

**IN THE COURT OF SHRI MAN MOHAN SHARMA, DISTRICT
JUDGE (COMMERCIAL COURT)-06, CENTRAL DISTRICT
TIS HAZARI COURTS, DELHI**

IN THE MATTER OF :-

M/s NKS Hospital
At Gulabi Bagh, Delhi
Through its authorized representative
Vishnu Joshi S/o Sh. Ramesh Chander JoshiPlaintiff

VERSUS

Sudarshan News
Indian Hindi News Channel
At-84, Sector-57, Noida, Uttar PardeshDefendant no. 1

Sagar Kumar (News Reporter)
Sudarshan News
Indian Hindi News Channel
R/o 10733, Gali No. 12, Pratap Nagar, DelhiDefendant no. 2

Anchal Yadav (News Reporter)
Sudarshan News
Indian Hindi News Channel
A-84, Sector 57, Noida
Uttar PardeshDefendant no. 3

Suresh Chavhanke
CMD & Editor-In Chief
at Indian News Channel
A-84, Sector 57, Noida
Uttar PardeshDefendant no. 4

Man Mohan Sharma
14.05.2020

Facebook (Social Networking Website)
Level -17, Wing B, Two Horizon Centre
Harizan Colony, Sector-43,
Gurugram, Haryana-1220022

.....Defendant no. 5

Twitter (Social Networking Website)
C-20, G Block, near MCA Bandra Kurla
Complex, Bandra (E) (Mumbai) Mumbai
City-MH-400051.

.....Defendant no. 6

Youtube (Social Networking Website)
Google Signature Towers,
691, Delhi-Jaipur Expy,
Silokhera, Sector-15, Part-2,
Sector-15, Gurugram, Haryana-122001.

.....Defendant no. 7

ORDER

This matter has been heard in the open Court. Social distancing guidelines have been strictly observed.

Present: Sh. Rishipal Singh, Id. Counsel for the plaintiff.

An application under Order 47 read with Section 151 CPC for review of the order dated 11.05.2020 has been filed by the plaintiff seeking a review of the said order passed by Dr. Kamini Lau, Id. Additional District Judge (Central), Tis Hazari Courts, Delhi, wherein the matter had not been treated to be as one of urgent nature.

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The application is also accompanied with another application, without citing any provision of law, seeking to treat the application under Order 47 read with Section 151 CPC for review of the order dated 11.05.2020 as an application seeking urgent relief. As prayed by, Ld. Counsel for plaintiff, the same is treated as an application under Section 151 CPC.

Heard on the application, which has been treated as one under Section 151 CPC.

It is submitted before me that urgency to hear the review application is on account of continuing acts of defendants in spreading false news/information resulting in loss of goodwill and jeopardizing the business of the plaintiff which is running a hospital in the name and style of NKS Hospital.

Considering the submissions, the application has shown sufficient urgency and therefore, the said application seeking urgent hearing of review application is allowed.

Heard on the review application under Order 47 read with Section 151 CPC for review of the order dated 11.05.2020.

A pertinent question is posed to the ld. Counsel for plaintiff as to the application for urgent hearing filed on 11.05.2020 (after the passing of the order dated 11.05.2020 by Dr. Kamini Lau, Ld. Additional District Judge (Central), Tis Hazari Courts, Delhi). He has been asked to clarify if the same was seeking review of the said order, the said

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14.05.2020

application had been heard on 12.05.2020 by Sh. Rajneesh Kumar Gupta, Ld. District Judge Commercial Court-02 (Central District), Tis Hazari Courts, Delhi, the following order has been passed:-

“File received from the filing section on the application of the early hearing.
Heard through Video Conferencing. It do not find any merits in the application and accordingly, it is disposed off.
Put up on 21.05.2020 i.e. the date already fixed in this case.”

It is submitted before me by Id. Counsel for the plaintiff that a meaningful reading of the said application, in its sum and substance, does not by any stretch of argument be treated as an application for review. It is submitted that the said application had been filed under some instructions of the Court staff as the plaintiff was seeking urgent hearing. There is no mention in the said application that any order has been passed by Dr. Kamini Lau, Ld. Additional District Judge (Central), Tis Hazari Courts, Delhi and as such, the same can not be treated as an application for review of the order passed by Dr. Kamini Lau, Ld. Additional District Judge (Central), Tis Hazari Courts, Delhi on 11.05.2020.

From reading the contents of the said application as well as the orders passed by Sh. Rajneesh Kumar Gupta, Ld. District Judge Commercial Court-02 (Central District), Tis Hazari Courts, Delhi, as

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cited above, I am satisfied that the said application was not in the nature of review of the order dated 11.05.2020 passed by Dr. Kamini Lau, Ld. Additional District Judge (Central), Tis Hazari Courts, Delhi. Hence, the present application for review is maintainable.

Heard on the review application.

It is submitted before me that in the said order dated 11.05.2020, it has been observed that the relief claimed by the plaintiff is not having any urgency and that the relief sought was non specific and vague. It is stated that there is an error apparent on the face of record and valuable rights of the plaintiff, which is a hospital, are involved in the matter and it is suffering in the loss of its goodwill on continuing basis, which is not only affecting the hospital as such but affecting the livelihood of its staff as well as the goodwill and reputation of its founders, patrons and management personnel.

I have considered the submissions.

It is settled law that if the relief is not properly worded or is non specific or vague, it does not take away the element of urgency from the matter. The element of urgency has to be culled out by taking an overall and a holistic view of the matter. As far as the pleadings are concerned, it is the substance which has to be preferred over the form. The order no. 8427-8527/CB/Covid-19/Lockdown/e-filing & VC Hearing/2020 dated 04.05.2020 (which has also been referred in the order dated 11.05.2020) mandates that the aspect of urgency has to be

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14.05.2020*

construed in a liberal manner.

Considering the totality of the facts and circumstances pleaded in the suit and taking the same at face value, the case of the hospital is that its very existence is at stake due to the tirade launched by the defendant no. 1 through its Reporters by using the social networking platforms. It is also put forth that the hospital has spent number of years to build up its reputation and goodwill, which is being tarnished by the defendant nos 1 to 4 by giving a lopsided version without even verifying the facts from the plaintiff.


Considering the facts and circumstances as pleaded in the application for review and the submissions advanced at the Bar, I am satisfied that the application deserved to be allowed and the matter ought to be treated as an urgent one. The review application is accordingly allowed and disposed of.

Heard on the main suit and the accompanying applications.

This is a suit seeking damages for defamation as well as mandatory and permanent injunction. It is accompanied with two applications, one under Section 149 CPC seeking enlargement of time for payment of Court Fee and another application under Order 39 Rule 1 & 2 CPC for *ad-interim ex-parte* injunction.

Heard on the application under Section 149 CPC.

Due to lockdown in the wake of Covid-19 pandemic, the application is allowed and the plaintiff is directed to file the requisite


14.05.2020

Court Fee within 15 days of the opening of the lockdown. The application is accordingly disposed of.

Heard on the application under Order 39 Rule 1 & 2 CPC.

It is stated that on 05.05.2020, a private car came at the gate/'pre-triage hold area' of the plaintiff hospital at about 09:32 hours. As per the Government guidelines, there was requirement of screening the visitors for Covid-19 symptoms through thermal screening etc. However, the said private car took a U-turn at 09:33:06 hours. This has been recorded on the CCTV Camera installed at the hospital. On the same day, at about 10:21 AM, defendant no. 2, a Reporter of defendant no. 1 had posted a false tweet against the hospital alleging negligence on the part of the hospital resulting in the death of the patient, who had been in the said private car, and thereafter, launched a tirade against the hospital which is continuing unabated in which false facts/information have been pressed into service and there is one way reporting without confirming/verifying the true facts from the hospital/plaintiff. These acts and omissions of defendant nos. 1 to 4 are in total defiance of the ethics by which the ethical journalism is governed. It is the duty of the Reporter/Journalist to obtain the version of the person affected and the same should be aired simultaneously with the purpose to give a complete picture to the viewer/audience/news reader. In no case, the reporting should be judgmental or in ignorance of the veracity and credibility of the facts.

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I have considered the submissions.

There is no separate provision in law for the freedom of the Press. The freedom of Press has to be culled out from Article 19 of the Constitution of India. The law framers have been conscious of the freedom of the Press in a democratic society, governed by the rule of law. The freedom of Press can be defined as 'licence to publish freely subject to consequences of law'. The legal jurisprudence has developed and crystallized that there can be no pre-censorship as to the publication by the Press. No one can become an authority to pre-decide what can be published and what cannot be published. However, any such publication is subject to consequences in accordance with law i.e. action for libel, slander or defamation for any false or incorrect reporting.

The legal jurisprudence has seen a catena of case law on the freedom of the Press and the Higher Courts have been guarding the same with zeal, which has been seen in the judgments in Express Newspaper, Sakal Newspaper and many other judgments that followed from the Apex Courts and various High Courts till date.

With that scope of freedom, there is expectation of responsibility from the Press in the same measure. Rights and responsibilities are two sides of the same coin. In the arena of responsible journalism, it is the duty of the Press to present a balance version by taking stock of the facts from both the sides, rather than propagating one sided judgmental version of an aspect. It is the duty of

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the Press to inform and by no stretch of imagination it can include within its scope and ambit the right to mis-inform its audience/readers.

The case of the plaintiff if considered on its face value makes out a *prima facie* case against the defendant nos. 1 to 4. Other defendants are only Intermediaries within the meaning and intent of Information Technology Act. The plaintiff is likely to suffer irreparable loss and injury, which can not be compensated in monetary terms as its goodwill is at stake. The balance of convenience also lies in favour of the plaintiff.

Considering the arena in which the freedom of Press has developed and the fact that there can be no pre-censorship, the restraint order can not be passed against the defendant nos. 1 to 4 by restraining them from publishing the news pertaining to the incident dated 05.05.2020 involving the plaintiff i.e. M/S NKS Hospital. However, in order to meet the ends of justice, it is incumbent upon the defendant nos. 1 to 4 to verify the facts from the side of the plaintiff and to take the version of the facts of the plaintiff and publish the same in its true spirit prominently and leave the matter for the discretion/judgment of the viewers/audience. It is also incumbent upon them not to press into service their own judgment based on unverified and one sided facts. The duty of defendant nos. 1 to 4 is to conform themselves to the true ethics of responsible journalism.

Therefore, ex-parte *ad-interim* injunction is passed thereby

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directing to the defendant nos. 1 to 4 to prominently publish the version of the plaintiff and the facts made available to them by its representatives/official(s) etc. The same be done by defendant nos. 1 to 4 within two days of the communication of this order to them and be done on continuing basis as long as the news is reported by them on any print, electronic, social or any other media.

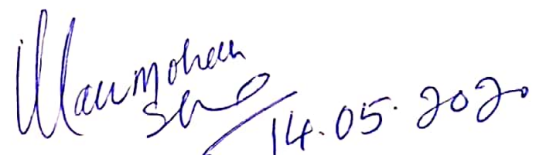
A copy of this order be sent to the Co-Ordinator to upload the same on the website of the District Courts/communicated to the counsel/parties over e-mail, as per the directions prevailing.

Compliance of Order 39 Rule 3 CPC be made within one week, through postal means, as and when the services are operational. A scanned copy of the complete paper book of the suit as well as this order be also sent to defendants by Fax/e-mail/whatsApp or any other electronic mode of transmission as may be available.

List the matter on the date already fixed i.e. 21.05.2020 for placing before Ld. District & Sessions Judge (HQs), Central District for appropriate orders. The complete paper book of the case be sent back.

This order has been dictated orally and directly typed on computer by Personal Assistant.

Announced in the open court
on 14th May, 2020

Handwritten signature of Man Mohan Sharma in blue ink, with the date 14.05.2020 written below it.

(Man Mohan Sharma)
District Judge,(Commercial Court)-06
Central District, THC Court