

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR INJUNCTION

CS(OS) 1063/2005

Judgment delivered on: 03.07.2006

RBEF
(RITNAND BALVED EDUCATION FOUNDATION) Plaintiff

versus

MR ALOK KUMAR Defendant

Advocates who appeared in this case:-

For the Plaintiff : Mr Rajiv Nayyar Sr Advocate with Ms Ruchira Arora.
For the Defendant : None (Ex parte)

BADAR DURREZ AHMED, J

1. This is a suit for damages of Rs.1 crore and permanent injunction. The damages have been sought on account of the alleged damage said to have been caused to the reputation of the plaintiff by the defendant's false and malicious statements, as also on account of losses allegedly caused to the plaintiff by the acts of the defendant in supplying confidential and privileged information/documents to certain parties which has resulted, according to the plaintiff, in filing of frivolous cases against the plaintiff and also in the attaching of its accounts and orders of injunction against its properties. The relief of permanent injunction in favour of the plaintiff has been sought for restraining the defendant, his agents, accomplices, attorneys, etc. from making any oral or written statement, writing any letter, giving any interview containing any allegations against the Plaintiff, its AMITY Institutions, its founder President, founder Trustee and office bearers, furnishing any information to any news channel/newspaper or to any business/education associates/collaborators of the Plaintiff in India and abroad or to any person, organization and authority or publishing, disclosing or releasing any article/information, relating to the Plaintiff, or its AMITY Institutions, its founder President, founder Trustee and office bearers or doing any act, which is injurious/harmful to the plaintiff. The plaintiff has also sought an award of costs in favour of the plaintiff and against the defendant.

2. The plaint was registered as a suit on 4.8.2005. On the same day directions were given for issuance of summons to the defendant through ordinary process, as well as through Registered A.D. cover, returnable on 7.9.2005. When the matter came up on the returnable date, i.e. on 7.9.2005, it was observed by this Court that the defendant remains to be served. Although the report of service recorded by the process server was one of refusal, this Court found the same to be quite vague and one that could not be relied upon so as to hold that the defendant has been served. Accordingly, this Court by an order dated 7.9.2005, directed issuance of fresh

summons and notice to be served upon the defendant on both the addresses given through ordinary process, registered A.D. post, approved courier, through e-mail and Dasti also, returnable on 14.11.2005. On 14.11.2005, this Court observed that although the process issued through ordinary course has been returned unserved as the premises were found to be locked, an affidavit of service has been filed indicating that summons sent by courier has been returned with the refusal report and the defendant has been served through e-mail. In these circumstances, it was taken that the defendant had been duly served. By an order dated 23.1.2006, as the defendant did not appear despite service, the defendant was directed to be proceeded with ex parte. The plaintiff was directed to lead its ex parte evidence by filing affidavits. The plaintiff was also permitted to file documents. The matter was directed to be listed for exhibiting the same before the Joint Registrar on 13.2.2006. After the evidence affidavits were filed on behalf of the plaintiff and the documents were exhibited, the plaintiff's evidence was closed and the matter was placed before this Court. Thereafter, the matter was heard and judgment was reserved. Mr Nayyar, the learned senior counsel who appeared on behalf of the plaintiff also requested that a brief synopsis be permitted to be filed. The permission was granted and the brief written synopsis was also filed.

3. The plaintiff (Ritnand Balved Education Foundation) is a Society registered under the Societies Registration Act, 1860 (hereinafter referred to as RBEF). The plaintiff, it is alleged in the plaint, is running various Educational Institutions in the name and style of "AMITY" all over India. In Paragraph 2 of the plaint, it is averred that the AMITY Institutions run and managed by the plaintiff (RBEF) have more than 35,000 students, 130 programmes and 22 campuses all over India. In paragraph 3A of the plaint, it is stated that the plaintiff (RBEF) was formed and is being run by very respectable, honest, dedicated, hard-working and educated persons, who have deep roots in society and who have earned a name and created a niche for themselves by the dint of their hard-work. Amongst them, Dr Ashok Kumar Chauhan is the founder President of RBEF and Mr Arun Kumar Chauhan is its founder Trustee. In paragraph 5 of the plaint, it is stated that the defendant was employed as an in-house Legal Attorney by the plaintiff (RBEF) to look after and assist in its legal matters as well as those of AKC Group of Companies, and the personal matters/cases of the Chauhans and their family members. The defendant is said to have worked with RBEF as Assistant Director between the period March 1996 till November, 1997 on a monthly salary of Rs 15,000/- along with rent free accommodation at NOIDA. He is said to have represented RBEF, AKC and the Chauhans in their legal matters. It is averred in paragraph 6 of the plaint that the defendant operated from RBEF's office at E-27, Defence Colony, New Delhi and that he was entrusted with all the files and documents pertaining to the legal/court matters and properties of RBEF, AKC Group of Companies and even the Chauhan family members and was privy to all the private and confidential information in respect of the above. It is further stated that all these files/documents/records were entrusted to the Defendant by reposing great trust and confidence in him.

4. It is further averred in paragraph 7 of the plaint that the defendant had gradually gained trust and as such, he was sent to London, England to assist solicitors of the AKC Group in a case filed by one American Company against the Chauhan family members. It is alleged that the defendant stayed at the accommodation

provided by the Chauhans during the period June 1997 to October, 1997 at London and that during this period the defendant inspected various confidential papers held by the solicitors of the AKC Group of Companies. He had also carried loads of papers with him from India. The proceedings on behalf of the American Company were filed and handled by Rakisons, Solicitors in U.K. In paragraph 8 of the plaint, it is alleged that on his return from London, the defendant, all of a sudden, left the employment of RBEF in November, 1997. Thereafter, it is alleged that as per the information of the plaintiff, the defendant proceeded to London and joined the Solicitors firm-Rakisons, who were fighting the case on behalf of the American Company against the Chauhan family. It is alleged that the defendant supplied confidential information and other relevant documents obtained by fraudulent means to the opposite Solicitors/Rakisons, which was used by them in cases against Chauhans. It is further stated that the outcome of the litigation led to the institution of several cases in the Delhi High Court, which caused great financial loss to RBEF, the Chauhan family and their companies. Some bank accounts of RBEF, AKC Group of Companies and Chauhan family members have been frozen by the ex parte orders of the Court.

5. It is further the case of the plaintiff that the defendant with the help of information gathered and papers stolen during his employment, induced some foreign companies/banks to institute false criminal and baseless civil action against the Chauhan family, RBEF and AKC Group with the assurance to get relief on the basis of his alleged contacts in India. It is alleged that the defendant supplied all this information to the opposite parties for money. The illegal acts of the defendant have caused wrongful loss to the plaintiff, as well as damage and harm to the reputation of its founder President, founder Trustee and its Institutions. It is further alleged in paragraph 12 of the plaint that as the defendant has failed miserably on all fronts, he resorted to arm twisting tactics by threatening the plaintiff, its founder President and Trustees and office bearers to adversely use the information gathered by him, while being employed by RBEF, against them to malign their reputation by making it public through the media, by twisting the facts, by adding colour, by misrepresentation, unless and plaintiff, its founder President and Trustee gave a huge amount of money to him, to keep quiet. It is further alleged that the plaintiff did not succumb to these threats, the defendant started circulating false and degrading material against them. This led to the publication of a highly offending and malicious article against the plaintiff, its founder President, founder Trustee and its Institution AMITY in the weekly newspaper "Tehelka The People's paper" in its edition dated 11.6.2005. Paragraph 13 of the plaint mentions an e-mail received by Major General R.K. Dhawan (Retired), who is a Senior Vice President, International Affairs, RBEF from Dr S.H. Khan of City University, London, informing that their Vice-Chancellor, Professor David Rhind has received an e-mail from one Alok Kumar (the defendant herein) describing the promoters of AMITY School of New Delhi as "international fugitives with pending Interpol Arrest Warrant" and that all information could be got from www.tehelka.com. It is contended, in paragraph 14, by the plaintiff that the above-mentioned e-mail from the defendant to Professor David Rhind of City University was sent with deliberate and mala fide intention not only to malign and harm the image and reputation of the plaintiff, its founder President and Trustees but also to spoil/adversely affect the tie up of City University with the plaintiff.

6. In paragraph 15 of the plaint, it is averred that on 11.6.2005, a news story was telecast by NDTV India (Hindi), regarding the Plaintiff, its founder President, founder Trustee and its Institutions. It is stated that the telecast which was for a period of more than three minutes, was regularly repeated after every half an hour that day by the TV Channel. The TV channel aired the pre-recorded voice of the defendant on telephone, while his photograph appeared on TV. The defendant was speaking from London and he said in Hindi that:
“Har Jaghah unhe jo unhone case file kiya tha wo jeet te aaye hain aur jahan jahan unhe Chauhan brothers ki property milti hai unko attach karke rakha hua hai.”

It is further stated that on 11.6.2005, after viewing the said telecast and stunned by the manipulated story, Mr Arun Kumar Chauhan, founder Trustee of the Plaintiff, immediately faxed a letter to NDTV India stating that the news story being telecast by them is incorrect and that Mr Arun Kumar Chauhan and Dr Ashok Kumar Chauhan have filed a Writ Petition (Crl.) No. 865-66/2005 before the Hon'ble High Court of Delhi on 30.5.2005 and that the Hon'ble High Court has issued notice in the said writ petition and has also granted a stay in their favour. The TV channel was asked to immediately stop and withdraw the telecast. It is further averred that similar offending letters with incorrect, baseless, unfounded and unwarranted allegations against the plaintiff, its founder President, Trustees and AMITY Institutions have been written by the defendant to Ministry of Human Resources Development. The plaintiff was called by the Ministry of HRD to give a clarification. It is further alleged that on 23.6.2005, an employee of the Plaintiff namely Pradeep Kumar received a call on his mobile at 13:59:29, from the defendant wherein the defendant asked for Ashok Chauhan and threatened that he will have all the AMITY Institutions shut down and will put an end to all the advertisements of AMITY in newspapers. The defendant also conveyed and confirmed that the article and news story in Tehelka and NDTV were his doings and at his behest and he demanded that if one million Pound Sterling are not paid to him by Dr Ashok Chauhan, he will not let them live in peace and that they and their children will face dire consequences. It is stated that similar threatening calls were made by defendant earlier to Dr Ashok K. Chauhan and Mr Arun Kumar Chauhan in July, 2004. It is then stated in paragraph 21 that the offending and defamatory news article in Tehelka and the letters to City University and Ministry of HRD have been read by large number of people and the telecast was viewed by all the persons who are connected with the Plaintiff, which amounts to publication of the defamatory article. It is further stated that the libelous statements contained in the news article/telecast/letters were neither called for, nor have any justification and have unnecessarily, willingly and wrongly exposed the plaintiff and its founder President and Trustee to ridicule. The statements, according to the plaintiff, have lowered the plaintiff in the esteem of the right thinking members of the society in general and their trade and profession in particular and it has tended to make them shun and avoid the plaintiff, its Institutions, founder President and founder Trustee. In paragraph 25 of the plaint, it is submitted that from the circumstances detailed above, it can be clearly inferred that the defendant's statements were:-

- (a) injurious to the plaintiff's reputation,
- (b) referred to the Plaintiff,
- (c) maliciously published,
- (d) false and defamatory, and
- (e) without any justification.

As a consequences, the plaintiff has submitted that it is entitled to being compensated for, inter alia, the social and public humiliation, loss of reputation, degradation in the eyes of public, family and children, deprivation of respect from the faculty and staff, fate accompli of 35,000 students, studying at present, mental agony, sufferings and pain, harm to the state of mind, honour and integrity, and professional/business losses. Therefore, the plaintiff is seeking compensation from the defendant limited to Rs.1 crore on account of the alleged actionable wrong committed by the defendant. As the defendant is allegedly intending to continue and repeat his allegation against the plaintiff, there is a prospect of immediate and pressing injury to the plaintiff, and, therefore, the decree of permanent injunction has also been prayed for.

7. The plaintiff has filed an affidavit of Shri Rakesh Kumar Sharma (PW1). The plaintiff has also filed documents exhibited as Ext. PW1/1 to PW1/40. Apart from this, affidavits by way of evidence of Major General R.K. Dhawan (Retd.) (PW2), Shri Rakesh Khanna (PW3) and Shri Pradeep Kumar (PW4) have also been filed as part of the plaintiff's evidence. The defendant has been proceeded with ex parte and has not appeared in the proceedings at all. Therefore, all the averments in the plaint and the statements contained in the affidavits by way of evidence go un-rebutted.

8. The affidavit of Ramesh Kumar Sharma (PW1) is essentially a repetition of the averments contained in the plaint. It must be noted that R.K. Sharma (PW1) has stated that he was working with the plaintiff (RBEF) as a Project Officer. He has verified the contents of the entire affidavit as true and correct to his knowledge. There are many matters mentioned in the affidavit (which essentially reproduces the plaint) which could not have been in the personal knowledge of the deponent Rakesh Sharma (PW1). For example, it is stated in paragraph 28 of the affidavit that- "On 23.06.2006, an employee of the plaintiff namely Pradeep Kumar received a call on his mobile at 13:59:29, from the Defendant. The Defendant asked for Ashok Chauhan...." This statement could not have been true to the knowledge of Rakesh Sharma (PW-1) as the call from the defendant was not received by him.

9. Apart from this, the general thrust of the case for the plaintiff is that defamatory statements were contained in the article which appeared in Tehelka (Exhibit-PW-1/30) on 11.06.2005, the e-mail (Exhibit-PW-1/31) sent by the defendant to the Vice-Chancellor of City University, London and its further communication by Dr Khan to Major General R.K. Dhawan (PW-2), purported letters written to the Ministry of Human Resource Development, Government of India, New Delhi and the NDTV telecast on 11.06.2005 (the CD of the alleged incriminating telecast is Exhibit-PW-1/32). Major General R.K. Dhawan (PW-2) filed an affidavit essentially to prove the receipt of the e-mail (Exhibit-PW-1/31). Rakesh Khanna (PW-3) stated in his affidavit that he was shocked and stunned to read the articles as appearing in Tehelka and the clip as it appeared in NDTV. According to him, these tended to lower the reputation of the plaintiff in his eyes. In conclusion, he stated that:-

"I do not hold the same view about the persons who are managing and running the said institutions, any more."

From this, it appears that the view held by the said Rakesh Khanna is with regard to the persons who were running the institutions and not directly concerned with the

institution itself, i.e., the plaintiff. As regards Pradeep Kumar (PW-4), his affidavit reveals that he did receive a call on his mobile phone from the defendant on 23.06.2005 as alleged in the plaint. The call was of a threatening nature in order to extort money and was directed against the Chauhan brothers.

10. Examining the pleadings and the entire evidence on record, I find that the entire thrust of the case is that the reputation of the Chauhan family and in particular Mr Ashok Kumar Chauhan and Mr Arun Kumar Chauhan has been demeaned by the defendant. Unfortunately, the said Mr Ashok Kumar Chauhan and Mr Arun Kumar Chauhan are not the plaintiffs. The plaintiff is a society registered under the Societies Registration Act, 1860. Mr Ashok Chauhan is the President of the Executive Board of the plaintiff society and the other members of the Chauhan family are also members of the Executive Board. The 7 members of the Executive Board indicated in the Memorandum of Association and Rules and Regulations of the plaintiff society (Exhibit-PW-1/2) are also founder members for life and are not liable to retire. All of them are members of the Chauhan family. The statements alleged to be of a defamatory / libelous nature which are being attributed to the defendant are allegedly those contained in the Tehelka edition of 11.06.2005 (Exhibit-PW-1/30); e-mail from the defendant to the Vice-Chancellor of the City University of London as communicated to Major General R.K. Dhawan (Exhibit-PW-1/31); news story telecast on NDTV on 11.06.2005 (Exhibit-PW-1/32) and some letters written to the Ministry of Human Resource Development, Government of India, New Delhi. Insofar as the letters allegedly written to the HRD Ministry, New Delhi are concerned, the same are not on record and, therefore, the contents of the said letters, if indeed they were written, are unknown. Therefore, nothing turns on the purported letters allegedly written to the HRD Ministry, Government of India, New Delhi. As regards the Tehelka edition of 11.06.2005 (Exhibit-PW-1/30), the front page carries the title "Germany wants Amity owners extradited for financial fraud". The article itself is at page 14 of the newspaper. On going through the article, it is abundantly clear that it is against the AMITY Directors, Ashok Kumar Chauhan and Arun Kumar Chauhan and the only reference to the plaintiff society in the said article is in the following words:- "Ashok and Arun duped banking institutions not only in Germany, but elsewhere too. The Delhi High Court, on a petition filed by US-based Formossa Plastics Corporation, had restrained them from disposing of or otherwise encumbering properties standing / acquired in the name of the Ritnand Balved Education Foundation (Ashok is the founder president of the foundation which runs Amity institutions),...." The defamatory imputations, if at all, are as regards Mr Ashok Kumar Chauhan and Mr Arun Kumar Chauhan and not with regard to the plaintiff society. Apart from the above statement, there is nothing in the said Tehelka article which relates to the plaintiff society.

11. As regards Exhibit-PW-1/31 (the e-mail from the defendant to the Vice-Chancellor of City University, London), here too, I find that there is no mention of the plaintiff society. It has reference to the Amity School of New Delhi and its association with the City University, London. The defendant has written to the Vice-Chancellor of City University London expressing surprise that the British Counsel did not advise him or do any due diligence action with regard to the background of the "promoters of the school", who, according to the said e-mail, were "international fugitives with pending Interpol arrest warrant". The e-mail further goes on to indicate

that the defendant was more than willing to provide further information in this direction. A reading of the e-mail again suggests that it relates entirely to the members of the Chauhan family and not to the plaintiff society. The reference is to the “promoters of the school”, which expression clearly does not cover the plaintiff society. Moreover, the reference to “international fugitives” cannot also cover the plaintiff society. Therefore, the said e-mail (Exhibit-PW-1/31), in my view, does not have any derogatory reference to the plaintiff society. This leaves us with Exhibit PW-1/32 which is the news story run on NDTV on 11.06.2005. I have run the CD (Exhibit-PW-1/32) and have seen and heard the contents thereof. The said video clip has reference to Mr Ashok Kumar Chauhan and Mr Arun Kumar Chauhan and not to the plaintiff society. In fact, the plaintiff society is not mentioned at all. The defendant is alleged to have used the words:-

“Har Jaghah unhe jo unhone case file kiya tha wo jeet te aaye hain aur jahan jahan unhe Chauhan brothers ki property milti hai unko attach karke rakha hua hai.”

This statement of the defendant also has reference only to the Chauhan brothers and not to the plaintiff society. In fact, even the letters written to NDTV by Mr Arun Chauhan (Exhibit-PW-1/34 and PW-1/35) refer only to the incorrect story about “Amity and Dr Ashok Kumar Chauhan and Shri Arun Kumar Chauhan”. The plaintiff society is not mentioned.

12. Therefore, the inescapable conclusion is that all the purported defamatory statements that have allegedly been made by the defendant are directed against the Chauhan brothers and not against the plaintiff society. It is another thing that the Chauhan brothers are members of the Executive Board of the plaintiff society. But, it is their reputation in their personal capacity which has purportedly been besmirched and not the reputation of the plaintiff society. If at all, it was for them to have brought a suit for defamation and not for the plaintiff society. In paragraph 25 of the plaint, it was alleged that the statements made by the defendant were injurious to the plaintiff's reputation and that they referred to the plaintiff. This is not borne out by the evidence on record. The statements do not refer to the plaintiff society and, therefore, there is no question of causing any injury to the plaintiff's reputation. Apart from this, paragraph 32 of the affidavit by way of evidence of Sh. R.K. Sharma (PW-1) indicates that “the plaintiff was put to great mental agony and torture”. This statement obviously could not refer to the plaintiff society which is an inanimate juristic entity, being a registered society. It cannot suffer mental agony or torture as a human being could. It appears that the entire plaint and evidence is a litigation in proxy on behalf of the Chauhan brothers who have not chosen to come forward as plaintiffs. Such an action is not permissible in law. Moreover, there is no indication as to what loss was caused to the plaintiff.

13. While it may be said that if a defamatory publication is made against a private company or a registered society, its director / member of Executive Board could bring in an action on behalf of the company and / or registered society (see *John Thomas v. Dr K. Jagadeesan*: 2001 (6) SCC 30], it must be established that the defamatory words were directed against such a company or registered society. In such a situation where the defamation has a reference to the juristic legal entity, then its authorised constituent personalities, such as a director or a member of the Board could claim to have locus standi for filing a suit. However, where the defamatory

statements are directed, not against the institution, i.e., a company or a registered society, but, against the individuals in the institutions, then such individuals would not have the locus standi to bring in an action in the name of the institution. In fact, it is not so much a question of locus standi as it is a question as to who is the target of the defamation. When the target of the defamatory statements are the individuals in the institution, then it is the individuals alone who can file a suit. In such a situation, the institution would have no cause of action to file a suit. In *Harsh Mendiratta v. Dr Maharaj Singh & Others*: 95 (2002) DLT 78, a learned Single Judge of this court observed as under:-

“13. Moreover the settled position of the law appears to be that an action for the defamation is maintainable only by the person who is defamed and not by his friends, relatives and family members. Learned Counsel for the defendants have cited the following cases:-

1. Subbaiyar v. Kristnaiyar, ILR Vol. 1 Mad. 383.
2. Daya v. Param Sukh, ILR Vol. II All. 104.
3. Bramanna v. Rama Krishna, ILR 1895 XVIII Mad. 215.
4. Luckumsey Rowji v. Hurbun Nursey and Others, ILR (Vol.5) 1881 page 580.

14. In all these cases it was held that an action for defamation can be instituted only by a person who is defamed and not by others viz. family members, relatives and friends etc. If family members, friends were allowed to file suit for damages for defamation it will open flood gates of litigation. In ILR Vol. I Mad. 383, the Court disallowed plaintiff's claim for damages for defamation of his sister. In ILR Vol. II All. 104, the suit for defamation brought by the father for defamation of his daughter, was dismissed as not maintainable. In ILR 1895 XVIII Mad. 250, the suit brought by the husband for defamation of his wife by the defendant, was held to be not maintainable.

15. The present case also falls in the same category. Mr Mendiratta, husband of the plaintiff has not filed any suit for damages for defamation against defendant No.1. Plaintiff who is the wife of Mendiratta has chosen to file this suit without joining Mendiratta as a party. The defect cannot be remedied at this stage even by impleading Mendiratta himself as a plaintiff as held in the case of ILR Vol. 1 Mad. 383. No law to the contrary was cited before me by the learned counsel for the plaintiff.

16. It must, therefore, be held that plaintiff has no cause of action for filing the present suit which is not maintainable. Both the issues are decided in negative and against the plaintiff.”

14. In view of the aforesaid clear position in law, the plaintiff has no cause of action to file the present suit and, therefore, the suit is liable to be dismissed on this ground alone. There is no necessity for me to examine the decisions cited by the learned counsel for the plaintiff for quantification of the damages for defamation, namely:-

- 1) *Khair-ud-Din v. Tara Singh and Another*: AIR 1927 Lahore 20;
- 2) *(Goginoni) Venkatappayya v. (Yerramneni) Ramakristnamma and*

Others: AIR 1932 Madras 53;

3) Bala Ram v. Sukh Sampat Lal and Others: AIR 1975 Raj 40; and

4) Ajay Aggarwal v. Vinod Mehta & Others: 2003 (66) DRJ 183.

This is so because the essential ingredient that the purported defamatory statements have a reference to the plaintiff has not been established. That being the case, there is no question of any injury having been caused to the plaintiff's reputation and, therefore, the consequential consideration on the question of damages does not arise at all.

15. In these circumstance, the suit is dismissed. No order as to costs.

Sd/-
BADAR DURREZ AHMED
(JUDGE)