

Court No. - 7

Case :- MATTERS UNDER ARTICLE 227 No. - 2108 of 2024

Petitioner :- Priti Ravindra Shukla

Respondent :- Aparna Soni @ Aparna Thakur And Another

Counsel for Petitioner :- Pranjal Krishna, Abhinav Bhattacharya

Hon'ble Alok Mathur, J.

1. Heard Sri Jaideep Narain Mathur, learned Senior Advocate assisted by Sri Pranjal Krishna, Sri Abhinava Bhattacharya, Sri Sajal Yadav, Sri Utkarsh Vardhan Singh and Ms. Aishvarya Mathur, learned counsel for the petitioner.

2. By means of present petition under Article 227 of the Constitution of India the petitioner has challenged the order dated 24.04.2024, passed in Civil Suit No. 1286 of 2024 - Priti Ravindra Shukla Vs. Aparna Soni @ Aparna Thakur and Another, in the Court of Civil Judge (Senior Division), Lucknow wherein the trial Court while entertaining the said suit has issued notices to the defendants therein, but on the other hand has declined to pass any order on the application under Order 39 Rule 1 and 2 Civil Procedure Code (hereinafter referred to as CPC) preferred by the petitioner/plaintiff, seeking to restrain the defendants as well as their agents from publishing any material against the husband of the petitioner thereby defaming him and their family especially considering the fact that husband of the plaintiff is contestant at the General Elections.

3. Brief facts of the present case are that the petitioner is married to one Ravindra Shukla since 10.12.1993 and has four children out of the said wedlock. According to the petitioner a suit has been filed on the basis of false and fictitious claim/allegations made by the opposite parties that opposite party no. 2 is biological daughter of the husband of the petitioner before Civil Courts at Mumbai. It has further been

stated that husband of the petitioner is contesting General Elections and on the eve of elections the opposite parties have held a press conference on 15/04/2024 where in defendant no. 2 has staked her claim that husband of petitioner is her biological father.

4. It has been submitted that prior to making the said claim legal notice was sent to the family of petitioner in which they had sought an amount of Rs.20 Crores as maintenance, alleging that the opposite party no. 2 is the daughter of the husband of the petitioner. It has been submitted that notice was duly responded to by the petitioner, and it was specifically denied that husband of petitioner is the father of defendant no. 2. A First Information Report for extortion has been lodged against the opposite parties. It has been further submitted that opposite party no. 2 has filed a declaratory suit at Bombay City Civil Court, Worli Division being Suit No. 982 of 2024, seeking declaration and injunction to the effect that husband of petitioner is her father.

5. It has been next submitted that in the said suit an ad-interim-relief application was made to hold a DNA test, which prayer has been rejected by means of order dated 26.04.2024. A copy of the said order has been produced before this Court.

6. Looking at the conduct of the opposite parties, and specially their actions in holding a press conference to allegedly defame the family of the petitioner and especially her husband, a suit has been filed before the court of Civil Judge (Senior Division) Lucknow for a decree of mandatory injunction against the opposite parties No. 1 and 2 be commanded to refrain from holding themselves out as the wife and daughter of the petitioner's husband, and also for restraining them or their agents from speaking, printing, publishing, selling or exhibiting, circulating, streaming and sharing any information and spoken words or in writing defaming the petitioner or her matrimony.

7. Grievance of the petitioner which has been raised in the present writ petition is that in the above suit, filed before the Civil Judge

(Senior Division), Lucknow notices have been issued on 24.04.2024, but the trial court has declined to pass any ex-parte interim injunction in favour of the petitioner. Aggrieved by the said order the present petition has been filed.

8. It has been submitted by Sri Jaideep Narain Mathur learned Senior Advocate that facts of the present case would indicate that after more than 25 years, the respondent no. 2 for the first time has claimed that the husband of the petitioner is her biological father, and no claim was made by her any time prior. It is submitted that the said allegations are on the face of it, false and baseless and directly impinge upon the matrimonial reputation of petitioner and her family and have been done only in an effort to defame, harass and malign the family of the petitioner and lower their reputation and esteem in the eyes of the public considering that the husband of the petitioner is contesting the forthcoming elections.

9. It is next submitted by learned counsel for the petitioner that if the defendants are allowed to defame and malign the reputation of petitioner and her family, it will have adverse effect on their matrimonial reputation and affect the electoral chances of the husband of petitioner in the forthcoming General Elections.

10. With regard to right of the petitioner to seek such a declaration from the Civil Court in form of an ad interim injunction, it was submitted that this aspect of the matter has been considered by the Hon'ble Supreme Court in the case of **R. Rajagopal v. State of T.N., (1994) 6 SCC 632**, where in para 26, the Apex Court has held as under :-

“26. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone”. A citizen has a right to safeguard the privacy of his own,

his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above — indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actu-

ated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.”

11. It has been submitted that at present only a claim/allegation has been made by respondent no. 2 with regard to the fact that the husband of the petitioner is her father, and the said claim is pending adjudication before the Bombay City Civil Court at Mumbai. It has further been stated that the said claim is not based on any public record and that till such time the said issue is decided the respondents need to be restrained from going to the Electronic/Print Media/social media and from spreading such baseless allegations maligning and defaming the petitioner and her family. In this regard it has been submitted that the right of privacy in matrimonial matters between parties in litigation under the marriage Acts is personal to the litigating parties. Even Section 22 on the Hindu Marriage Act makes it clear that matters pertaining to matrimonial affairs are intended to be conducted in camera and therefore it was submitted that it is

manifestly clear that legislature has intended to guard the rights of privacy in relation to matrimonial matters. It was stated that even the statutory provisions contained in the Hindu Marriage Act especially section 22 (1) clearly protects matrimonial privacy and restrains the publishing of the proceedings of the court except the judgements where also the previous permission of the court has to be obtained.

12. It has also been submitted that the trial Court at this stage should have considered the application of the petitioner for grant of ad-interim-injunction, considering that the opposite parties are making reckless allegations against the husband of petitioner and the reputation of the entire families at stake. It is stated that once the opposite parties have approached the courts and filed a civil suit, they should await the decision of the court rather than seek a media trial on the said issue. It is stated that aforesaid facts would clearly show that a case of irreparable loss and existence of prima-facie case is clearly made out, and the balance of convenience lies in favour of the petitioners where restraining the opposite parties will not put them into any disadvantageous position as their claim is already under consideration before Court of competent jurisdiction, while on the other hand such an order would seek to preserve and protect the reputation of the petitioner and a family. It is submitted that it is in the aforesaid circumstances the Civil Judge Senior Division Lucknow should have granted ad-interim injunction to preserve the rights of the petitioner inasmuch as spreading such news through social media and other means would defame the petitioner and her family, and such defamation is continuing on a day-to-day basis, as fresh messages are being circulated on the social media each day, and in any case their version has already been published by the media pursuant to the press conference held by them on 15/04/2024, and therefore they will not be deprived of any right pertaining to freedom of expression.

13. Heard learned counsel for the petitioner and perused the record.

14. The limited question before this Court in the present petition raised is only with regard to the exercise of discretion by the Civil Judge (Senior Division), Lucknow while considering the application preferred by the petitioner under Order 39 Rule 1 and 2 CPC. The trial Court was of the view that such an order as sought by the petitioner can be passed only after issuing notices and hearing the respondents and no case for ex-parte interim injunction was made out.

15. Considering the facts on record as stated by the petitioner, it is clear that respondent no. 2 has claimed that the husband of petitioner to be her father after expiry of long time of 25 years. It is stated that such a claim was not made any time previously but has been made only on the eve of General Elections. A press conference was held by respondent nos. 1 and 2 at Lucknow on 15.04.2024 where the opposite parties meet allegations against the husband of the petitioner, and the said news was widely covered in print, electronic as well as social media. It is stated that much injury to the reputation of the petitioner and her family has already occurred, and the petitioner is seeking to contain any further disrepute and harassment by way of filing an application for temporary injunction before the trial Court.

16. It is stated that the defendants have suddenly become very active and are propagating their claim in the print and social media only to tarnish the reputation image of the petitioner and her family and to coerce them to accede to the illegal demands which have been made to legal notices and therefore have prayed that they should be restrained from doing so. A Civil Suit has also been filed by defendant no. 2 seeking a decree of declaration from the Court of competent jurisdiction in Mumbai which suit which is still pending.

17. This Court has also carefully considered the requisite conditions and criteria for passing of interim injunction which is balance of convenience, irreparable loss and prima-facie case in the factual matrix of the present case. The broad parameters for exercise of discretion in

this regard have also been considered by the Apex Court in the case of **Bloomberg Television Production Services India Private Limited and Others Vs Zee Entertainment Enterprises Limited , 2024 SCC Online SC 426**, where the Apex Court has reiterated that threefold test should not be applied in a very mechanical manner and only when the Court is satisfied, only then interim injunction deserves to be granted in appropriate cases. The Court in para nos. 5, 6, 7 and 9 has held as under :-

“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, 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.

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 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)

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.”

18. Considering the facts of the present, it is noticed that a claim has been made by the opposite parties before the Bombay Civil Court, Borivaili Division at Dindoshi, Goregaon, Mumbai by filing a suit for declaration and injunction which has been registered as suit No. 892 of 2024. The claim of the opposite parties will have to be established before the trial court, and till then it only remains the “alleged claim” of the opposite parties. On the other hand, undoubtedly the petitioners have a right to their reputation and which they can legally and validly seek to preserve against vague, false and frivolous allegations. The balance of convenience also lies in favour of the petitioner, in as much as the opposite parties have already brought the said fact/allegations in public domain by holding a press conference on 15/04/2024 which has been widely covered by the print, electronic and social media, but on the other hand the petitioner seek to restrain them from further publishing and disseminating the disputed content pertaining to parentage of opposite party No. 2 in the social media as it would tend to further defame the matrimonial relationship of the petitioner, and undoubtedly there is urgency in the matter, as the opposite parties are further disseminating the disputed content on social media. Damage to reputation would undoubtedly cause irreparable damage and cannot be fully compensated by the award of damages. Accordingly, this Court is of the considered view that the trial court should have considered the case of the petitioner in its proper perspective as discussed above and dealt with the facts brought out in the plaint coupled with the need for grant of ad interim temporary injunction. The denial of the interim temporary injunction by the trial court, without considering the

relevant aspects as discussed above, is accordingly held to be arbitrary, in as much as it had not even proceeded to consider the case of the petitioner and was cursorily rejected after recording that the same would be considered after giving opportunity to the opposite parties. The impugned order does not even indicate proper application of mind.

19. The trial court ought to have considered the additional factors apart from the three-fold test especially the statutory provisions pertaining to preservation of the right of privacy in matrimonial matters between parties in the litigation, which principle would apply in the present dispute also.

20. Applying the aforesaid Judgments of the Supreme Court to the facts of the present case, this Court is of the considered view, that the petitioners have made out a prima facie case for due consideration of ad interim injunction, to the effect that till such time as the claim of respondents is established in the Court of competent jurisdiction, the opposite parties should be restrained from publishing of such allegations in social, print or electronic media and this aspect should have been duly considered by the trial Court while considering the application of the petitioner under Order 39 Rule 1 and 2 CPC. The denial of ad interim injunction in the facts of the present case would defeat the very purpose of filing the suit, in case the opposite parties were allowed to proceed to further canvass their claim/allegations against the husband of the petitioner in the public domain which may have the effect of damaging the matrimonial reputation of the petitioner and her family .There is no doubt that a person who is alleged to have a child born outside of marriage is not considered virtuous and society attaches stigma to such relationships

21. In the light of aforesaid, case for interference is made out.

22. This Court is proceeding to decide the present petition without issuing notice to respondent nos. 1 and 2, as the issue before us is with

regard to refusal to pass ex party ad interim injunction at the stage of issuance of notice to defendants in the suit by the trial court, and the matter is being remanded at the admission stage itself for fresh consideration in accordance with law and also that the impugned order was passed after hearing the petitioner alone.

23. Accordingly, impugned order dated 24.04.2024, is interfered with to the extent that "ex-parte interim injunction has been denied", is set aside.

24. In the light of observations made by this Court herein above, the matter is remitted to the Court below i.e. Civil Judge (Senior Division), Lucknow to pass fresh orders on the application of the petitioner under Order 39 Rule 1 and 2 CPC , and also consider passing of ad interim injunction during pendency of the application under order 39 rule 1 and 2 CPC expeditiously, say within a period of one week from today, in case there is no legal impediment, in accordance with law.

25. It is further provided that till decision is taken by the Court below on the application of the petitioner, the defendants are restrained from publishing any fresh matter regarding relationship of defendant nos. 1 and 2 with the husband of the petitioner in any manner whatsoever.

26. It is made clear that protection granted to the petitioner by means of this order is available only till such time as suitable orders are passed by the Court below on the application under Order 39 Rule 1 and 2 CPC. In case the application under Order 39 Rule 1 and 2 CPC is not decided within the time prescribed above due to any legal impediment then, it shall be open for the Court below to consider granting temporary interim injunction, in accordance with law. It shall be open for the opposite parties after putting in appearance before the trial court to file their objections to the application preferred by the petitioner and order 39 rule 1 and 2, whereupon the Court shall proceed to consider and decide the same in accordance with law.

While considering the application for grant of ad interim injunction, the trial court shall not be bound by the observations made by this court in the present order and shall proceed to decide the said application on its merits in accordance with law.

27. With aforesaid directions the writ petition is **allowed**.

Order Date :- 27.4.2024

A. Verma

(Alok Mathur, J.)