

CS SCJ 100/22

**WHOOPSCOOP MEDIA PVT LTD THROUGH ITS AUTHORIZED SIGNATORY MRS NIVA
MUKHERJEE Vs. SAMDISH BHATIA**

14.02.2022.

**ORDER ON APPLICATION UNDER ORDER XXXIX RULE 1 & 2 CPC
MOVED ON BEHALF OF PLAINTIFF**

1. It is the case of the plaintiff company that defendant no.1 is an employee / consultant in “UNSCRIPTED” with his last contract ending on September 30, 2021. That, defendant no.2 is an employee of the plaintiff company and was Chief Executive Officer of “ScoopWhoop Media Private Limited” (hereinafter referred as “SMP”, which is spin off company of plaintiff company) and its Director and Founding Member. That, the defendant no.1 has filed a complaint of sexual harassment against the defendant no.2 and his wife, which is sub-judice before the Grievance Committee constituted under the POSH Act. That, the defendant no.1 has published / circulated regarding his allegations of sexual harassment through Instagram posts and youtube which may damage the reputation of the plaintiff company and also hamper the fair enquiry.

2. As an interim measure, the plaintiff company seeks grant of temporary injunction in favour of the plaintiff and against the defendants restraining the defendants, their associates, agents, representatives, correspondents, officers, employees and / or any other person, entity, in print or electronics media or on social media or via internet or otherwise from writing, speaking, content creation (including graphic and representation), publishing, republishing , circulating, carrying out any reports or articles or posts or reporting of any kind, directly or indirectly or in any manner pertaining to any allegations against each other and / or any other person / plaintiff organization’s connected therewith pertaining to the pending complaint and allegations by the defendant no.1 qua alleged incident of the intervening night of 7th - 8th October, 2021, till pendency of the present suit.

3. Notice of the instant application was issued to both the defendants.
4. On the other hand, defendant no.1 has opposed the instant application and filed a detailed reply to the present application. In the reply, the defendant no.1 has challenged the locus of the plaintiff company and has also submitted that the complaint was filed before the Internal Complaints Committee ScoopWhoop wherein no action has been taken and without any consent of the defendant no.1, the complaint has been transferred to the plaintiff company. That, the plaintiff has failed to show any prima-facie in its favour. That, the alleged media reports, screen-shots of videos and social media posts do not, in any manner, name or indicate the name of the plaintiff company. That, the plaintiff company has not prima-facie established that there is loss of subscribers or goodwill or reputation of the plaintiff company which was formed almost four months ago and has hardly been able to generate reputation in its favour in its favour. That, even balance of convenience does not lie in favour of the plaintiff company which is a separate entity and that the complaint of sexual harassment has not been made to the plaintiff company.
5. No reply to the instant application has been filed on behalf of defendant no.2. As such, no interim relief has been sought against the defendant no.2 in the instant application.
6. I have heard and considered the submissions addressed on behalf of the parties. Written Submissions on behalf of plaintiff has also been filed. File perused.
7. Before proceeding further with the present case, it would be relevant to discuss in here that ordinarily, there are three main principles govern the grant / refusal of injunction :
 - (a) prima facie case;
 - (b) balance of convenience; and
 - (c) irreparable injury;which guide the court in this regard.

8. In the broad category of prima-facie case, it is imperative for the court to carefully analyse the pleadings and the documents on record and only on that basis the court must be governed by the prima facie case. In grant and refusal of injunction, pleadings and documents play a vital role (*Reliance placed on Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira, (2012) 5 SCC 370 at page 393*).

9. It is the case of the plaintiff that a complaint of sexual harassment filed by the defendant no.1 is sub-judice with its Grievance Cell constituted under the POSH Act. Also admittedly, the allegations are not covered in the POSH Act and the complaint was not filed before the plaintiff company nor the defendant no.1 was employed with the plaintiff company. Thus, it cannot be said that the plaintiff company has been in any way “injured” with the acts of the defendant no.1. A legal right / injury has to be established before considering any case for grant of injunction which prima-facie appears to be absent in the present case. Further, the alleged posts / contents / video in question do not mention the name of the plaintiff company nor is obscene / derogatory / defamatory prima-facie. Expression of a victim’s trauma or experience is his / her fundamental right which can only be curtailed if it falls under four broad categories i.e. “libel, slander, defamation”, “contempt of court”, “offends against decency or morality” and “undermines the security or tends to overthrow the State”. In the present case, the alleged posts do not fall in any of the above-said category and thus, in the opinion of this court, the relief as sought by way of instant application cannot be granted at this stage. Thus, the application at hand is accordingly dismissed.

10. Nothing expressed herein shall tantamount to expression on the merits of the case.

**Announced in the open Court
on 14th day of February, 2022.**

**(PREETI PAREWA)
ACJ/CCJ/ARC, NDD, PHC
NEW DELHI : 14.02.2022**