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

+ CS(OS) 554/2019

SUPARN PANDEY Plaintiff

Through: Mr. Anchit Sharma &
Ms. Anukriti Pareek, Advs.

versus

GAYATRI DAHIYA Defendant

Through: none.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **30.10.2019**

IA No.15033/2019(exemption)

1. Allowed, subject to just exceptions.
2. Application stands disposed of.

CS(OS) 554/2019 & IA No.15032/2019(u/O.XXXIX R-1&2 CPC)

3. The plaintiff has instituted this suit for (i) recovery of damages for defamation; (ii) restraining the defendant from further defaming the plaintiff; and, (iii) taking down of the allegedly defamatory content.

4. The allegedly defamatory allegations are with respect to the complaint made by the defendant against the plaintiff of sexual harassment at work place and the legal proceedings emanating therefrom. It is the case of the plaintiff that the defendant has been leaking to the media, particularly the electronic media her version of the complaint and the legal proceedings in pursuance thereto.

5. The defamation alleged is of 8th October, 2018, though, it is also the plea that the defendant re-posted the allegations on 10th, 11th and 13th October, 2018. The suit has been instituted first on 9th October, 2019 and re-

filed on 22nd October, 2019 and has come up today before this Court for the first time.

6. It needs to be considered whether re-posting of the allegedly defamatory allegations furnish a fresh cause of action to the plaintiff particularly when the initial posting remains on the electronic media.

7. The counsel for the plaintiff, on enquiry as to how the suit claim for damages is within time, states that the Courts were closed from 2nd to 8th October, 2019 on account of the Dusshera vacations and thus the suit filed on 9th October, 2019 is within time.

8. The plaintiff in the present case has also alleged defamation *inter alia* by publication in April, 2017 of contents of FIR lodged by defendant against plaintiff and the counsel for the plaintiff, with reference to ***Youth Bar Association Vs. Union of India*** (2016) 9 SCC 473 directing publication of all FIRs, contends that FIRs relating to sexual harassment are exempted therefrom.

9. There is however no plea in the plaint, of the FIR lodged by defendant against plaintiff having not been published and the counsel for plaintiff states that he will check and the matter be passed over.

10. The counsel for the plaintiff however, on enquiry states that the claim in this suit is not on the basis of the said publication of the contents of the FIR, which was beyond one year preceding the institution of suit.

11. The counsel for the plaintiff informs that CS(OS) 530/2019, filed by one Sriparna Tikekar, against the same defendant and arising out of the same incident, had come up before this Court for admission on 18th October, 2019 and has handed over a copy of the order of that date.

12. Though in CS(OS)530/2019 which had come up on 18th October, 2019, no *ex parte* orders sought were granted, but the counsel for the plaintiff has today sought to re-argue the matter. It is argued, (a) that the defendant has been successively improving her case and causing prejudice to the plaintiff; (b) from selective release of news by the defendant, the plaintiff is being subjected to a media trial and is suffering; and, (c) that at least the defendant be restrained from going to the media with respect to filing of the present suit by the plaintiff.

13. I have considered the contentions made today by counsel for plaintiff.

14. In ***Ritesh Properties & Industries Ltd. Vs. Youtube LLC*** MANU/DE/3284/2019 I have *inter alia* held as under:

“11. The case of the plaintiff cannot be equated to other cases coming up before this Court of character assassination without the complainant / accuser disclosing own identity even. Generally such accusations are of sexual harassment / misconduct. In such cases, suits have been entertained and ex parte orders issued to social networking sites, for taking down the impugned content and to disclose particulars of the uploader of such content. The reason which prevailed was, none can be condemned publically, without having an opportunity to defend him/her self. It was felt that the accuser, in the matter of own complaint / grievance, cannot also be the judge and pronounce the accused guilty publically. However while it is not possible for a person who is accused of sexual harassment / misconduct, to prove the negative, that he/she is not guilty of what he/she is accused of in public domain by unknown persons who want to hide behind the veil of an electronic identity, when a person in the market, selling real estate professing good title thereto is accused in public domain of doing so without having any title and particulars of legal cases given in support of the allegations, for such person to make out a case for defamation, it is essential to satisfy the Court of falsity of the allegations and which can easily be done by producing documents of Court cases referred

to and showing good title to the real estate being offered for sale. When no effort even in this respect is made, the only inference is that the allegations are not controverted. The Court would not injunct a defendant from publishing the truth. The effect of the injunction, if granted, would be to allow the plaintiff to continue selling / offering for sale, real estate, without having a good marketable title thereto, thereby cheating gullible buyers.”

15. Order dated 18th October, 2019 in CS(OS)530/2019 arising from the same incident, is as under:-

“4. It is the case of the plaintiff that the defendant was an employee of a company co-founded by the plaintiff and after was hauled up for her non-performance, resigned from the said company and on acceptance of her resignation, is taking vengeance from the company and the plaintiff, by belatedly alleging that her complaint for sexual harassment while in the employment of the said company was not treated in accordance with law, inter alia by the plaintiff.

5. I have enquired from the senior counsel for the plaintiff, whether the husband of the plaintiff who is also pleaded to be the co-founder of the company and the company are intending to take any action for defamation against the defendant inasmuch as it appears that if it is so, there should be no multiplicity of proceedings.

6. The senior counsel for the plaintiff, under instructions states that the husband of the plaintiff and the company are not intending to take any action.

7. It is further the case of the plaintiff that though an Internal Complaint Committee (ICC) was constituted by the company with respect to allegations of the defendant but did not find any merit in the allegations of the defendant but a writ petition filed by the defendant is pending in this Court and by interim order wherein, it was directed that neither the defendant nor the plaintiff be personally named. It is pleaded that the defendant was in violation of the said order and on contempt action being taken by the plaintiff, further directions have been issued to the defendant.

8. Once the Writ/Contempt Court is already seized of the matter and directions have already been issued, it is inexplicable,

as to how the plaintiff has a cause of action for the relief claimed of permanent and mandatory injunction.

9. *The senior counsel for the plaintiff states that the plaintiff, for the time being, is not pressing the relief of permanent and mandatory injunction and confines the relief to that of recovery of damages.*

10. *Though once the matter is sub-judice, the question of adjudicating, whether there is any defamation or not, ordinarily does not arise but the senior counsel for the plaintiff states that since the limitation for claiming damages would be lost by the time the writ petition is dismissed, this suit has been filed.*

11. *Damages are being claimed with respect to defamation vide tweets and Facebook posts of 8th October, 2018 onwards and though the suit was filed on 9th October, 2019, it is stated that this Court was closed from 2nd October, 2019 to 8th October, 2019.*

12. *During hearing it is also disclosed that though a FIR lodged by the defendant was closed but protest petition of defendant is pending.*

13. *Attention of the senior counsel for the plaintiff is invited to **Primero Skill & Training Pvt. Ltd. Vs. Selima Publications Pvt. Ltd.** (2017) 23 9 DLT 15 holding that news relating to lodging of an FIR and/or with respect to a legal proceeding or steps in aid thereof cannot be defamation as the Supreme Court itself in **Youth Bar Association Vs. Union of India** (2016) 9 SCC 473 has ordered it so and the reporting of court proceedings which are in open Court is only enlargement of the Court Room. Reference may also be made to order dated 17th September, 2019 in CS(OS) No.482/2019 titled **Metro Institutes of Medical Sciences Pvt. Ltd. Vs. Dr. Shyam Sunder Bansal.***

14. *Subject to the aforesaid, issue summons of the suit and notice of the application for interim relief to the defendant by all modes including dasti and electronic returnable before the Joint Registrar on 28th November, 2019.*

15. *List before the Court on 26th February, 2020."*

16. *Prima facie it appears, that when the complainant in such cases of sexual harassment has come forward, identifying herself and has taken legal*

recourse, the order restraining the said complainant from going to the media can be made only by the Court which is seized of the prosecution or complaint or other proceedings initiated by the complainant, inasmuch as it is that Court only which is equipped to take a call on the merits of the complaint and if is of *prima facie* view that though the complaint proceedings have to be taken to logical end, appear to be without any substance and reporting of contents of the FIR / complaint and the prosecution / proceedings pursuant thereto are prejudicing the person complained against, issue requisite direction. Again, *prima facie*, it is not open to another Court to enter into the said controversy and take a call on the respective merits of the case of the complainant and the person complained against, and to pass any orders restraining media reporting of such proceeding, inasmuch as legal and Court proceedings are in public domain and in open Court and media reporting thereof is only an extension of the Court room, as held by me in ***Primer Skill & Training Pvt. Ltd. Vs. Selima Publications Pvt. Ltd.*** (2017) 23 9 DLT 15 and in order dated 17th September, 2019 in CS(OS) No.482/2019 titled ***Metro Institutes of Medical Sciences Pvt. Ltd. Vs. Dr. Shyam Sunder Bansal.***

17. As far as the question of prejudice is concerned, again it is only the Court which is seized of the proceedings initiated by the complainant, which can judge whether the proceedings in the case before it are being correctly reported or not, and the same cannot be judged in a parallel proceeding. In ***Primer Skill & Training Pvt. Ltd.*** supra I have relied on ***Sahara India Real Estate Corporation Limited Vs. Securities and Exchange Board of India*** (2012) 10 SCC 603 and held that postponement of publication of Court proceedings can be applied for to the same Court in which the

proceedings are pending and not to another Court.

18. Similarly, the plaintiff having himself opened up another platform of litigation with the defendant, cannot, in my view, seek restraint against reporting if any by the defendant of the filing of the present suit or the proceedings therein. A plaintiff cannot institute a suit to prevent media reporting of the suit or proceedings therein. Moreover, till there is no restraint against media reporting of the other legal proceedings initiated by the defendant, restraint of media reporting of the present proceedings will serve no purpose.

19. It is also felt that all the persons complained against with respect to same incident, cannot file separate suits, involving the complainant in multiple litigations and which can be a way of coercing the complainant to give up the complaint.

20. The counsel for the plaintiff however states that the cause of action for the two suits is different.

21. Issue summons of the suit and notice of the application for interim relief to the defendant by all modes including dasti and electronic, returnable before the Joint Registrar on 28th November, 2019.

22. List before the Court on 26th February, 2020 along with CS(OS) No.530/2019.

RAJIV SAHAI ENDLAW, J

OCTOBER 30, 2019

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