member Committee, again made bald and baseless imputations against the plaintiff on 20th June, 2021, alleging that the plaintiff was in conspiracy with the vehicle manufacturers and that there was a scam in the procurement of the buses. This tweet is reproduced herein-below:



15. Making allegations once again of financial irregularities, the defendant No.1 made the following tweets on 26th June, 2021. The defendant No.1 further raised objections to the appointment of the Committee by the Hon'ble Lt. Governor and malafidely chose a social media platform to express his discontent in the following tweet dated 27th June, 2021. On 1st July, 2021, the following tweet was made by the defendant No.1, accusing the Government of open route. These tweets are reproduced sequentially below from the plaint for ready reference:





Vijender Gupta @Gupta_vijender

बस ख़रीद घोटाले में सरकारी ख़ज़ाने की खुली लूट !
हर महीने सरकारी ख़ज़ाने से एक हाथ दे- दूसरे हाथ ले !
1000 बसों के रखरखाव पर 30 करोड़ का भुगतान किया जायेगा
और बदले में AAP सरकार के परिवहन मंत्री @kgahlot अपना हिस्सा पायेगा।

#KejriwalKaBusScam

Translate Tweet



7:36 PM · Jul 1, 2021 · Twitter for iPhone



Vijender Gupta @Gupta_vijender · Jul 4

Protested in front of Transport Minister Kailash Gahlot's house at Vasant Vihar, along with MP Shri @rameshbidhuri ji.

We demanded his resignation in Rs 5000 cr DTC bus procurement scam.

#KejriwalKaBusScam



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16. Learned senior counsel has submitted that the independent Committee had submitted its report to the Lt. Governor observing that they had not come across any material to impute criminal misconduct or corruption attributable to any public official, much less the plaintiff. This report was widely circulated. However, despite this, the

defendant No.1 made the following defamatory tweets on 10th July, 2021 and 11th July, 2021, which are reproduced herein-below:



17. Thus, the learned counsel submitted that when there was nothing on which any act of financial irregularities or corruption were established or a whisper of scam existed and everything was available in the public domain, the unverified tweets aforementioned made by the defendant No.1 were *per se* defamatory. It was intended only to bring down the standing of the plaintiff and to compromise his credibility before his constituency members. Even his neighbors were affected by accusations that the plaintiff was a scamster, and his family members and relatives have been traumatized by this vilification. The tweets were suggestive of the plaintiff having prevailed upon the bureaucrats, including the Transport Secretary, to get the deal through and also manipulate the Committee appointed by the Hon'ble Lt. Governor. It was also submitted that various amounts had been alleged to have been defalcated ranging from Rs.1000 crores to Rs.3500 crores to Rs.5000 crores to Rs.30,000 crores. This changing stance itself established the falsity of the allegations made by the defendant No.1 in his tweets.

18. The learned senior counsel further submitted that when the report of the Three Member Committee was not available to the Government, it seems to have been made available to the defendant No.1, as he was able to procure and take a photograph of the report which had actually exonerated the plaintiff. The defendant No.1 had not come to the court with clean hands.

19. It was submitted that despite having raised starred questions in the Assembly, to which the plaintiff had given proper replies, the defendant No.1 persisted on making

unverified and unfair allegations, the whole intent being to deprive the citizens of Delhi of a good fleet of buses. The defendant No.1 was acting against public interest by issuing such tweets. Even the contents of the report submitted by the Three Member Committee had been incorrectly referred to in the tweets by the defendant No.1. The Committee had not scrapped the CAMC but had only recommended/advised the scrapping of the CAMC. Yet even while doing so, the Committee found no scam or corruption. Certain procedural shortcomings were noted but those did not smack of corruption.

20. The learned counsel submitted that even in the written statement, several incorrect statements have been made and therefore, the plaintiff would succeed in his claim against the defendant No.1 and he should be protected till the disposal of the suit by an injunction, directing the taking down of all these offending tweets. It was further submitted that the written statement cannot be looked into since the verification is not proper. Moreover, the admission and denial of documents are also not in order. Therefore, the suit should be decreed against defendant No.1 under Order VIII Rule 10 CPC.

21. Mr. Pawan Narang, learned counsel for defendant No.1, has crystallized his arguments under the following heads:

(i) Whether the tweets related to the conduct of the plaintiff in discharge of his public duties and did not relate to his private life or the lives of his family members;

(ii) A public person cannot be too sensitive and the threshold level for defamation is set higher for them;

(iii) That the plaintiff would not be entitled to any relief, if he has suppressed facts and documents;

(iv) Injunctive relief is premised on urgency and none was disclosed in the present matter, as the first tweets were of March, 2021, but the suit was filed and relief sought only in August, 2021;

(v) The plaintiff had quantified his claim for damages, therefore, no interim injunction can be granted;

(vi) There was inherent contradiction in the pleadings and the prayer clause, as what has been stated in the plaint, has not been prayed for as a relief and something not pleaded, has been included in the prayer and therefore, no relief can be granted to the plaintiff and,

(vii) Injunction cannot be sought for tweeting in future, as it was violative of Article 19 of the Constitution of India and such a relief can neither be sought nor granted.

22. Taking these points, the learned counsel for the defendant has submitted that admittedly, the plaintiff was a politician and therefore, was a public person. The first tweet had been made on 8th March, 2021, just before the Assembly was convened, when no Minutes of the meetings of the DTC in connection to the purchase of 1000 buses had been uploaded. No relief in respect of the 8th March, 2021 or 10th March,

2021 tweet has been sought, though these have been referred to in the plaint. Therefore, no relief qua these tweets could be granted. In respect of several tweets included in the prayer no relief could be granted as these are not referred to in the plaint. Merely annexing two Schedules to the plaint, listing out the tweets and the Facebook posts, would not suffice to explain what was defamatory in them.

23. According to the learned counsel for defendant No.1, the tweet of 15th June, 2020 related to the office order dated 11th June, 2021, whereby the Department/Govt. of NCT of Delhi had of their own sweet will put the entire process of procurement and CAMC in abeyance. But the plaintiff had deliberately suppressed this fact and the said order had been filed by the defendant No.1 at page 59 of his documents. Nowhere has the plaintiff explained why the Government had taken such a decision, despite the claim of a favourable Committee Report, which had been released on 10th/11th July, 2021. There was nothing in the plaint to connect the voluntary placing of the orders in abeyance to the tweets of the defendant No.1 and therefore, it was only rhetorical to claim that the defendant No.1 had denied a sound transport system to the citizens of Delhi. The tweet was actually only stating a truth.

24. It was submitted that the defendant No.1 was only discharging his public duties by drawing attention to irregularities in the procurement process of buses and it was an apparent political strategy to shift the blame on the opposition, as if they were blocking the procurement process, whereas, the truth was that the plaintiff and the Government were themselves not interested in creating a good transport system in Delhi. By reproducing all these orders and other details, including press report in the tweets by the defendant No.1, he had acted in public interest and not against it as alleged by the plaintiff.

25. Learned counsel submitted that while accusations had been leveled against defendant No.1, for “obtaining” the Committee Report, but on 6th July, 2021, after the report had been published and, as claimed by the plaintiff was widely circulated in newspapers and in the electronic media, in the morning of 10th July, 2021, the plaintiff alongwith the Deputy Chief Minister of Delhi, had held a press conference announcing that the Committee had gone through 3000 pages of documentation and had found no corruption. Both these statements cannot stand together, for if the report was available with the Media, there was nothing under hand if the defendant No.1 had come across it. However, the Committee had itself clarified that it was only focusing on the process qua the CAMC and not the procurement of the buses and therefore, to claim that there was no adverse finding against the Government by the Committee was incorrect. The defendant No.1 had only stated as much in his tweets which was the truth.

26. Moreover, the question that the defendant No.1 had raised, including in the Assembly, was as to how the weighted value of Rs.45.5 per KM had been arrived at. Learned counsel submitted that there was a method of arriving at a weighted value which was given under the GFR, but that was not followed. The Committee had faulted the procedure adopted by the DTC, as the weighted value was usually low in

the initial years, increasing towards the end of the life of the bus, whereas, by having a flat rate of Rs.45.5 per KM for the entire 12 years period, the difference in payment annually was huge, entailing an overpayment of Rs.17/- per KM per year per bus. That was why the defendant No.1 said that there was a 'stench' of corruption in the deal, and he was justified in saying so.

27. The Committee found the fixing of the weighted value without basis and against the Rules and asked the Government to cancel the contract for CAMC. When the Committee had found fault with the CAMC and had asked that it be ended, it was not possible for the plaintiff to claim that they had got a clean chit. In any case, the Central Bureau of Investigation ('CBI') had also commenced a preliminary inquiry. It was not possible for the plaintiff to have not seen the report to have known that the claims made in the press conference were not true. It was submitted that it was only after the Central Government asked the CBI to hold a preliminary inquiry, that this defamation suit has been filed. Thus, all statements made in the tweets were justified.

28. It was further submitted that the tweets came on the heels of the earlier problematic procurement process of the DTC, which was why the procurement in the previous years were called off. Being a vigilant public figure, the defendant No.1 was only keeping a tab on what was happening with the DTC procurement process this time and found it opaque, as initially even the Minutes were not uploaded and thereafter despite queries, a logical explanation for a flat rate weighted value was not given.

29. By merely stating suspicions, there could be no defamation caused. Learned counsel for the defendant No.1 further submitted that on the basis of all the documents placed on record, both by the plaintiff as well as the defendant No.1, he would be able to justify every tweet that he had made. According to the learned counsel, there was enough material which raised suspicion on the conduct of the meetings, the decisions taken in those meetings, the resolutions passed and the ultimate grant of the tender to M/s Tata Motors and M/s JBM Auto Ltd.

30. The learned counsel submitted that on the other hand, on the material filed on record, the plaintiff has not been able to show how the tweets of defendant No.1 contained false facts since the entire process was over-shadowed with unexplained decisions and improper procedure. Nor have facts reflecting defamation been pleaded and established.

31. It was submitted that this was not a commercial suit and therefore, the index as filed qua admission and denial may be ignored. The written statement was filed within time and an irregularity in verification was curable. Hence, the application I.A.12535/2021 seeking permission to amend the written statement along with the affidavit be allowed.

32. Since the plaintiff filed the statement of the witness recorded before the learned Metropolitan Magistrate in connection with the filing of the Committee Report with the Chief Secretary on 5th October, 2021, the learned counsel submitted that the original report was already with the Government much prior to the filing of the suit and it was

next to impossible that the plaintiff was unaware of its contents.

33. Learned counsel for the defendant No.1 submitted that in the light of all these factors, no interim injunction can be granted and the application I.A.10839/2021 be dismissed.

34. In rejoinder, the learned senior counsel for the plaintiff submitted that all tweets had been included in the Schedules and so it was incorrect to suggest that these have not been challenged. Relying on **Zenit Mataplast Pvt Ltd. vs State of Maharashtra & Ors.** (2009) 10 SCC 388, it was contended that when fundamental rights have been breached and the plaintiff's image has been sullied, delay if any, would not disentitle him from seeking relief. Further, the arguments raised on behalf of the defendant No.1 were to be considered at the final disposal of the suit, whereas the plaintiff was required only to show "an arguable case", which he has. The court was required to balance Article 21 and Article 19 and to be conscious of the irreversible damage that would be caused to the plaintiff if the defamatory tweets remained on the social media. The case law relied upon by the defendant No.1 were in fact in the plaintiff's favour. The defendant No.1 cannot be permitted to continue to malign the plaintiff till the trial was over. Learned counsel prayed that directions be issued also to take down the tweets. He also relied on **Anand Prasad Agarwalla vs Tarkeshwar Prasad & Ors.** (2001) 4 SCC 149

35. In the course of arguments, the learned counsel for the plaintiff has relied on several judgments. With respect to Non-Compliance of Order VI Rule 15 & Order XIX, CPC 1908, reliance has been placed on **State of Bombay v. Purushottam Jog Naik**, 1952 SCR 674; **Amar Singh vs Union of India & ors.** 2011 (7) SCC 69; and **LT Food Ltd. vs Sachdeva & Sons Rice Mills Ltd & Ors.** 2009 SCC OnLine Del 3773. With respect to law on defamation, decisions in the following cases were cited : **Mehmood Nayyar Azam vs. State of Chhattisgarh & ors.** (2012) 8 SCC 1; **Umesh Kumar vs State of Andhra Pradesh & Anr.** 2013 (10) SCC 591; **Subramanian Swamy vs UOI & Ors.** 2016 (7) SCC 221; **New Okhla Industrial Development Authority & Anr. Vs B.D. Singhal & Ors.** 2021 SCC OnLine SC 466; **Pandey Surendra Nath Sinha & anr vs Bageshwari Pd** 1960 SCC OnLine Pat 116; **Hari Shankar vs Kailash Narayan & Ors.** 1981 SCC OnLine MP 30; **V. Subair vs. Dr. P.K. Sudhakaran** 1987 SCC OnLine Ker 192; **M. N. Meera vs A. C. Mathew** 2002 SCC OnLine Ker 470; **B. M. Thimmaiah vs. Smt. T.M. Rukimini & Ors.**, 2012 SCC OnLine Kar 8721; **Housing Development Finance Corporation Ltd. & ors. vs. Suresh Chandra V. Parekh & ors.** 2018 SCC OnLine Bom 13662; **Editor, Divya Himachal & Ors. vs Dr. Sukhdev Sharma & Ors.** 2019 SCC OnLine HP 1067; **Rachna Gupta vs Dev Ashish Bhattacharya**, Order dated 03 January, 2020 by the High Court of Himachal Pradesh in Commercial Suit No. 20 of 2019; **T.V. Today Network Ltd. v. The Cognate & Ors**, 2021 SCC OnLine Del 3244; and **Lakshmi Murdeshwar Puri vs. Saket Gokhale** 2021 SCC Online Del 3675.

36. Learned counsel for the defendant No.1 has relied on **Kartar Singh v. State of Punjab**, 1956 SCR 476; **R Rajagopal & Another v. State of TN & others** (1994) 6

SCC 632; *Mahila Ramkali Devi & Others v. Nandram through LR's & Others* (2015) 13 SCC 132; *Sardar Charanjit Singh vs. Arun Purie & Others*, 1982 SCC OnLine Del 301; *M/s Seemax Construction (P) Ltd. vs. State Bank of India & Another*, 1991 SCC OnLine Del 668; *Billimoria Jehan Bux Tehmuras & Others v. Indian Institute of Architects & Another*, 2004 SCC Online Bom 873; *Khushwant Singh & Another vs. Maneka Gandhi*, 2001 SCC OnLine Del 1030; *Indu Jain vs. Forbes Incorporated*, 2007 SCCOnline Del 1424; *Sanj Daily Lokopchar & Others vs. Gokulchand Govindlal Sananda*, 2014 SCC OnLineBom1492; *Union of India v. Shanti Gurung*, 2014 SCC OnLine Del 989; *G.K. Mani vs. New Generation Media Corporation Pvt. Ltd.*, 2019 SCCOnline Mad 8332; *K.T. Balaji v. HastunAgro Product Ltd. & others*, 2019 SCC Online Mad 30443; *Aditya Raj Kaul & Others v. Naeem Akhter* CRMC No. 58 /2019 of J&K High Court; and *Lakshmi Murdeshwar Puri v. Saket Gokhale* (2021) SCC Online Del 3675

DISCUSSION

37. I have heard the arguments of the learned counsel for the plaintiff and defendant No.1 at great length and have considered the documents on record, as also the cited judgments.

38. Before proceeding further, the objections taken by the learned senior counsel for the plaintiff in respect of the written statement may be considered. The objection taken is to the verification clause, which does not confirm to the Delhi High Court Rules. The defendant No.1 has filed I.A. 12535/2021 under Order VI Rule 17 CPC, seeking an opportunity to amend the verification. A reply has also been filed thereto by the plaintiff submitting that an improper verification has been filed intentionally by the defendant No.1 in order to escape the rigours of Section 340 Cr.P.C., as the written statement contains only falsehood. Further, it was submitted that the defect in the verification was fatal and the amendment could not be allowed. It was also submitted that the written statement was directed to be filed within a week from the date of the order of the Division Bench of this Court i.e., 6th September, 2021 and since the written statement was filed only on 12th September, 2021, it could not be taken on record and there could be no question of amendment.

39. Though parties are entitled to raise objections based on procedure, it cannot be overlooked that procedure is meant to advance substantive justice and is rarely used to unsuit any person, unless the timeline was strictly provided for by the statute. This is an ordinary civil suit. The Division Bench of this Court had granted a week's time to file the written statement w.e.f. 6th September, 2021 i.e. by 13th September, 2021. The written statement was filed on 12th September, 2021. The reply to the I.A. 10839/2021 was filed on 13th September, 2021. Thus, evidently, the defendant No.1 has complied with the orders of the Division Bench of this Court. The reason why the learned senior counsel submitted that the order has not been complied with, is on account of the improper verification of the written statement. However, the courts have repeatedly taken the view that the defect in verification is a curable defect.

40. Reference may be made to the decision of a Division Bench of this Court in

Suman Jain & ors. Vs. Jaimala Jain & ors. 2007 SCC Online Del 615, and several decisions of Coordinate Benches of this Court, including in **Sudesh Garg Vs. Dipender Kumar**, 2011 SCC Online Del 5181. In these cases too, specific objections to the filing of the written statement with improper or defective verification were raised and the view taken was that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Defects with regard to signature, verification or presentation, may be permitted to be cured. When the attention of the court is drawn to a defect in verification of the written statement, the defendant should be given an opportunity to cure the same. There is no requirement for an application under Order VI Rule 17 CPC. The opportunity is to be given irrespective of such an application. I.A. 12535/2021 is therefore, quite unnecessary.

41. The learned senior counsel for the plaintiff has pointed out to errors, even in this “amended” verification. Be that as it may, the application is disposed of by granting a final opportunity to the defendant No.1 to file the correct verification. The written statement having been filed with a curable defect, there is no occasion to reject it, as all that is required is a direction to the defendant No.1 to cure this defect. The objection raised is thus, without force. There is also no merit in the argument urged that deeming there is no written statement on the record, the suit be decreed qua defendant No.1.

42. Turning to the interim application being I.A. 10839/2021, it may be noticed that there is an incongruity in the prayers made in the application and the averments in the pleadings. While there is reference to the tweets of 8th & 10th of March, 2021 in the pleadings, the interim relief has not been sought qua these tweets. Furthermore, the prayer in the interim application refers to several tweets, of which there is no reference in the pleadings, namely, the tweets of 16th June, 2021, 18th June 2021, 30th June, 2021, 5th July, 2021, and 20th August, 2021, although they are listed in the Annexure 1 (Schedule-I). The tweets in respect of which there is a reference both in the pleadings as well as the prayers in the interim relief are the tweets that are dated 13th March, 2021, 14th March, 2021, 15th March, 2021, 15th June, 2021, 17th June, 2021 (3), 20th June, 2021, 26th June, 2021, 27th June, 2021, 1st July, 2021, 4th July, 2021, 10th July, 2021, 11th July, 2021, 27th July, 2021 and 19th August, 2021. The mere reference to tweets in the body of the plaint or the application will not suffice, as urged by the learned senior counsel for the plaintiff, inasmuch as the plaintiff is required to distil his reliefs from all the facts that he pleads. It is a prayer clause that will temper the relief that can be granted. What has not been sought obviously, cannot be granted. However, reference is made to the Twitter and Facebook links in Schedule I and II and these Schedules are included only in the prayer clause (5). The learned counsel for defendant No.1 is right that mere listing of links will not suffice to establish defamation, but the reliefs claimed are considered on the averments in the pleadings.

43. The prayers (3) & (4) seek a restraint on the defendant No.1 from posting any defamatory or scandalous or factually incorrect tweets or posts on his Twitter account or Facebook account or any other social media profile, in respect of the low floor

buses and the orders placed on M/s Tata Motors Ltd. and M/s JBM Auto Ltd. Vide prayer (5), directions are sought against defendants No.2 & 3 to not permit any such posting or tweeting by the defendant No.1 till the adjudication of the suit. This, the learned counsel for the defendant No.1 has submitted, is a relief that cannot be granted, as it seeks to muzzle the defendant No.1 and would be violative of his fundamental rights under Article 19 of the Constitution. Reliance has been placed by him on the judgments of this Court in **Sardar Charanjit Singh (supra)**, **Khushwant Singh (supra)**, as also the judgment of the Supreme Court in **R Rajagopal & Another v. State of TN & others**, (1994) 6 SCC 632.

44. The judgment of the Supreme Court in **R. Rajagopal (supra)** lays down the broad principles while considering defamation on publication vis.-a-vis. the freedom of speech and expression guaranteed under Article 19(1)(a). These may be reproduced below for the ready reference:

“26. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone”. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above — indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated

by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.”

45. Though the said case was primarily in respect of the right to privacy and the freedom of speech and expression, the court held that no such prior restraint or prohibition of publication can be imposed on a proposed publication. The remedy for the person, who fears that he would be defamed would arise only after the publication and would be governed by the principles as enunciated by the Supreme Court. On a probability that a publication could defame a person, there is no right to seek a prior restraint.

46. The Division Bench too, considered in ***Khushwant Singh (supra)***, the claim of right to privacy and the right to seek preventive injunction. It went on to hold that the right to privacy would have two aspects, namely, (i) a tortious action for damages for unlawful invasion of privacy and (ii) protection of personal privacy against unlawful government action. If consent was not taken to publication, this would give rise to tortious action for damages. But it followed the Supreme Court decision in ***R Rajagopal's (supra)*** case to decline pre-publication injunction.

47. Similarly, a Co-ordinate Bench of this Court in ***Sardar Charanjit Singh (supra)***, held that the court would not restrain publication on the plea that if it was published, it would result in a negative impact on the reputation of the plaintiff. What has not come into existence cannot be presumed to be defamatory. The court would not have any material before it to take even a *prima facie* view that what would be published would in fact result in loss of reputation.

48. Thus, the prayers (3), (4) and (5), cannot be granted. The defendant No.1 cannot be restrained from publishing or tweeting any matter in relation to the procurement of the 1000 buses and the CAMC, as it cannot be held that whatever the defendant No.1 may tweet or post in future would necessarily be defamatory.

49. It cannot be overlooked that both, the plaintiff as well as the defendant No.1, are public figures and members of the Legislative Assembly. There is a right vested in the Opposition to question the government on its actions, as the Executive is subject to

the Legislature under the Constitution. This is key to the maintenance of the balance of power between the two wings of the State. The defendant No.1 had in fact raised starred questions in the Assembly, but did not find the answers sufficiently elucidating of the actions taken by the Government. To now prevent the defendant No.1 from commenting on, specifically, the purchase of the low-floor buses from M/s Tata Motors Limited & M/s JBM Auto Ltd. and the CAMC given to JBM Auto Limited, would not only amount to a gag order, but would also tie the hands of the defendant No.1, preventing him from effectively discharging his public duties as an MLA by raising questions legitimately, on action taken or not taken by the government, particularly when it would be obligated, at least in the Assembly, to answer the very same questions.

50. It would also amount to a restraint on the defendant No.1 from raising issues of public importance, which would impact the public and about which the public has a right to know and be informed. It is the elected representatives of the people who are expected to raise the concerns of the public in appropriate fora. Today, it is through the social-media platforms i.e., including Facebook and Twitter amongst others, that information and opinions are transmitted. Only if blatant lies and falsehoods, detrimental to public order and morality or adversely affecting the security of the country or national interests are being disseminated through these social-media platforms, can there be a restraint imposed as being reasonable restrictions under Article 19(2) of the Constitution. Else, none should be prevented from expressing their opinions including suspicions or doubts on Government's transaction of business. In the process public figures such as Ministers like the plaintiff, may be lampooned. But they must bear it with fortitude and allow their actions to speak louder than words. The prayers (3), (4) and (5), therefore, cannot be granted on the basis of a presumed threat of defamation.

51. The prayers (1), (2) and (6) relate to the taking down of the tweets and posts that have been found objectionable by the plaintiff.

52. As observed in *Khushwant Singh (supra)* a close and microscopic examination of the private lives of public men is a natural consequence of holding public offices. Thus, what is true for a private citizen, who does not come within the public gaze, may not be true of a person holding 'public office'. Though scrutiny of public figures by media of all kinds, should not reach a stage where it would amount to harassment of the 'public figures' and their family members, but 'public gaze' is a necessary corollary of their holding public offices. In the words of the Division Bench:-

*"65.The task, though difficult it may be, for persons holding public office, cannot be summed up but to say that such persons have to show greater tolerance for comments and criticisms. **One cannot but once again rely on the observations of Cockburn C.J. in "Seymour v. Butterworth" cited with approval in Kartar Singh's case (supra) to the effect that the persons holding public offices must not be thin skinned in reference to the comments made on them and even where they know that the observations are undeserved and unjust they must bear with***

them and submit to be misunderstood for a time. *At times public figures have to ignore vulgar criticism and abuses hurled against them and they must restrain themselves from giving importance to the same by prosecuting the person responsible for the same.”*

(emphasis added)

53. The nature of these tweets may be discussed at this juncture, as to whether they only raise a concern about the intended purchase of 1000 low-floor buses from Tata Motors and the grant of an AMC which included a weighted value of Rs.45.50 or appear intended solely to tarnish the image of the plaintiff. While it was contended by the learned senior counsel for the plaintiff that even the Committee had found no corruption, which Report was available to the defendant No.1 before he made his defamatory statements, it is the contention of the learned counsel for the defendant No.1 that the Committee had not looked into the purchase of the buses but had considered the CAMC and found it faulty, recommending that it should be cancelled. In other words, according to defendant No.1, the suspicions raised by him were not unfounded, even in March, 2021.

54. While assessing whether the tweets contain misrepresentation of the facts causing damage to the reputation of the plaintiff, one factor has to be also kept in mind namely, that the defendant No.1 claims that there is material in the public domain relating to the tendering for the purchase of the buses as also the AMCs from previous years, which were clouded and which were not taken through and that therefore, the decisions taken by the Government in 2020-21 had to be closely monitored. It was on his public demand that the Minutes of the current tendering process were uploaded. The Committee Report was also in the public domain. Thus, it is clear that the defendant No.1 seeks to justify his tweets on the basis of public records.

55. (i) The initial tweet of 8th March 2021, was because despite lapse of time, no effort had been made by the plaintiff/department/DTC to upload the Minutes of the Meetings, which would have happened in the usual course. The tweet of 8th March 2021, refers specifically to the Minutes of the Meetings dated 22nd December, 2020 to 19th February, 2021. Therefore, suggesting that there was some stench of a scam. The Minutes, it seems, were uploaded following this tweet. The tweet only addresses a query to the plaintiff as to why the Minutes of the Meetings had not been uploaded.

(ii) The tweet of 10th March, 2021, is a comment on a newspaper report which has also been placed along with the tweet, suggesting that the newspaper report had revealed a scam which had caused a flutter in the government.

(iii) The third tweet on 15th June, 2021 again refers to a newspaper report suggesting that the Transport Minister, namely the plaintiff, had got involved in corruption as there was some scam in the purchase of 1000 DTC low-floor buses and the same had tagged various political functionaries. But this tweet has also copied the newspaper report.

(iv) The tweet of 17th June, 2021 refers to the decision of the government dated 11th

June, 2021, keeping the purchase and the maintenance order in abeyance. That order has been filed by the defendant No.1, though it has also been reproduced as part of the tweet at page 49 of the plaint.

(v) The second tweet on the same day (at page 50), again copying a newspaper report, appears to be a comment on the plaintiff that he has developed cold-feet after having issued a work order as corrupt practices have been caught out.

(vi) In the tweet of 20th June, 2021, a press-release has been annexed and shared in the tweet, referring to irregularities in the purchase of the 1000 buses and complicity of the Transport Minister i.e., the plaintiff.

(vii) In the tweet of 26th June, 2021, again, the defendant No.1 has referred to the process of purchase under the Chairmanship of Delhi Government's Transport Minister being marred by financial irregularities. A press-note has also been annexed.

(viii) On 27th June, 2021, the tweet refers to another newspaper report commenting that the Committee appointed by the Lieutenant Governor by including a retired IAS Officer and the Transport Secretary, was not an impartial Committee, as the Transport Secretary worked under the Transport Minister, against whom the main allegations were. Thus, it found fault in the constitution of the Committee.

(ix) In respect of the Tweet of 1st July, 2021, allegation of loss of Rs.30 crores has been made, alleging that the Transport Minister would also get his share.

(x) The tweet of 4th July, 2021 is only a tweet of photographs of protest in front of the house of the Transport Minister, namely, the plaintiff.

(xi) The tweet of 10th July, 2021 comments on the findings of the Three-Member Committee claiming that the Report established open loot by the Transport Minister in the AMC contract for the new DTC buses and that the entire deal was meant to siphon off Rs.3,500/- crores from the tax-payers' fund. This, the learned counsel for the defendant No.1 contended was based on the report itself which asked the Government to cancel the CAMC and being truthful, cannot amount to defamation.

(xii) The tweet of 11th July, 2021 similarly, is a comment on the findings of the Committee constituted by the Lieutenant Governor and revelation of a conspiracy.

(xiii) The tweet of 27th July, 2021 informs the public that the defendant No.1 intended to bring a privilege motion against the Transport Minister.

(xiv) Then the tweet of 19th August, 2021, refers to the MHA having directed the CBI to probe the corruption in the AMC contract and a demand for the removal of the plaintiff to ensure fair investigation. There is no dispute that a preliminary inquiry has in fact been directed. The 2nd tweet of 19th August, 2021 informs that the CBI inquiry has commenced on allegations of corruption in regard to which an attempt had been made to bury it, are also recorded in the said tweet.

(xv) The tweet at page 63 of the plaint demands the removal of those, who were in charge and so behind the conspiracy to settle and execute a corrupt deal, to ensure a fair inquiry.

(xvi) At page 64 of the plaint is a re-tweet by the defendant No.1 of an Interview he has given to 'AajTak'.

56. The tone and tenor of these tweets would show that the defendant No.1 being a 'public figure' was relentlessly pursuing the Government in respect of the purchase of and grant of an AMC for 1000 buses, in which the Committee had also found irregularities and had recommended its cancellation. The tweets are also contemporaneous to the convening of the Delhi Assembly and also to the appointment of a Committee by the Hon'ble Lieutenant Governor to make inquiry into the alleged corrupt practices, based on a complaint received by him. Thus, it is difficult to accept that these tweets were personally targeted against the plaintiff alone and were per se defamatory and were totally false on the face of it. Had these accusations been absolutely false, the Hon'ble Lieutenant Governor would not have constituted a Committee. Moreover, the CBI has also initiated a preliminary inquiry. The Delhi Government, through the plaintiff, has kept the purchase and maintenance orders on hold, stating no reason. Hence, it is reasonable to infer that the Committee report and the CBI inquiry may have had some effect on this decision of the Government. It would, no doubt be upon the defendant No.1 to actually prove justification during trial. But on the material placed on the record, there is nothing on which basis the tweets can be treated as blatant lies and hence defamatory.

57. The case of **Laksmi Murdeshwar Puri (supra)** will not be applicable in the present case, as in that case, a personal allegation had been made by the defendant against the plaintiff as if to suggest that her acquisition of two immovable properties was sourced by corruption, whereas in the present instance, the comments have been on the discharge of public functions by the plaintiff in his capacity as the Transport Minister as also the Chairman of the Delhi Transport Corporation. As noted hereinabove, 'public figures' are subjected to closer scrutiny and unless the same tantamounts to harassment and invasion of private lives of the family of the public personality, interest even in his personal activities, cannot be barred and negative comments banned because they have an impact on his standing in the public eye. Even if these tweets were suggestive of corruption, in the backdrop of the findings of the Committee and initiation of the CBI inquiry, even on a *prima facie* reading, these cannot be held to be defamatory. Moreover, the defendant No.1 has raised the plea of justification for these comments and has also referred to various documents during the course of arguments to justify the tweets. The defendant No.1 has to be granted an opportunity to establish his plea of justification at the time of trial.

58. This Court, in the case of **Fiitjee Limited Versus Vidya Mandir Classes Ltd. and Others** 2022 SCC OnLine Del 484, held as under :

"19. There is no gainsaying that in general, the Bonnard Rule has been followed by the courts in determining whether interlocutory injunctions should be granted against publication in cases of defamation including in the case cited on behalf of the defendants viz. Tata Sons Limited Vs. Greenpeace International (supra). In Bonnard it was decided that an interim injunction should not be awarded unless a defence of

justification by the defendant was certain to fail at trial level. Free speech has been held to be of paramount importance. The right to free speech must remain unimpeded, except when it leads to the commission of a wrongful act. Or the words published or spoken are ex facie untrue. As observed in Holley v. Smyth, [1998] QB 726, the rule is also partly founded on the pragmatic grounds that until there has been disclosure of documents and cross-examination at the trial, a court cannot safely proceed on the basis that what the defendants wish to say is not true.”

59. In ***Tata Sons Limited Vs. Greenpeace International & Anr*** 2011 SCC OnLine Del 466, a Coordinate Bench of this Court concluded that wider viewership or a degree of permanence characteristic of publication on the internet would not change the essential fact that it too is “*but a medium of expression and called for no different standards for grant of interlocutory injunction*”. This Court does not find any reason to take a different view.

60. Finally, it cannot also be overlooked that the plaintiff has sought damages of Rs.5 crores from the defendant No.1 for causing loss of reputation to him. In other words, compensation in monetary terms has been quantified by the plaintiff himself and the absence of an interim injunction would not cause injury that could not be compensated by grant of damages, in the event, the defendant No.1 fails to justify his tweets.

61. Thus, on an assessment, on the cardinal principles for grant of interim relief, i.e., existence of a *prima-facie* case, balance of convenience and irreparable loss and injury, no case for grant of interim injunction to restrain the defendant No.1 from tweeting/publishing his views or to take down or archive the existing tweets, is made-out.

62. The application is accordingly dismissed.

63. Doubtless, the view taken is a *prima-facie* view and shall not be a reflection on the merits of the case to be determined after trial.

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64. The defendant No.1 is granted two weeks’ time to file the proper verification.

65. List before the Roster Bench on 12th July, 2022, for framing of issues.

66. The order be uploaded on the website forthwith.