

ITEM NO.19

COURT NO.1

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.6696/2024

(Arising out of impugned final judgment and order dated 14-03-2024
in FAO No.79/2024 passed by the High Court of Delhi at New Delhi)

BLOOMBERG TELEVISION PRODUCTION SERVICES
INDIA PRIVATE LIMITED & ORS.

Appellant(s)

VERSUS

ZEE ENTERTAINMENT ENTERPRISES LIMITED

Respondent(s)

(With IA No.68929/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

Date: 22-03-2024 This petition was called on for hearing today.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Appellant(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Neeraj Kishan Kaul, Sr. Adv.
Dr. Menaka Guruswamy, Sr. Adv.
Mr. Rohit Kochhar, Adv.
Mr. Shiv Sapra, Adv.
Mr. Samiron Borkataky, AOR
Ms. Ranjeet Rohatgi, Adv.
Mr. Rajat Gava, Adv.
Mr. Ikshvaaku Marwah, Adv.
Mr. Vishal Singh, Adv.
Mr. Sanskriti Shrimali, Adv.
Mr. Keshav Sehgal, Adv.
Mr. Dhruv Sharma, Adv.
Mr. Raghav Agarwal, Adv.
Mr. Utkarsh Pratap, Adv.

Mr. Lavish Bhambhani, Adv.
Mr. Harshvardhan Thakur, Adv.
Ms. Suvangana Agrawal, Adv.

For Respondent(s) **Mr. Mahesh Agarwal, Adv.**
Ms. Madhavi Agarwal, Adv.
Mr. Shashwat Singh, Adv.
Mr. E.C. Agrawala, AOR

**UPON perusing papers the Court made the following
O R D E R**

1. Leave granted.
2. On 01 March 2024, an *ex-parte* ad interim order was passed by the ADJ 05 of the South Saket Courts, New Delhi¹ directing the appellants (a media platform, one of its editors, and the concerned journalists) to take down an article dated 21 February 2024 published on their online platform within a week. The appellants were also restrained from posting, circulating or publishing the article in respect of the respondent-plaintiff on any online or offline platform till the next date of hearing.
3. The order of the trial Judge indicates that the discussion, after recording the submission of the respondent, commences at paragraph 7. The only reasoning which is found in the order of the trial Judge is in paragraphs 8-9, which read as follows:

“8. I have noticed that in **Dr. Abhishek Manu Singhvi** (Supra), **Chandra Kochar** (Supra), **Swami Ramdev** (Supra), *ex-parte* ad interim injunction was passed, considering that the contents of the material in question was per se defamatory.

9. In my view, the plaintiff has made out a prima facie case for passing ad interim *ex-parte* orders of injunction, balance of

¹ “trial Judge”

convenience is also in favour of plaintiff and against the defendant and irreparable loss and injury may be caused to the plaintiff, if the injunction as prayed for is not granted. In view thereof, defendant no.1 and defendant no.2 are directed to take down the article dated 21.02.2024 (page 84 to 86 of the plaintiff's document) from online platform within one week of receipt of this order. The defendants are further restrained from posting, circulating or publishing the aforesaid article in respect of the plaintiff on any online or offline platform till the next date of hearing."

4. The order of the trial Judge has been upheld by a Single Judge of the High Court of Delhi by order dated 14 March 2024.² The Single Judge of the High Court seems to have had doubts about the maintainability of the appeal, but that point need not be laboured any further having regard to the provisions of Order XLIII of the Code of Civil Procedure 1908.
5. The three-fold test of establishing (i) a *prima facie* case, (ii) balance of convenience and (iii) irreparable loss or harm, for the grant of interim relief, is well-established in the jurisprudence of this Court. This test is equally applicable to the grant of interim injunctions in defamation suits. However, this three-fold test must not be applied mechanically,³ to the detriment of the other party and in the case of injunctions against journalistic pieces, often to the detriment of the public. While granting interim relief, the court must provide detailed reasons and analyze how the three-fold test is satisfied. A cursory reproduction of the submissions and precedents before the court is not sufficient. The court must explain how the test is satisfied and how the precedents cited apply to the facts of the case.

² "Impugned Order"

³ Delhi Development Authority v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622, para 38.

6. In addition to this oft-repeated test, there are also additional factors, which must weigh with courts while granting an ex-parte ad interim injunction. Some of these factors were elucidated by a three-judge bench of this Court in **Morgan Stanley Mutual Fund v. Kartick Das**,⁴ in the following terms:

“36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are—

- (a) whether irreparable or serious mischief will ensue to the plaintiff;
- (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;
- (c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
- (d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;
- (e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.
- (f) even if granted, the ex parte injunction would be for a limited period of time.
- (g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.”

7. Significantly, in suits concerning defamation by media platforms and/or journalists, an additional consideration of balancing the fundamental right to free speech with the right to reputation and privacy must be borne in mind.⁵ The constitutional mandate of protecting journalistic expression cannot be understated, and courts must tread cautiously while granting pre-trial interim injunctions. The standard to be followed

⁴ (1994) 4 SCC 225.

⁵ R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632.

may be borrowed from the decision in **Bonnard v. Perryman**.⁶ This standard, christened the 'Bonnard standard', laid down by the Court of Appeal (England and Wales), has acquired the status of a common law principle for the grant of interim injunctions in defamation suits.⁷ The Court of Appeal in **Bonnard** (supra) held as follows:

"...But it is obvious that the subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions."

(emphasis supplied)

8. In **Fraser v. Evans**,⁸ the Court of Appeal followed the Bonnard principle and held as follows:

"... in so far as the article will be defamatory of Mr. Fraser, it is clear he cannot get an injunction. The Court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since (Bonnard v. Ferryman 1891 2 Ch. 269). 'The reason sometimes given is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a Judge. But a better reason is the importance in the public interest that the truth should out. ..."

(emphasis supplied)

⁶ (1891) 95 All ER 965.

⁷ Holley vs. Smyth, (1998) 1 All ER 853.

⁸ [1969] 1 Q.B. 349.

9. In essence, the grant of a pre-trial injunction against the publication of an article may have severe ramifications on the right to freedom of speech of the author and the public's right to know. An injunction, particularly ex-parte, should not be granted without establishing that the content sought to be restricted is 'malicious' or 'palpably false'. Granting interim injunctions, before the trial commences, in a cavalier manner results in the stifling of public debate. In other words, courts should not grant ex-parte injunctions except in exceptional cases where the defence advanced by the respondent would undoubtedly fail at trial. In all other cases, injunctions against the publication of material should be granted only after a full-fledged trial is conducted or in exceptional cases, after the respondent is given a chance to make their submissions.

10. Increasingly, across various jurisdictions, the concept of 'SLAPP Suits' has been recognized either by statute or by courts. The term 'SLAPP' stands for 'Strategic Litigation against Public Participation' and is an umbrella term used to refer to litigation predominantly initiated by entities that wield immense economic power against members of the media or civil society, to prevent the public from knowing about or participating in important affairs in the public interest.⁹ We must be cognizant of the realities of prolonged trials. The grant of an interim injunction, before the trial commences, often acts as a 'death sentence' to the material sought to be published, well before the allegations have been proven. While granting ad-interim injunctions in defamation suits, the potential of using prolonged litigation to prevent

⁹ Donson, F.J.L. 2000. *Legal Intimidation: A SLAPP in the Face of Democracy*. London, New York: Free Association Books.

free speech and public participation must also be kept in mind by courts.

11. The order of the trial Judge does not discuss, even cursorily, the *prima facie* strength of the plaintiff's case, nor does it deal with the balance of convenience or the irreparable hardship that is caused. The trial Judge needed to have analysed why such an *ex parte* injunction was essential, after setting out the factual basis and the contentions of the respondent made before the trial Judge. The trial Judge merely states, in paras 7-8, that the court has "gone through the record available as on date" and noticed certain precedents where an ad-interim injunction was granted. Without even cursorily dwelling on the merits of the plaint, the ad-interim injunction granted by the trial Judge amounts to unreasoned censorship which cannot be countenanced.

12. Undoubtedly, the grant of an interim injunction is an exercise of discretionary power and the appellate court (in this case, the High Court) will usually not interfere with the grant of interim relief. However, in a line of precedent, this Court has held that appellate courts must interfere with the grant of interim relief if the discretion has been exercised "*arbitrarily, capriciously, perversely, or where the court has ignored settled principles of law regulating the grant or refusal of interlocutory injunctions.*"¹⁰ The grant of an *ex parte* interim injunction by way of an unreasoned order, definitely falls within the above formulation, necessitating interference by the High Court. This being a case of an injunction granted in defamation proceedings against a media

¹⁰ Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel, (2006) 8 SCC 726, para 128; Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd., (2023) 1 SCC 634, para 37.

platform, the impact of the injunction on the constitutionally protected right of free speech further warranted intervention.

13. In view of the above, the High Court ought to have, in our view, also at least *prima facie* assessed whether the test for the grant of an injunction was duly established after an evaluation of facts. The same error which has been committed by the trial Judge has been perpetuated by the Single Judge of the High Court. Merely recording that a *prima facie* case exists, that the balance of convenience is in favour of the grant of injunction and that an irreparable injury would be caused, would not amount to an application of mind to the facts of the case. The three-fold test cannot merely be recorded as a mantra without looking into the facts on the basis of which an injunction has been sought. In the absence of such a consideration either by the trial Judge or by the High Court, we have no option but to set aside both the orders of the trial Judge dated 1 March 2024 and of the Single Judge of the High Court dated 14 March 2024. We do so accordingly.

14. Since the proceedings are now listed before the trial Judge on 26 March 2024, we direct that it would be open to the respondents to renew their application for injunction, on which the trial Judge shall pass fresh orders after hearing the parties and bearing in mind the observations which are contained in the above segment of the judgment and order. All the rights and contentions of the parties are kept open in that regard. In the event that the appellants seek to contest the application for injunction, they shall file their reply before the trial Judge before the next date of listing.

15. It is clarified that the above segment of the judgment and order may not be construed as a comment on the merits of the present case. The purpose of the above segment is to provide the broad parameters to be kept in mind while hearing the application for an interim injunction.

16. The appeal is accordingly disposed of in the above terms.

17. Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar