

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/APPEAL FROM ORDER NO. 172 of 2021
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/APPEAL FROM ORDER NO. 172 of 2021

FOR APPROVAL AND SIGNATURE:**HONOURABLE DR. JUSTICE A. P. THAKER**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

NEWSClick.IN PUBLISHER OF ARTICLE THROUGH PRABIR
 PURKAYASTHA
 Versus
 ADANI POWER RAJASTHAN LIMITED

Appearance:
 for the Appellant(s) No. 4
 MR TARAK DAMANI(6089) for the Appellant(s) No. 1,2,3,5
 MR. KAMAL TRIVEDI, SR. ADVOCATE WITH MR. SINGHI, ADVOCATE
 FOR SINGHI & CO(2725) for the Respondent(s) No. 1

CORAM: HONOURABLE DR. JUSTICE A. P. THAKER**Date : 01/04/2022****ORAL JUDGMENT**

1. With the joint consent of the learned Senior Counsels and learned advocates appearing for the parties, the Appeal has

been heard finally at the stage of admission.

2. Being aggrieved and dissatisfied with the order dated 6.3.2021 passed by the learned Judge, City Civil Court, Ahmedabad below Exh-6 in Civil Suit No. 776 of 2020, whereby the learned Judge has passed the impugned order confirming the 'ex-parte ad-interim injunction' granted on 18.9.2020, the original defendant has preferred this Appeal under Order 43 Rule 1 of the Code of Civil Procedure, 1908.
3. Pending the hearing and final disposal of the Suit, the defendants-appellants, their servants, agents or representative has been directed to refrain from stating, publishing, issuing, circulating, distributing, carrying out reports or Articles or reporting of any kind, directly or indirectly, in any manner whatsoever either in print or electronic or any other form of media any defamatory story or article concerning the Respondent Company and Adani Group and from making publishing, circulating or causing or authorising to be published and circulated the words complained of or similar defamatory matter relating to the Respondent Company and Adani Group.

4. The appellants are the original defendants and the respondent is the original plaintiff before the trial Court. For brevity and convenience, the parties are referred to herein as per their status before the trial Court.
5. The brief facts, as emerged from the record, are as under:
 - 5.1 Two Articles were published on Appellant No.1's e-platform on September 7, 2020 titled "*Justice Arun Mishra's Final 'Gift' of Rs.8,000 crore to Adani*" and on August 7, 2020, titled "*Have Justice Arun Mishra's Judgments helped Adani Group?*" [hereinafter referred to as "Articles"], which pertained to the Respondent's and the adjudication of their disputes by the Hon'ble Supreme Court. According to the appellants, the facts mentioned in the said Articles pertained to information which are widely available in the public domain and are topics which have been widely discussed by various tabloids and news agencies. According to the appellants, as a part of their profession, they have published the said Articles in public domain and have reported on the said issues which pertains to the Hon'ble Supreme Court of India adjudicating upon the disputes regarding the Respondent.

6. The Respondent has filed the impugned Suit on 15.9.2020 and has alleged that the said Articles are defamatory in nature and have, accordingly, sought from the appellants jointly and/ or severally an amount of INR 100 Crores. The trial Court has initially issued ex-parte interim injunction on 18th September, 2020. The appellants have filed an application for vacation of interim relief granted by the City Civil Court, Ahmedabad and also filed the reply to the injunction application. According to the appellant, it being a Media House, owes a duty to the public to report on issues of public importance and thus the publication of the Articles in good faith was done in the larger public interest to generate debate and discussion on the facts available in public domain and the same cannot in any manner be construed to defame the Respondent and/ or the Hon'ble Supreme Court in any manner whatsoever. It has also contended that the Articles are based out of information that are publicly available topics which have been deliberated upon widely by the public at large. It is also contended that various publication houses in both print and digital media have published on the e-platform of appellant

No.1. It is also contended that under no circumstances are the said Articles false and neither are they defamatory in nature. The Articles are merely discussion of the issues that are being discussed widely in the public and a reporting of the information in one place. According to the appellants, similar Articles and news have been reported by various news agencies and tabloids all over India which pertain to the arbitrary listing of matter before the Supreme Court and the passing of certain orders which have adversely affected the overall functioning of the justice delivery system, including that of matter pertaining to the Respondent Company and its other group companies. While giving instances of other Articles, it is stated that one thing is sufficiently clear that the working of the Supreme Court and the manner in which Hon'ble Justice Arun Mishra has conducted himself has been the talk of the town amongst eminent jurists and has been published by various tabloids and other media handles. The appellants have also referred to herein to the instance of writing of eminent Senior Advocate Mr. Dushyant Dave as well as the Press Conference held by former Judges of the Supreme Court on 12.1.2018 and other reports and has stated that on such

public debate and other information which are already in public space, the Articles were published and, therefore, there is no question regarding defamation against the Respondent in any manner. According to the appellants, such Article placing facts on record already been published widely by various other Media Houses and, therefore, it cannot be said to be scandalous, frivolous, misleading, derogatory, libellous or defamatory in any manner whatsoever.

- 6.1 Regarding Article titled "*Justice Arun Mishra's Final Gift of Rs 8,000 Crore to Adani*", it is stated that in the said Article, discussion has been made about judgment passed by the Supreme Court under the heads of 'domestic or imported coal', 'terms of the power purchase agreement', 'lobbying by the Rajasthan Government', 'change in law', 'over invoicing of coal', 'impact of the judgment' and 'Justice Mishra's seventh pro-Adani verdict'. It is contended that discussion in the said Article have already been echoed by public at large thereby making the context of the Articles a matter of public debate and discussion. It is contended that the Articles merely lays down the facts of the appeal that

was pending before the Supreme Court and that cannot be construed to have caused defamation of the Supreme Court and/ or that of the Respondent Company.

6.2 It is contended by the Appellant that without taking into consideration the facts of the case as well as without taking into consideration the settled position of law and without taking into consideration, the contentions raised by the Appellants in the reply to the Injunction Application and the Application for vacation of interim stay, the City Civil Court has passed the impugned order which is not in consonance with the facts and law. It is also contended that the City Civil Court has failed to consider that the Appellants form a part of the fourth pillar of the democracy and restricting their right to free press is against the fundamentals of the Constitution. It is also contended that the trial Court has failed to recognise that the respondent Company has no locus to file a case alleging defamatory statements made against its Group when no such authorization has been provided by such group Companies to the Respondent Company. According to the Appellants, the Respondent Company has also no locus to file a case alleging

defamation caused to the Supreme Court or to its Hon'ble Judges when the Supreme Court has the requisite powers to initiate contempt proceedings against the Appellants, if the said Articles has actually caused defamation to the Supreme Court or to its Hon'ble Judges.

6.3 The Appellants have also referred to the decision of the Apex Court in the case of Ramrameshwari Devi & Ors v. Nirmala Devi & Ors, (Civil Appeal Nos. 4912-4913 of 2011) and has submitted that gag order in the form of impugned order has been passed by the City Civil Court. It is also contended that the Articles published by the appellants squarely falls within the Second Exception - 'Public conduct of public servants' to Section 499 of the Indian Penal Code, 1860 and has relied upon the decision of Purushottam Vijay v. State of Madhya Pradesh, (1961) 2 Cri. LJ 114. It has also contended that such a blanket ban or gag order ought not to have been passed by the trial Court which has restricted the fundamental right to life and personal liberty of the Appellants whereby they have been restricted to write or publish work even remotely connected to the Respondent or its group Companies, irrespective of the same being true

or not. The appellants have raised the points that all the observations made by the trial Court against the Appellants are without any base and the trial Court ought not to have passed such a gag order. It is contended that the impugned order of the trial Court is factually and legally not sustainable and deserves to be set aside. On all these contention and grounds, the appellants have prayed to allow the present appeal and set-aside the impugned order.

7. Heard Mr. Tarak Damani, learned Counsel for the appellants and Mr. Kamal Trivedi, learned Senior Counsel assisted by Mr. Singhi, learned Counsel for the respondent at length through video-conferencing. Perused the material placed on record.
8. Mr. Tarak Damani, learned advocate for the appellants has reiterated the averments made in the written statement as well as in Appeal Memo which have been referred to hereinabove. Mr. Damani, learned counsel has vehemently submitted that there were various publication by various media houses regarding the functioning of the Supreme Court as well as regarding the judgment passed in favour of the respondent Company. He has submitted that the

dispute is regarding the two Articles published which are at Para-101 and 113, which are already referred to in the Memo of Appeal. He has submitted that both these Articles are published, based on the analysis of various judgments of the Supreme Court or on material published in Media. He has also submitted that Shri Prashant Bhushan as well as Shri Dushyant Dave have raised grievance regarding the functioning of the Supreme Court. He submitted that both the Articles are based upon the public information available on the public platform and the criticism made by the eminent jurists like Shri Prashant Bhushan and Shri Dushyant Dave. While referring to Para 15 and 16 of the written Statement filed before the trial Court (paper Book Page Nos. 206 and 207), Mr. Damani, learned advocate has submitted that arbitrary listing of matters before the Apex Court and the passing of certain orders which have adversely affected the overall functioning of the justice delivery system, has been raised at multiple occasion which have been narrated in Para-15 which includes the press-conference of former Supreme Court Judges held on 12.1.2018 as well as the letter addressed by Ms. Dushyant Dave dated 16.8.2019 and other materials. He has also

submitted that respondent-plaintiff and its two Companies have been in the news repeatedly for their questionable and manipulative manner of doing business and participating in bidding processes in India. He has also submitted that various such instances where the respondent and / or its group companies have been questioned for their corrupt and immoral methods of doing business by the respondents can be assessed through the various links which have been referred to in Para-16 of the Written Statement. He has submitted that out of list enumerated by the Appellants in his written Statement (Page-16) (Paper-book Page-208) only Articles No. 'g' has been published by the Appellants herein. He has also submitted that it is the duty of the Appellants-defendants to bring true facts before the public. He has also submitted that the action of the Appellants in publishing the said two Articles are based upon the information available on the public domain and they have not committed any act of defamation of the respondent Company. He has also submitted that the plaintiff-defendant are the legal entities and it could not have asked for relief pertaining to other Companies which are not before the Court.

- 8.1 Mr. Damani, learned counsel has also contended that the trial Court has only reproduced the contents of the application of the Plaintiff. According to him, the trial Court ought not to have granted ex-parte injunction and ought not to have confirmed it and trial Court ought to have granted application of appellant of vacation of stay.
- 8.2 Mr. Damani, learned counsel for the appellants, referring to Articles at Page-238 has also submitted that the respondent has filed its response at Page-249 of the Paper-book. Mr. Damani also referred to various Articles at Page-251, 257, 258, 263, 265, 268, 270, 283, 287 and has submitted that all the Articles are containing the similar information and news and based upon all these materials and other materials available at public domain, the Articles in question are published and, therefore, they cannot be termed as defamatory in nature.
- 8.3 Mr. Damani, learned counsel has also submitted that the appellants have only reported the facts of judgment of Justice Arun Mishra pertaining to Adani Company and, therefore, that cannot be defamation per-se. He has also

submitted that there is no question of contempt of the Supreme Court or the Hon'ble Judges of the Supreme Court and if any, then in that case, the necessary proceedings could be initiated by the Hon'ble Supreme Court, but according to Mr. Damani, the respondent cannot take shelter alleging that by way of publishing of such Articles by the Appellants, there is defamation of the Respondent Company. He has submitted that the impugned order of the trial Court needs to be interfered with and needs to be set aside. He has prayed to allow the present Appeal by setting aside the impugned order of the trial Court.

9. Per contra, Mr. Kamal Trivedi, learned Senior Counsel with Mr. Singhi, learned counsel for the respondent has vehemently submitted that the scope of the present appeal is very much circumscribed in view of the observation of the Hon'ble Supreme Court in the case of Wander Ltd. and Another v. Antox India P. Ltd, reported in 1990 (Supp) SCC 727 essentially Para-14. Mr. Trivedi, learned Senior Counsel has submitted that the impugned order of the trial Court is neither arbitrary nor perverse. He has submitted that the

trial Court has dealt with each and every point raised by the appellant herein and has granted this interim relief in favour of the respondent which is proper one. He has submitted that the Hon'ble Judges of the High Courts and Supreme Court are the silent sufferers as they cannot raise grievance publicly against any Article published in the Media or against any observation made by any person against its functioning. He has submitted that analysis of any judgment of the Court on legal touch-stone, may not be defamatory, but, imputing allegation of dishonesty upon a particular Judge is nothing but defamation of the Institution. Mr. Trivedi, learned Senior Counsel has also submitted that the judgment which has been referred to by the Appellants in its Articles are not of a Hon'ble Single Judge but Judges of the Supreme Court. He has submitted that to allege dishonesty or of ulterior motive upon a Supreme Court Judge, would come within the term of defamation. He has also submitted that even under the Article 51 of the Constitution of India, everybody has constitutional duty not to make defamation of any of the Institution. He has submitted that every person has right to express its view, but by such expression, one cannot make

defamatory statement against anybody which may include any institution or person or entity. Mr. Trivedi, while referring to the entire order of the trial Court has submitted that trial Court has given proper reasons in passing the impugned order.

- 9.1 Regarding the averment made on behalf of the appellants that others have also published Articles pertaining to the same fact, Mr. Trivedi has submitted that there is no question of Negative equality. He has submitted that even if done wrong, it will not give any license to the appellants to publish the defamatory Articles. In this regard, Mr. Trivedi, learned Senior Counsel has relied upon the decision in case of Union of India and Another v. International Trading Co. and Another, reported in (2003) 5 SCC 437. Mr. Trivedi, learned Senior Counsel has also submitted that regarding the benefit of Rs. 8000 Crore to the respondents by the judgment of the Apex Court is concerned, there is no such observation regarding that amount in the judgment itself. According to Mr. Trivedi, how Rs. 8000 Crore has been assessed or estimated by the Appellant, needs to be explained by it. Mr. Trivedi has also submitted that if

somebody twists the fact and observation of the Court in respect of any order or judgment passed by it, then that would not be an action bonafide in nature and would come within the mischief of trying to defame the concerned person or Institution or the entity. He has submitted that the trial Court may be directed to expedite and decide the Suit within a time bound manner so that the apprehension of the defendants- Appellants that the order would remain for long, could be rested. He has also submitted that the plaintiff would definitely cooperate in the earlier disposal of the Suit and will not resort to delay tactics in conducting and disposing of the Suit. He has submitted that the impugned order of the trial Court is a discretionary one and the same view is possible from the material placed on record and this Court as an Appellate Court may not disturb the same, even if, the second view of the matter is possible. He has prayed to dismiss the present Appeal.

10. In rejoinder, Mr. Damani, learned counsel has submitted that the trial Court has not applied its mind and has reproduced the Para-9 of the Application of the Respondent in its order in Para-35 at Page-67 and,

therefore, there is no application of mind on the part of the trial Court, and therefore, the order of the trial Court needs to be interfered with by this Court.

10.1 Regarding the submission of Mr. Kamal Trivedi, learned Senior Counsel for the respondent as to principle of doctrine of negativity equality, Mr. Damani has submitted that other Articles are produced and referred to with a view to show that similar facts have been published and the respondent-plaintiff has not objected to it. He has submitted that the entire order of the trial Court is based upon the fact that by the disputed Articles, there is defamation of the Supreme Court and Justice Arun Mishra. He has submitted that considering the facts and circumstances of the case, the impugned order needs to be set-aside and, therefore, the impugned order may be set-aside and the present appeal be allowed.

11. It emerges from the submission of both the sides that the defendant has published two Articles, which is alleged to be defamatory in nature. For deciding the present Appeal from Order, wherein this Court, as a Appellate Court, has a limited jurisdiction to interfere with the discretionary order

passed by the trial Court, extract of the same needs to be reproduced, which are as under:

11.1 **Helped** 1. **Have Justice Arun Mishra's Judgements Adani Group?**

"With less than a month to go before his retirement from the Supreme Court, Justice Arun Mishra is expected to pronounce the judgement of a three-judge bench he heads in a case concerning a company in the Adani group. This will be the seventh case involving Adani group companies heard by benches led by Justice Mishra since 2019, with the previous six judgements having gone in favour of the group. If the decision on the seventh case also goes in the Adani group's favour, it would leave public power distribution utilities and consumers in Rajasthan poorer by around Rs 5,000 crore".

"Over the last week, a document of unknown origin has been circulating in the capital. The two-page document listing eight court cases is reportedly doing the rounds of offices of the judges of the Supreme Court of India and senior lawyers".

"The document, a copy of which is with NewsClick, lists eight cases that have been taken up by the country's apex court, each of which involves the Adani group and each of which has been heard by a bench of judges headed by Justice Arun Kumar Mishra. The Supreme

Court has ruled in favour of the Adani group in six of these cases, enabling the corporate conglomerate, headed by India's second richest man, to gain large amounts running into over thousands of crores of rupees".

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"The case in which a judgement is anticipated relates to a legal dispute on "compensatory tariffs" for electricity worth over Rs 5,000 crore that the Adani group company claimed was owed to it by a clutch of state government-owned power distribution utilities in Rajasthan, including those located in the cities of Jaipur and Jodhpur".

CASE ON ADANI POWER RAJASTHAN

"The case that is currently going on before a three-judge bench headed by Justice Arun Mishra, which also includes Justices Vineet Saran and Mukesh Shah, is based on a clutch of three petitions appealing a regulatory decision of the Appellate Tribunal for Electricity (APTEL) that granted Adani Power Rajasthan Limited (APRL)—a subsidiary of Adani Power Limited—"compensatory tariffs" worth around Rs 5,000 crore".

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SIX PRO-ADANI VERDICTS

“If indeed the three-judge bench ends up ruling in favour of Adani Power Rajasthan, this would become the seventh occasion a judgement favouring the Adani group has been made by a bench presided over by Justice Arun Mishra”.

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SIGNIFICANCE OF UPCOMING ORDER

“As we will explain in detail in the next article, the Supreme Court’s decision assumes further significance in light of an earlier decision by it on the issue of coal imports from Indonesia by Adani Power for another one of its power plants— in this case, the 4,620 MW capacity power project in Mundra, Gujarat”.

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“The decision by the bench led by Justice Arun Mishra can serve to reinforce the principle of the 2017 order if it upholds the appeal and strikes down the compensatory tariffs. If it dismisses the appeal and grants compensatory tariffs favouring the Adani group, it may end up contradicting the 2017 order of Justice Nariman, creating jurisprudential ambiguity”.

11.2 **2. Justice Arun Mishra’s Final ‘Gift’ of Rs. 8,000 to Adani:**

“On August 31, a Supreme Court Bench headed by Justice Arun Mishra approved the decision by electricity

regulators to grant Adani Power “compensatory tariffs” amounting to Rs 8,000 crore for electricity generated at its power plant in Rajasthan. The verdict, just before Justice Mishra’s retirement on September 2, is the seventh judgment since the beginning of 2019 in which benches headed by him have ruled in favour of Adani group of companies.

Bengaluru/Gurugram: *On August 31, a Supreme Court bench headed by Justice Arun Kumar Mishra, that included Justices Vineet Saran and M R Shah, ruled in favour of a company in the Adani group in a dispute with public sector power distribution companies in Rajasthan. The verdict, issued three days before Justice Mishra retired from the court on September 2, has granted Adani Power Rajasthan Limited (APRL) – which owns a 1,320 megawatt capacity thermal power station in Kawai, Baran district – “compensatory tariffs” worth over Rs 5,000 crore and penalties and interest payments of nearly Rs 3,000 crore”.*

“This “price” of Rs 8,000 crore will be borne by electricity consumers in the cities of Jaipur, Jodhpur and Ajmer. This is the seventh verdict in favour of Adani group companies issued by benches headed by Justice Mishra since the beginning of 2019”.

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(MIS-)USING ENERGY WATCHDOG JUDGMENT

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“The present judgment draws from the Energy Watchdog judgment in its understanding of change in law, while appearing to ignore the above principle. Despite not having been a CSA in place, the verdict by the Justice Arun Mishra-led bench held that the MoU between the Government of Rajasthan and APRL was sufficient to fulfil the basis for holding that APRL had suffered a change in law”.

OVER INVOICING OF COAL?

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“Specifically with regard to its investigations into the Adani group, the DRI is in a legal battle at the Supreme Court over Adani’s attempts to block its investigation. In 2018, the DRI had sent Letters Rogatory to Singapore, Hong Kong, Switzerland and the United Arab Emirates seeking the support of the courts in those countries to obtain banking and other documents it required for its investigation into the Adani group’s import of coal from Indonesia. The Adani group sought to quash these letters rogatory, first in the courts in Singapore, and having failed there, at the Bombay High Court. The Bombay High Court had in 2019 ruled in Adani’s favour and quashed the letters rogatory, which the DRI is currently appealing before the Supreme Court. In January of this year, the Supreme Court stayed High Court’s order as it heard the case”.

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“The Justice Arun Mishra-led bench refused to entertain the issue. Noting that the AIPEF’s counsel, Prashant Bhushan, had sought to bring the matter to the court’s attention, the verdict reads “we are of the opinion that until and unless there is a finding recorded by the competent court as to invoicing, the submission cannot be accepted.”

IMPACT OF JUDGEMENT

“The one count on which the Supreme Court’s verdict has given a minor relief to the discoms is on the interest rate payable on the compensatory tariffs due, calculated back to the beginning of the supply of electricity from the plant in 2013. While the Adani group company had sought an interest rate of 2% more than the SABR interest rate (Stochastic Alpha Beta Rho, a measure used in banking and finance), the Supreme Court’s verdict has capped it at 9%”.

JUSTICE MISHRA’S SEVENTH PRO-ADANI VERDICT

“In an [earlier article](#), Newsclick had listed six cases in which benches involving Justice Mishra had ruled on cases in which the Adani group was a party, wherein the court had ruled in favour of the Adani group companies”.

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12. In view of the two Articles published by the defendants, the

trial Court has made following observations for coming to the conclusion that all the three ingredients namely prima-facie case, irreparable loss and balance of convenience are in favour of the plaintiff and has ultimately granted the interim injunction in favour of the plaintiff and against the defendants. The trial Court has observed as under:

“39.Looking to the titled given by the defendants to such articles they published, even a common man with even an average prudence can find that they are mere contents, but, they create some sort of sensation for a reader to read such articles. They prima facie create some sort of aspersions against the plaintiff as well as the Hon’ble Supreme Court of India”.

“41.It is clearly evidence therefrom that no such article shows the source from which the same has been gathered. Thus, all such allegations which are alleged therein are produced from anonymous sources. It is trite that Freedom of Speech is enshrined in the Constitution of India. However, it is well-established principles of law that such Freedom of Speech also comes with certain restrictions. In the instant case, if we peruse the Articles said to have been published by the defendants, all such articles relate to Adani group and also involves the judiciary

and its Hon'ble Judges”.

“42.It prima facie, shows that the defendants have clearly concluded that the plaintiff company has been clearly helped by such judgement of Hon'ble Mr. Justice (Retd.) Arun Mishra, which in my opinion, prima facie does not appear to be in the interest of public at large, but, in complete bad taste and maligning the reputation and integrity of a Judge of the Hon'ble Supreme Court. Thus, in my opinion, it prima facie appears that the defendants have not carefully verified the facts of the case before its publication”.

“43.Therefore, just because judgements in certain cases went in favour of the plaintiff company and coincidentally all such Benches were headed by Hon'ble Mr. Justice Arun Mishra, does not mean that they were so decided just to favour the plaintiff company.....”

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“44.Therefore, without producing any proof and/or evidence merely casting aspersions or raising allegations against the working of the Hon'ble Supreme Court or its Hon'ble Judges prima facie, appears to be in bad taste, disrespectful, full of mala fides, ulterior motive and most importantly not in the interest of the public at large, as claimed by the

defendants.”

“45.Here in case of the plaintiff, as submitted by the learned counsel appearing for the plaintiff, there were concurrent findings by various forums before passing of the said judgment by the Hon’ble Supreme Court and all such fora below also have passed an order in favour of the plaintiff company based on the evidence available before them. Therefore, when such is the case, prima facie it appears that the defendants have published such articles, without verifying the true facts”.

“53. ...However, if we peruse the articles published by the defendants, prima facie the defendants have come with a clear cut case but instead have merely raised suspicions and cast aspersions against the plaintiff and against the Hon’ble Supreme Court . In my opinion, merely because, the defendants being a meid, has a right to freedom of expression, cannot merely raise suspicions without any proof.....”

“54. Thus, looking to the facts and circumstances of the present case in juxtaposition with the settled legal provisions as discussed hereinabove, I am of the considered opinion that the defendants herein have, by allegedly published the Articles referred to hereinabove, have prima-facie acted contrary to

Articles – 19(1)(a) of the Constitution of India. Looking to the tenor of the articles, it is prima facie evident that it not only tries to show the plaintiff in poor light, but, at the same time also prima facie tries to cast aspersions against the Hon'ble Judge of the Hon'ble Supreme court of India which, under no circumstances, can be permitted. It further prima facie appears from the aforesaid articles that the defendants appears to have procured the same from some anonymous source thereby the defendants have no personal knowledge regarding the same. When the defendants have no personal knowledge regarding the facts alleged in the said articles, mentioning of the name of the plaintiff and its Group as well as the name of the Hon'ble Judge of the Supreme Court of India and also casting aspersions against the Hon'ble Judge of the Hon'ble Supreme Court of India as well as the Hon'ble Supreme Court of India, cannot be said to be in the public interest and that the intention of the defendants also appears to be prima facie doubtful".

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"60.In the case on hand also, it prima facie appears that if the defendants are not restrained from publishing such defamatory articles, it may cause more damage to the plaintiff rather than the defendants in case of vice versa. Therefore, it prima facie appears that the plaintiffs have also proved the

aspect of irreparable loss in their favour.”

13. In view of the aforesaid averments in the disputes Articles, the learned trial Court has considered it to be a prima-facie defamatory in nature. The trial Court has considered it to be defamatory on two counts and one of is regarding the defamation of the Hon'ble Judge of the Supreme Court as well as Supreme Court as a whole and also affecting the reputation of the plaintiff. It is the stand of the defendant that the Articles is based upon a view of two eminent lawyers of the Supreme Court and other material available to them.
14. It is well known that the source of law of Freedom of Expression is the preamble of our Constitution. Expression is a matter of liberty and right. Freedom of speech and expression includes in its rubric, every other kind of expressions i.e. Press, Media, Television, Internet, etc. A free Press is an essential limb of democracy, as a parliament freely elected by the people and an independent judiciary. The right to freedom of expression, though it belongs to every individual, institution and organization, becomes imperatively necessary in the Media world which serves as a

best communicator of information and the best instrument in expression. Exercise of right of freedom of expression is the professional duty and character of freedom of media whether it is print media or electronic media. The media acts as a mass communicator and has to enjoy this freedom from promoting public good and informing the people in general as to the state of affairs in every sphere of life and activity throughout the State and indeed throughout the world. It is said freedom of Press is not an end in itself, but means to the ends of free Society.

14.2 Freedom of speech and expression has been guaranteed as a fundamental right under Article 19(1) (a), available to all citizens but subject only to restriction which may be imposed by the State under Clause-2 of Article 19.

14.3 At this juncture, it is worthwhile to refer to the decision of the Apex Court in case of Indian Express Newspaper (Pvt) Ltd. v. Union of India, reported in (1965) 1 SCC 6419, wherein the Supreme Court has emphasized the importance of freedom of press in the following words: ".....expression of freedom of Press has not been used in

Article 19 but it is comprehended within Article 19(1)(a)". Expression means freedom from interference from authority, which would have the effect of interference with the contents and circulation of Newspaper. There cannot be interference with that freedom, in the name of public interest. The purpose of the press is to advance the public interest by publishing facts and opinion without which the democratic electorate cannot make a responsible judgment. The freedom of the Press is a heart of the social-political intercourse.

14.4 Earlier in the case of Sakal Papers (Pvt) Ltd. v. Union of India, reported in AIR 1962 SC 305, the Supreme Court had observed that right to freedom of speech and expression carries with it the right to publish and circular one's ideas, information and views with complete freedom and by resorting to any available means of publication, subject to the restriction imposed under Article 19(2).

14.5 One of the restrictions enumerated in the Article 19(2) of the Constitution is relating to defamation. Freedom of Press is a part and parcel of the freedom of speech and expression as guaranteed under Article 19(1)(g). However,

this freedom is not absolute, since no democracy affords absolute and unbridled freedom. Law of Defamation is an effective limitation on the freedom of Press.

14.6 It is said that every person has a right to reputation. If reputation is harmed by wrongful publication, victim has legal remedies. Action against defamation is a two-in-one choice available to every citizen to protect his reputation against defamatory publication made by Newspaper. One can either sue for damages or prosecute defaming media persons. Defamation is a Constitutional limitation upon the right to freedom of expression as mentioned under Article 19(2). The importance of the law of defamation gropes with civilisation with an increase in the use of mass media of communication and with the spread of literacy, the growth of reading habit and the technological advance that enable the spoken and written words published conveyed to a very large number of people, there is naturally an increase in the volume of the matter as well as in the audience that it reaches. This increases the likelihood of harm to reputation. With the advent of democracy and the reputation of importance of freedom of expression and the emphasis

placed on the right of the public to know the truth on certain matters, a check on the freedom of press also gains more importance so that a proper balance between private interest and reputation and public right to information about the public matter is maintained. It is well settled that a man publish a defamatory statement at his peril. The intention or knowledge is immaterial.

14.7 To be actionable, the defamatory statement must be false. Civil action lies for the publication of a defamatory statement which is false. Duty is cast upon the defendant who has published the defamatory statement to establish that it is true. Of course, truth is the best defence, but, the duty is upon him that the statement is a true in real sense. The defence available against the action of defamation are truth, fair-comment and privilege. The law has recognized truth as a defence in an action of defamation. When there is an allegation of defamation by the plaintiff then the defendant can rebut that presumption by leading appropriate evidence to substantiate his defence of truth. The fair comment is also a defence against the defamation and it expands scope of freedom of speech and expression.

If the reputation is demolish by comments which are fair and reasonable, no action lies if the statements are made as true information and fairness which will works as as shield against the action of defamation.

14.8 There are universal recognition of the ethics of journalist writing, regarding the caution against defamatory writing. General norms needs to be followed. Such norms may include that - (a) Press should not publish anything which is manifestly defamatory against any individual or institution, only after due verification, there is sufficient reasons / evidence to believe that it is true and its publication will be for public good ; (b) Truth is no defence for publishing derogatory, scurrilous and defamatory material against the private citizen where no public interest is involved; (c) in the gest to expose, the press should not exceed the limit of ethical caution and fair comment; (d) Publication of defamatory news by one paper does not give licence to others to publish news, information, reproducing or repeating the same; (e) as a custodian of public interest, the Press has a right to highlight cases of corruption and irregularities in public bodies. However, such material

should be based on irrefutable evidence and published after due inquiry and verification from the concerned source and after obtaining the version of the person, authority being commented upon, etc.

15. Now, what is stated hereinabove regarding the Constitutional right of expression and thought and the restrictions thereof by way of defamation and the role and importance of the Media, it is true that the media has right of fair-comment and to publish truth. But, at the same time it is the duty of the media to substantiate its stand primarily by producing the evidence in respect of the truth. In the present case, it emerge that the defendant has published the Articles on the basis that the Bench headed by Justice Arun Mishra has favoured the plaintiff. The tenor of both the Articles appears to raise questions of propriety of the orders and raising doubt that there is something fishy in the delivery of the judgment in favour of the plaintiff. It appears from the records that the defendant has not averred any facts regarding the benefit of almost Rs. 8000 Crore to be available to the plaintiff by the order of the Bench of three Judges of the Supreme Court. There is no

any material placed on record to show that how this figure has emerged from the judgment. The tenor of the language used in the Articles, prima-facie, supports the observation made by the trial Court while granting the injunction against the defendant – present appellant.

16. At this juncture, it is worthwhile to refer to the observation of the Hon'ble Apex Court in case of Wander Ltd. and Another v. Antox India P. Ltd (Supra), in Para-14, which is as under:

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of

discretion. After referring to these principles Gajendragadkar, J. in [Printers \(Mysore\) Private Ltd. v. Pothan Joseph](#) : (AIR 1960 SC 1156)

"... These principles are well established, but as has been observed by Viscount Simon in [Charles Osenton & Co. v. Johnston](#) the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case".

17. Further, in case of [Union of India and Another v. International Trading Co. and Another \(Supra\)](#), the matter was pertaining to Administrative Law and relating to the Article 14 of the Constitution of India. In Para-13, regarding Negative Equality, the Apex Court has observed as under:

"13. What remains now to be considered, is the effect of permission granted to the 32 vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as 32 vessels are concerned. But it cannot come to the aid of respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case; direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of [Article 14](#) the Constitution of India, 1950 (in short 'the Constitution') cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs or par. Even if hypothetically it is accepted

that wrong has been committed on some other cases by introducing a concept of negative equality respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.

18. In the facts and circumstances of the case, the view taken by the trial Court is reasonable one. This Court, being an Appellate Court exercising the limited jurisdiction, cannot interfere with it only on the basis that second view of the matter is possible. The observation of the trial Court cannot be said to be perverse one or arbitrary one.
19. Therefore, the impugned order of the trial Court does not need any interference by this Court. However, since the issue involved is entirely based upon the documentary evidence and the scope of the oral evidence is very much limited and the important of the issue involved, it is desirable that the trial court be directed to expedite the hearing of the Suit and decide it within time bound period so that the interim order may not continue for long time and the plaintiff may not indulge in delay tactics in prolonging the Suit.
20. In view of the above, the present Appeal from Order stands dismissed. Considering the facts and circumstances of the

case and the issue involved in the matter, the trial Court is hereby directed to expedite the hearing of the Civil Suit No. 776 of 2020 and to decide the same as early as possible, preferably within a period of 4 months, from the date of receipt of order of this Court.

The parties are directed to cooperate with the trial Court for earlier disposal of the same.

No order as to costs.

In view of the above, the Civil Application stands disposed of accordingly.

SAJ GEORGE

(DR. A. P. THAKER, J)

