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

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Judgment Pronounced on: 06.07.2020

+ CS(OS) 123/2017

MAHESH MURTHY

..... Plaintiff

Through

Mr.Jayant K.Mehta, Ms.Bani Dikshit
and Ms.Drishti Harpalani, Advocates

versus

POOJA CHAUHAN AND ORS.

.... Defendants

Through

Ms.Swati Sukumar and Ms.Subhashree,
Advocates for D-3 & D-4.
Mr.Samrat Nigam, Advocate for D-13
& D-14.
Mr.Abhimanyu Walia, Adv. for D-15
and D-16.
Mr.Aayush Agarwala, Adv. for D-17 &
D-18.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

IA Nos. 1259/2017, 3239/2017, 5230/2017 & 9281/2017

1. This suit is filed by the plaintiff seeking a decree for a sum of Rs.2,50,00,000/-. Permanent injunction is also sought to restrain the defendants from directly or indirectly publishing, commenting, communicating or issuing any article, etc. in any manner whatsoever referring to the allegations, details of which are set out in the plaint. Other connected reliefs are also sought.

2. This matter came up for hearing on 15.03.2017 when notice was issued to the defendants. On 18.04.2017, this court restrained the defendants from, in any manner, directly or indirectly publishing and/or commenting and/or

communicating and/or issuing any article, interview and material to the public in any manner whatsoever, containing or referring to the allegations contained in the posts being the subject matter of the suit. Subsequently, on 28.04.2017 this court impleaded defendants No. 13 to 18 and permitted amendment to the plaint. The interim order was extended to the newly impleaded defendants.

3. IA No. 3239/2017 is filed by the plaintiff under Order 39 Rules 1 & 2 CPC for injunction. Similarly, IA No. 5230/2017 is also filed by the plaintiff under Order 39 Rules 1 & 2 CPC seeking interim orders against the newly impleaded defendants No. 13 to 19. IA No. 9281/2017 is filed by defendants No. 17 and 18 under Order 39 Rule 4 CPC for vacation of the interim injunctions. IA No.1259/2017 is filed under Order 39 Rule 4 CPC by defendants No. 13 and 14 for vacation of the injunctions. I will now decide these applications.

4. The case of the plaintiff is that he claims to be India's well known and leading venture capitalist and managing partner of a leading venture capital firm called Seedfund. The plaintiff is also said to be a Managing Director of a leading digital brand management firm called Pinstorm. The plaintiff claims to enjoy an excellent reputation and tremendous goodwill both in India as well as internationally.

5. The entire case centres around alleged defamatory publications done by defendants No. 1 & 2 and defendants No. 15 & 16 which have been in some manner or the other forwarded, reproduced or further propagated by the other defendants in the form of various communications. The plaint gives a long narration of publications by various defendants/the acts of various defendants. I may refer to some of the salient contentions.

6. It is the case of the plaintiff that due to the nature of the plaintiff's work as a venture capitalist, he receives business proposals from various people on a daily basis. Defendants No. 1 and 2 had also got in touch with the plaintiff for seeking advice and help with regard to their prospective start-up business plans/ideas. The plaintiff has never met defendant No. 1 or defendant No. 2. It is stated that the plaintiff did not express any interest in the business plans/ideas provided by defendants No. 1 and 2. It is claimed that defendants No. 1 and 2 were disgruntled with the plaintiff for rejecting their business proposals pursuant to which the defendants took steps of publishing the defamatory posts. It is stated that for the first time, the plaintiff was victimized by a resentful woman entrepreneur in 2007, named, Seema Pagey.

7. It is claimed that defendants No. 1 and 2 have uploaded certain defamatory content pertaining to the plaintiff on the website www.Linkedin.com and www.indian.ceo.in respectively which gives rise to the reliefs which have been sought by the plaintiff. Defendant No. 1 uploaded a post on the said website www.Linkedin.com (hereinafter referred to as 'LinkedIn') on 12.02.2017. It is stated that the said post alleged that the plaintiff had sent an inappropriate response to defendant No. 1's 'Christmas Greetings'. She also uploaded a purported screen-shot of alleged WhatsApp messages exchanged between her and the plaintiff on 25.12.2016. The said LinkedIn post was widely circulated on social media. It also apparently came to the attention of defendant No. 2. It is claimed that defendant No. 2 got inspired by defendant No. 1 and decided to put forth her alleged experience of interacting with the plaintiff. Defendant no. 2 published a quoted account of the communications with the plaintiff done sometimes in March 2016 through

defendants No. 5 and 6's web portal 'Indian ceo' which was published by 'Indian ceo' on February 19, 2017 (hereinafter referred to as 'Indian ceo post').

8. Subsequently, defendant No 4 who is a writer published an article titled "Sexual Harassment - Underbelly of the Indian Startup ecosystem exposed" targeting the plaintiff which was based on the LinkedIn post as well as on the Indian ceo post. This article was posted on defendant No. 3's website www.yourstory.com on 21.02.2017. Thereafter, 'Asian Age', an English language daily newspaper published by defendant No. 7 reported about the LinkedIn post as well as Indian ceo post in an article with the title "Star Investor Faces Heat Over "Lewd" Text" which was published on 22.02.2017. A similar article was published by 'Deccan Chronicle', an English language daily newspaper published by defendant No. 7 on 23.02.2017.

9. Similarly, defendant No.8 is the founder of a website called "shethepeople.tv" which operates through the web portal www.shethepeople.tv which is a media technology platform for women entrepreneurs. Defendant No. 9 is said to be defendant No.2's business partner who has published a defamatory content pertaining to the plaintiff on a social networking website www.facebook.com. It is claimed that defendant No. 9 has made derogating remarks against the plaintiff. Similarly, defendant No. 10, who is a journalist and a documentary film maker has sent objectionable messages to the plaintiff which are said to be highly derogatory and defamatory. The Unicon Baba tweeted defamatory statements about and against the plaintiff on defendant No. 11's web portal (hereinafter referred to as 'Unicon Tweets').

10. It is claimed that the right to reliefs sought by the plaintiff arises on account of the LinkedIn post published by defendant No.1, which led to the Indian ceo post published by defendant No. 2, yourstory post published by

defendants No.3 and 4 and the articles published in the newspapers, namely, Asian Age, Deccan Chronicle and shethepeople article. Similar plea is raised in the Unicon Tweets and similar such tweets which allege that the plaintiff behaves obnoxiously towards women. All these, it is stated, contain defamatory insinuations and statements. It is claimed that the said defamatory statements raise common questions of law and fact and hence all the defendants have been impleaded.

11. I may note that the original plaint was filed against defendants no. 1 to 12. By order dated 28.04.2017, defendants No. 13 to 18 were added as parties.

12. It is claimed that defendant No. 13 wrote and published an article titled as “Mahesh Murthy in New Sexual Misconduct Charges; Seedfund says had heard other rumours” which was published on the website www.factoraily.com which is administered by defendant No. 14. This article is based on allegations by defendants No. 15 and 16. It is further stated that defendants No. 13 and 14 in their Factoraily article also produced and published defamatory and malicious statements of defendants No. 17 and 18 which were reproduced in the article. Defendants No 17 and 18 are the business partners/associates of the plaintiff.

13. It is further stated that after publication the aforesaid Factoraily article by defendants No. 13 and 14, the same was shared and communicated by defendant No. 15 on several platforms including but not limited to www.twitter.com and www.facebook.com. The factoraily article is also said to have been aired and circulated on several platforms and websites including various newspapers like Hindustan Times, etc. It is alleged that the Factor Daily article contains events a decade old and is clearly manipulated, misleading, false and without any iota of truth.

14. It is the case of the plaintiff that the said posts have been written in a sensational manner which misleads a common man reading the same to draw a conclusion that the plaintiff is in the habit of exploiting and harassing young women entrepreneurs. The content of the said posts published by the defendant are claimed to be clearly defamatory and are intended to lower the reputation of the plaintiff in the eyes of public and adversely impact the plaintiff's fundamental right of living with dignity which is contrary to Article 21 of the Constitution of India.

15. The plaintiff further claims and submits that the actions of the defendants are motivated by mala fide and the posts have been published by the defendants with the sole motive of sensationalising the matter by making false, grave and defamatory statements against the plaintiff and tarnishing his reputation before the public at large. The imputation in the said posts is said to be causing considerable hardship and loss of reputation to the plaintiff. The defendants by using the social media platforms have been disseminating information about the plaintiff which are absolutely false and injurious to the goodwill, reputation and status of the plaintiff. It is claimed by the plaintiff that he has suffered harm and injury which he currently quantifies at Rs. 2,50,00,000/- caused by the acts of defamation by the defendants for showing the plaintiff in a bad light and damaging his personal and business reputation.

16. The plaintiff claims that this court has territorial jurisdiction to adjudicate the present suit as he has gained knowledge of the publication and grave allegations made therein while he was in Delhi. He further states that defendant No.8 is residing in Delhi. The respective offices of defendant No. 7 are located in Delhi. It is further stated that the said defamatory posts and

publications have been published to the general public in Delhi. Hence, the present suit.

17. I may note that in response to the service of summons, written statements have been filed by defendant No. 1, defendant No. 2, defendants No. 3 and 4, defendant No. 7, defendant No. 8, defendant No. 9, defendants No. 13 and 14, defendant No. 15, defendant No. 16 and defendants No. 17 and 18.

18. Defendant No. 1 in her written statement has alleged that the post uploaded by her does not contain any defamatory content against the plaintiff. It is submitted that the plaintiff has suppressed the fact that after the alleged post sent to defendant No.1, the plaintiff made an apology on 15.02.2017. Further, the post-dated 12.02.2017 is not defamatory. The alleged post and its contents are a matter of record. On the contrary, it is the plaintiff who sent objectionable and obscene contents in his post-dated 25.12.2016 to defendant No. 1 for which the plaintiff has rendered an apology. It is further stated that defendant No. 1 has no control over the visitors of LinkedIn and has no connection with its users or management. Defendant No. 1 has also denied that she ever got in touch with the plaintiff for seeking advice and help with regard to their prospective start-up business plan. It is further stated that all communications between the plaintiff and defendant No. 1 happened either on LinkedIn or WhatsApp and defendant No. 1 never reached the plaintiff for any business help or support.

19. Defendant No. 2 has also filed her written statement. Defendant No. 2 denies that defendants No. 1 and 2 have uploaded certain defamatory contents pertaining to the plaintiff on the website on LinkedIn or Indian ceo. It is pleaded that the contents uploaded by defendants No. 2 in the said posts are

not defamatory as the same are true statements as to the reputation of the plaintiff in the society. It is stated that the so called defamatory statements as propounded by the plaintiff in the present case is a real life account of the experience of the answering defendant with the plaintiff and cannot be termed to be defamatory. It is also denied that she has posted her statements inspired from the LinkedIn post of defendant No. 1.

20. It is stated that the genesis of the whole controversy started on 08.12.2014 when defendant No. 2 being an aspiring entrepreneur approached various venture capitalists. She has business ideas. One of them whom she approached was the plaintiff to whom the said defendant sent an e-mail with greetings and requested to look into her business idea by the name of "dukandar.com". The exchange of mails between the plaintiff and defendant No. 2 has thereafter been narrated in the written statement. It is pleaded that the foremost ingredient of an act of defamation is publication of false defamatory statements about a person which lower the reputation of the said person in the eyes of right-thinking members of the society. It is stated that the facts stated are verified and true facts which have been seconded time and again by various known entrepreneurs. The plaintiff has humiliated and misbehaved with women entrepreneur. The messages sent would clearly make any respectable woman uncomfortable and angry.

21. Defendants No. 7 and 8 have also filed their written statements. Defendant No.7 publishes two English language daily newspapers, namely, Deccan Chronicle and Asian Age. It is claimed that the said defendants have been wrongly arrayed as defendants in the suit as there is no specific averment made against the answering defendant. It is further claimed that the articles published by the answering defendant have not lowered the reputation of the

plaintiff in the public eyes. On the contrary, the answering defendant has merely reported the posts which were already in the public domain. It is stated that in a democratic set up, it is the legitimate function of the press to bring to the notice of general public all that happens around. The answering defendant ensures that the publication is substantially a true report and is being made in good faith for public good. The said defendants act with due care and caution. The answering defendant, it is repeated, is indulging in fair reporting and had not expressed anything out of its own and that the defendant has merely reproduced the posts in public domain.

22. Defendants No. 13 and 14 have also filed their written statement. It is pleaded that the article in question, namely, “Mahesh Murthy in New Sexual Misconduct Charges; Seedfund says had heard other rumours” was published on the website www.factoraily.com after the suit was filed. It is also clear that the answering defendants are not the first persons who have spoken against the misdemeanours of the plaintiff. It is further pleaded that the plaintiff to exonerate himself has to first commit himself to a process of enquiry or investigation or at the very least, cross-examination in the present proceedings before he can give himself a clean chit. It is pleaded that in the course of verifying information shared by defendants No. 15 and 16, the answering defendants came by a whole volume of material relating to the plaintiff which indicates and conclusively shows his manner of engaging in inappropriate and sexually coloured conduct with unknown ladies on a random basis from time to time. It is also stated that upon making enquiries and exercising due diligence, the answering defendants have confirmed that several ladies have made similar allegations of sexual harassment and inappropriate conduct against the plaintiff. These ladies have no connection or association with each

other. It is further pleaded that before publishing the version of defendants No. 15 and 16, the answering defendants did seek the version of the plaintiff on the subject matter of the publication by sending to the plaintiff an e-mail dated 20.04.2017 with specific queries. However, the plaintiff chose not to respond to the queries despite being given enough time. In these circumstances, the allegations made by defendants No. 15 and 16 were published on the website.

23. Defendants No. 17 and 18 respectively have filed their written statements which contain somewhat similar contentions. Defendant No. 17 in his written statement states that the only allegation against the answering defendant is with respect to an article dated 21.04.2017 published by factordaily. It is stated that the answering defendant resides and works in Mumbai and these statements of the answering defendant contained in the said factordaily article were obtained from the answering defendant over telephone while he was in Mumbai. Defendant No. 14, namely, the Administrator of the website www.factordaily.com is also based in Bangalore. Defendant No, 13, the Editor of the article is admittedly a resident of Bangalore. Hence, this court does not have territorial jurisdiction.

It is further stated that the article in question published in factordaily does not even prima facie make out a case for defamation. The answering defendant has merely stated that they have received concerns regarding the alleged behaviour of the plaintiff on a couple of occasions and that the plaintiff was not in fact actively involved in working of Seedfund. The answering defendant, it is stated, in his capacity as a business colleague of the plaintiff and a co-founder of Seedfund was under the moral and ethical obligation to state his views with respect to the controversy raging around the alleged conduct and behaviour of the plaintiff.

24. I have heard learned counsels for the parties.

25. Essentially, learned counsel appearing for defendants No. 17 and 18 and defendants No. 13 and 14 have strongly opposed the continuation of the interim injunction and have said that the same may be vacated.

26. Mr. Aayush Agarwala, learned counsel for defendants No. 17 and 18 has vehemently pleaded that this court cannot pass a blanket stay order restraining the defendants from making publication of their comments. It has been submitted relying upon the judgment of the English Court in the case of *Bonnard vs. Perryman* [1891] 2 Ch 269, that a court would not restrain publication of an article even though it is defamatory when the defendant says that he intends to justify it or to make their comment on a matter of public interest. It is pleaded that the right of publication by press is a cherished right and the court should be increasingly slow in passing interim injunction to restrain such publications. He also relies upon the judgment of the Division Bench of this court in the case of *Khushwant Singh vs. Maneka Gandhi*, AIR 2002 Del 58, judgment of a Coordinate Bench of this court in the case of *Tata Sons Ltd. Vs. Greenpeace International & Anr.*, 2011 (178) DLT 705, another judgment of a Coordinate Bench of this court in the case of *Shashi Tharoor vs. Arnab Goswami*, (2018) 246 DLT 279 and the judgment of the Division Bench of this court in the case of *Pushp Sharma vs. D.B. Corporation Ltd. & Ors.*, 2018 SCCOnline11537 to contend that this court should not grant interim injunction and that the answering defendants seek to contest the matter on merit and to show appropriate justification. He also urges that there is non-compliance of the provisions of Order 39 Rule 3 CPC when the interim was passed in favour of the plaintiff and against the answering defendants.

27. Learned counsel appearing for defendants No. 13 and 14 has reiterated the above submissions of learned counsel for defendants No. 17 and 18. He reiterates that injunction was passed against the newly added defendants on 28.04.2017 whereas compliance of Order 39 Rule 3 CPC was done on 16.05.2017. Hence, it is pleaded that the interim order stands vacated.

28. It is further pleaded that the plaintiff has failed to make out any prima face case in his favour. It is further pleaded that balance of convenience is also not in favour of the plaintiff.

29. I have also heard Mr. Jayant Mehta, learned counsel appearing for the plaintiff. He relies upon the judgments of the Supreme Court in the case of *Subramaniam Swamy vs. Union of India, 2016 (7) SCC 221*, Judgment of this court in the case of *Swatanter Kumar vs. The Indian Express Ltd. & Ors, 2014 SCC OnLine Del 210* and *Swami Ramdev vs. Juggernaut Books Pvt. Ltd., Manu/DE/3565/2018* to plead that this court has to balance the two separate rights, namely, the right under Article 19 (1) (a) of the Constitution of India and the right of the plaintiff under Article 21 of the Constitution of India. Where a plaintiff would suffer irreparable loss to his reputation, the court would grant an interim injunction to restrain prior publication of stated defamatory content. The court has to do a balancing act of fundamental rights.

30. I may first look at the legal position regarding grant of an interim injunction against publication where a plaintiff seeks the said relief. I will first look at the judgments relied upon by the learned counsel for the plaintiff. The first judgment relied upon by the learned counsel for the plaintiff is the judgement of the Supreme Court in the case of *Subramaniam Swamy vs. Union of India(supra)*. That was a case dealing with the constitutional validity

of Sections 499 and 500 IPC and Section 199 of Cr.P.C. regarding punishment for defamation. The Supreme Court held as follows: -

“144. The aforementioned authorities clearly state that balancing of fundamental rights is a constitutional necessity. It is the duty of the Court to strike a balance so that the values are sustained. The submission is that continuance of criminal defamation under Section 499 IPC is constitutionally inconceivable as it creates a serious dent in the right to freedom of speech and expression. It is urged that to have defamation as a component of criminal law is an anathema to the idea of free speech which is recognized under the Constitution and, therefore, criminalization of defamation in any form is an unreasonable restriction. We have already held that reputation is an inextricable aspect of right to life under Article 21 of the Constitution and the State in order to sustain and protect the said reputation of an individual has kept the provision under Section 499 IPC alive as a part of law. The seminal point is permissibility of criminal defamation as a reasonable restriction as understood under Article 19(2) of the Constitution. To elucidate, the submission is that criminal defamation, a pre-Constitution law is totally alien to the concept of free speech. As stated earlier, the right to reputation is a constituent of Article 21 of the Constitution. It is an individual’s fundamental right and, therefore, balancing of fundamental right is imperative. The Court has spoken about synthesis and overlapping of fundamental rights, and thus, sometimes conflicts between two rights and competing values. In the name of freedom of speech and expression, the right of another cannot be jeopardized. In this regard, 192 reproduction of a passage from Noise Pollution (V), In RE (2005 5 SCC 733) would be apposite. It reads as follows:-

“11... Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. Nobody

can indulge in aural aggression. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. We need not further dwell on this aspect. Two decisions in this regard delivered by the High Courts have been brought to our notice wherein the right to live in an atmosphere free from noise pollution has been upheld as the one guaranteed by Article 21 of the Constitution. These decisions are Free Legal Aid Cell Shri Sujan Chand Aggarwal v. Govt. (NCT of Delhi) [AIR 2001 Del 455] and P.A. Jacob v. Supt. of Police [AIR 1993 Ker 1]. We have carefully gone through the reasoning adopted in the two decisions and the principle of law laid down therein, in particular, the exposition of Article 21 of the Constitution. We find ourselves in entire agreement therewith.”

31. Reliance was also sought to be placed on the judgment of the Coordinate Bench of this court in the case of *Swatanter Kumar vs. The Indian Express Ltd. & Ors. (supra)* wherein this court held as follows:-

“46. From the mere reading of the excerpts from the judgment of Sahara India case [(2012) 10 SCC 603], it can be said that the High Court has ample powers under its inherent powers to restrain the publication in media in the event it arrives at the finding that the said publication may result in interference with the administration of justice or would be against the principle of fair trial or open justice. Although the aforementioned observations seem to suggest that the Court can restrain the publication of the news relating to Court proceedings or postpone the same in order to obtain the fair trial. The later part of the judgement in Sahara India (supra) suggest that the order of the prior restraint is a preventive order and the said order may proceed to restrain any publication which may cause obstruction of the justice which

include intrusion in right to have open justice unbiased by any public opinion expressed in publication. Thus, the interference with the course of justice as a term is not merely confined to the restraint order only on the publications relating to pending Court proceedings. But also, any publication which would give excessive adverse publicity to the accused or alleged victim which may likely to hamper the fair trial in future is also covered within the ambit and sweep of the enquiry of the Court as to what may constitute the interference with the course of the justice. This can be seen if one reads the following paragraphs of the judgment in Sahara India (Supra) wherein it has been observed thus:

"To see that the administration of justice is not prejudiced or perverted clearly includes power of the Supreme Court/High Court to prohibit temporarily, statements being made in the media which would prejudice or obstruct or interfere with the administration of justice in a given case pending in the Supreme Court or the High Court or even in the subordinate Courts. In view of the judgment of this Court in A.K. Gopalan v. Noordeen [(1969) 2 SCC 734], such statements which could be prohibited temporarily would include statements in the media which would prejudice the right to a fair trial of a suspect or accused under Article 21 from the time when the criminal proceedings in a subordinate Court are imminent or where suspect is arrested.

Presumption of innocence is held to be a human right. [See : Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (2005) 5 SCC 294]. If in a given case the appropriate Court finds infringement of such presumption by excessive prejudicial publicity by the newspapers (in general), then under inherent powers, the Courts of Record suo motu or on being approached or on report being filed before it by subordinate Court can under its inherent powers under Article 129 or Article 215 pass orders of

postponement of publication for a limited period if the applicant is able to demonstrate substantial risk of prejudice to the pending trial and provided he is able to displace the presumption of open Justice and to that extent the burden will be on the applicant who seeks such postponement of offending publication." (Emphasis Supplied)

32. Similarly, reliance is also placed by the plaintiff on the judgment of another Coordinate Bench of this court in the case of *Swami Ramdev vs. Juggernaut Books Pvt. Ltd.*, (*supra*) wherein this court held as follows: -

“125. The contention of the respondents has been that freedom of speech and expression under Article 19(1)(a) of the Constitution of India is supreme and cannot in any manner be qualified by the contentions raised in civil disputes contending that the right to freedom of speech and expression be regulated in a manner that it does not circumscribe or impinge on another's right to reputation. The said contention clearly cannot be accepted. This is so in as much as ruled in *Charu Khurana v. Union of India*: AIR (2015) SC 839, dignity is a quintessential quality of a personality, for it is a highly cherished value as observed by the Hon'ble Supreme Court in *Subramniam Swamy v. Union of India*: (2016) 7 SCC 227 laying down further vide paragraph 133 thereof, thus perceived the right to honour, dignity and reputation are the basic constituents of the right to life under Article 21. The verdict in *Subramniam Swamy* (*supra*) categorically observes that to state that the right to reputation can be impinged and remains unprotected inter se private disputes pertaining to reputation would not be correct and also lays down vide paragraph 144 of the said verdict that “reputation” of one cannot be allowed to be crucified at the altar of the other's right of free speech and that the balance between the two rights needs to be struck and that the reputation being an inherent component of Article 21 of the Constitution of India, it should not be allowed to be sullied only because another individual can have its freedom. Undoubtedly, when there is an abridgement and the reasonable restrictions imposed so that both right exists, such an abridgement or

restriction has only to be to the extent what is absolutely necessary.”

33. What follows from the aforesaid judgments is that the reputation of a person cannot be allowed to be sullied for the other’s right of free speech. A balance has to be struck between the two rights, namely, freedom of speech and expression as stated in Article 19(1)(a) of the Constitution and the reputation of an individual which is an inherent component of Article 21 of the Constitution of India. Both rights should co-exist, but restrictions should be to the extent absolutely necessary.

34. I may also look at the judgments relied upon by learned counsel for the defendants. Reference may be had to the judgment of the Division Bench of this court in the case of *Khushwant Singh vs. Maneka Gandhi (supra)*. That was a case in which the appellant-Sh.Khushwant Singh was desirous of publishing his autobiography. The book had a chapter which as per the respondent was damaging to the respondent. In those facts, the Division Bench held as follows:-

“60. The right to publish and the freedom of press, as enshrined in Article 19(1)(a) of the Constitution of India is sacrosanct. This right cannot be violated by an individual or the State. The only parameters of restriction are provided in Article 19(2) of the Constitution of India. The total matter of the book is yet to be published including the chapter in question. The interim order granted by the learned Single Judge is a pre-publication injunction. The contents of subject matter had been reported before and the author stands by the same. In view of this we are of the considered view that the respondent cannot make a grievance so as to prevent the publication itself when the remedy is available to her by way of damages. We are not examining the statements attributed to appellant no.1 on the touchstone of defamation. It would not be appropriate to do so for us at this stage but what we do observe is that the statements are not of

such a nature as to grant injunction even from publication of the material when the appellants are willing to face the consequences in a trial in case the same are held to be defamatory and the pleas of the appellants of truth are analysed by the trial court.”

35. Similarly, reference may be had to the judgment of a Coordinate Bench of this court in the case of *Tata Sons Ltd. Vs. Greenpeace International & Anr.(supra)*. The issue in that case pertained to a joint venture port started by the plaintiff. The defendants were protesting as the said port threatened the Olive Ridley Turtles nestling habitat. The defendant had launched a game to protect the turtles which was objected to by the plaintiff. In those facts, the court held as follows:-

“37. From the above reasoning it follows that the Court will invariably not grant an interim injunction to restrain the publication of defamatory material as it would be unreasonable to fetter the freedom of speech before the full trial takes place, where each of the parties can argue in detail with the help of additional evidence. Similarly in this matter, it is incumbent upon this Court to decide whether it would be reasonable to fetter the reasonable criticism, comment, and parody directed at the plaintiff, which to a large extent is protected by the Constitutional guarantee to free speech, to all the citizens of India. This point of view was also strengthened by a recent challenge to the old common law rule of *Bonnard* in the case of *Greene v. Associated Newspapers Limited*, 2005 (1) All.ER. 30, where it was decided that if it is a known fact that the true validity of the defamation claims will only be tested at trial level then it would only be appropriate for the Court not to award an interim injunction to the plaintiffs as it would otherwise put an unreasonable burden on the concept of free speech. After an elaborate survey of the law on the issue, it was held that:

"This survey of the caselaw shows that in an action for defamation a court will not impose a prior restraint on publication unless it is clear that no defence will succeed at the trial. This is partly due to the importance the court attaches to freedom of speech. It is partly because a judge must not usurp the constitutional function of the jury unless

he is satisfied that there is no case to go to a jury. The rule is also partly founded on the pragmatic grounds that until there has been disclosure of documents and cross-examination at the trial a court cannot safely proceed on the basis that what the defendants wish to say is not true. And if it is or might be true the court has no business to stop them saying it. This is another way of putting the point made by Sir John Donaldson MR in *Khashoggi*, to the effect that a court cannot know whether the plaintiff has a right to his/her reputation until the trial process has shown where the truth lies. And if the defence fails, the defendants will have to pay damages (which in an appropriate case may include aggravated and/or exemplary damages as well)".

36. In the above two cases, the injunction was declined to the plaintiff on the peculiar facts and circumstances of the case. In the case of *Khushwant Singh vs. Maneka Gandhi(supra)*, the court noted that the statements are not of such a nature as to grant injunction from publication of the material especially when the appellants were willing to face the consequences in a trial. Similarly, in *Tata Sons Ltd. Vs. Greenpeace International & Anr. (supra)*, the court was of the view that granting of an injunction to the plaintiff would freeze the entire public debate on the effect of the port project on the Olive Ridley Turtles' Habitat which would not be in public interest.

37. Reference may also be had to the judgment of a Coordinate Bench of this court in the case of *Shashi Tharoor vs. Arnab Goswami(supra)*. I may note that this court in the said judgment noted a gamut of judgments including various recent judgments of the Supreme Court on this aspect i.e. the case of *Subramaniam Swamy vs. UOI (supra)*, *Reliance Petrochem v.s Proprietors of Indian Express Bombay, (1988) 4 SCC 5* and *Sahara India Real Estate vs. SEBI, (2012) 10 SCC*. This court held as follows:-

“49. According to The Common Law Library Gatley on Libel and Slander, the jurisdiction to grant interim injunctions to restrain publication of defamatory statements is "of a delicate nature", which "ought only to be exercised in the clearest cases". That was stated by Lord Esher M.R. in Coulson Vs. Coulson, (1887) 3 T.L.R. 846 and it encapsulates the general approach of the English courts. The reluctance to grant peremptory injunctions is rooted in the importance attached to the right of free speech, and the consideration that damages are liable to be an adequate remedy. Thus, the English Court will only grant an interim injunction where:

- (1) the statement is unarguably defamatory;
- (2) there are no grounds for concluding the statement may be true;
- (3) there is no other defence which might succeed;
- (4) there is evidence of an intention to repeat or publish the defamatory statement.

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64. The prejudice that results from reporting has been taken into account by the Indian Supreme Court in R.K. Anand Vs. Registrar, Delhi High Court, (2009) 8 SCC 106 while explaining the meaning of "trial by media" as under:-

"293. :

“The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.”

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66. The Supreme Court in *Reliance Petrochemicals vs. Proprietors of Indian Express Newspapers Bombay*, (1988) 4 SCC 592 observed that the test for any preventive injunction against the press must be "based on reasonable grounds for keeping the administration of justice unimpaired" and that there must be reasonable ground to believe that the danger apprehended is real and imminent. The Court went by the doctrine of clear present and imminent danger.

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68. In both *Reliance Petrochemicals (supra)* and *Sahara India Real Estate (supra)*, the Apex Court held that Courts have inherent power to pass prior restraint injunction order in matters which are subjudice to safeguard fairness of trial and to prevent possible contempt.

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70. The Indian Constitution is not absolute with respect to freedom of speech and expression, as enshrined in the First Amendment to the American Constitution. One of the permissible heads of restrictions on freedom of expression is defamation. As regards the essential ingredients of defamation, Salmond has stated in **The Law of Torts**.

“The test of defamatory nature of a statement is its tendency of excite against the plaintiff the adverse opinions or feeling of other persons. The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct.”

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77. Keeping in view the aforesaid judgments, this Court is of the opinion that the two-pronged test of necessity and proportionality have to be satisfied before ordering postponement of publication, namely, necessity to prevent real and substantial risk to fairness of trial and salutary effect of such an injunction outweighs deleterious effect to the free expression. This Court would like to clarify that tests like necessity, proportionality and balance of convenience are not end points but points of departure. Moreover,

the injunction order should only be passed if reasonable alternative methods or measures would not prevent the said risk.

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98. This Court refrains from saying anything more as Mr. Sandeep Sethi, learned senior counsel for defendants had assured this Court on 29th May, 2017 that the defendants in future would exercise restraint as well as bring down the 'rhetoric' and even according to Mr. Salman Khurshid, learned senior counsel for plaintiff, subsequent to the said statement the 'previous vitriolic attack' was missing. The statement made by Mr. Sandeep Sethi is accepted by this Court and defendants are held bound by the same."

38. Hence, the court concluded that in India there is no absolute rule that the courts do not have powers to pass pre-publication or pre-broadcasting injunction or prior restraint order in sub-judice matters. The court stressed the two-pronged test of necessity and proportionality that must be satisfied before ordering postponement of publication. Moreover, the injunction order should only be passed if reasonable alternate methods or measures would not prevent the said risk.

39. I may look at the facts of this case. There are three basic documents on the strength of which the present suit centres around. The first is the publication uploaded by defendant No. 1 which is the LinkedIn publication published on 12.02.2017. The second one is the one attributed to defendant No. 2 who had interacted with the plaintiff in March 2016 which was published on 19.02.2017 on the portal Indian ceo of defendants No. 5 and 6 also known as Indian ceo post. The third publication pertains to the allegations levied by defendants No. 15 and 16 respectively which was published by defendant No. 13 on the website www.factoraily.com. I may look at these publications.

40. The LinkedIn publication which is attributed to defendant No. 1 reads as follows:-



41. Similarly, the Indian ceo post which is attributed to defendant No. 2 reads as follows:-

“


EXHIBIT-B 4

2/20/2017 Shocking: Mahesh Murthy Misbehaves with FrshDay Founder Wamika Iyer - IndianCEO

HOME STARTUPS NEWS CEO TV Q f t

BREAKING

Shocking: Mahesh Murthy Misbehaves with FrshDay Founder Wamika Iyer


By IndianCEO Team  Posted on February 19, 2017

Story sent by **Wamika Iyer (Founder of FrshDay.in)** from Mumbai, while seeking help from a mentor for setting up my startup to the next level..this is the challenge that I came across.

It is shocking and sad to see the "famous" Venture capitalists, who are mentors and action figures to millions of young entrepreneurs, trying to exploit the rising women entrepreneurs. These men are the worst kind of insects that exist in our society, even worse than uneducated rapists.

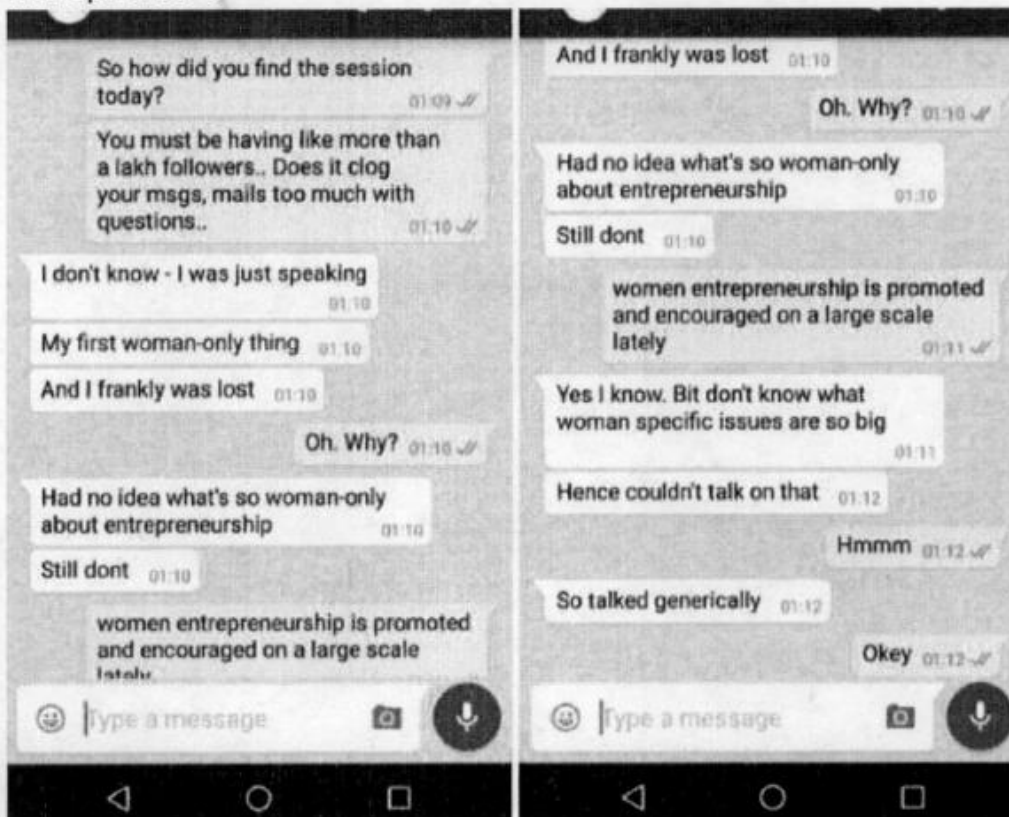
Following are the screenshots of snippets of the personal conversation that I had with this man, whom I considered as a dignified respectable senior, until I saw his true colors.

<https://indianceo.in/news/exclusive-noted-vc-mahesh-murthys-misbehavior-women-entrepreneurs/>



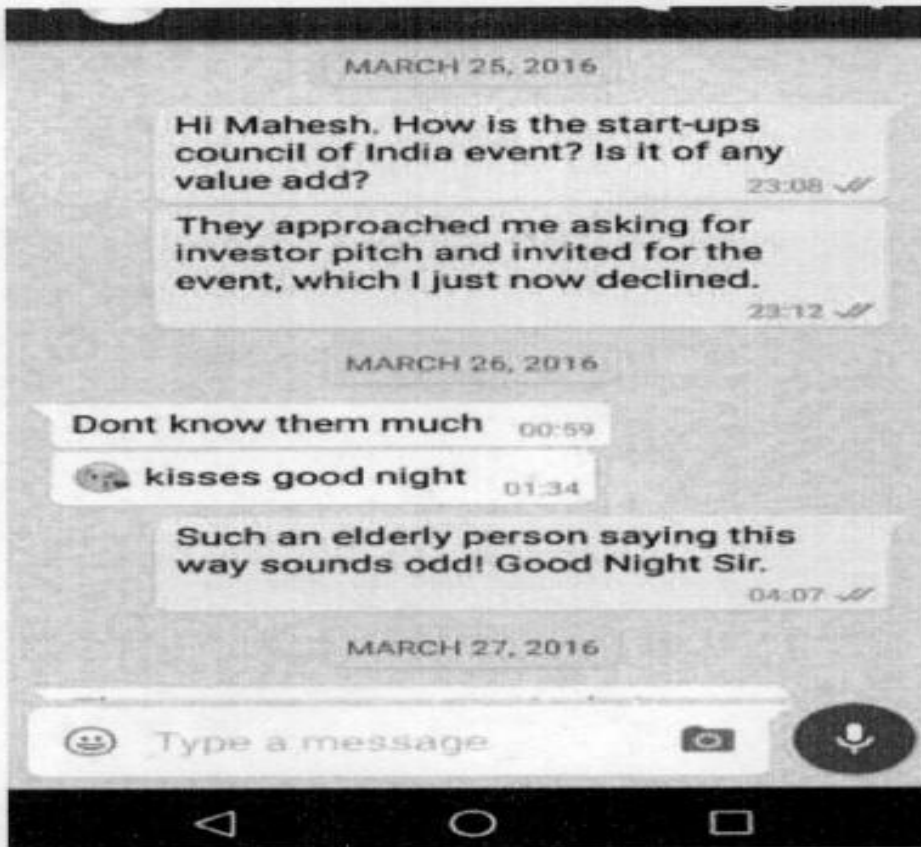


Mahesh Murthy is misogynistic does not encourage woman specific issues and here's what he said after his event on women entrepreneurs



If he does not have an idea about women entrepreneurship, how can he be a guest to educate other fellow juniors??

The level of indecency that Mahesh Murthy shows while having professional conversations with women entrepreneurs is sickening. This pervert, Mahesh Murthy, greets women with inappropriate phrases, which will make you uncomfortable, as below:-





Inspite of telling him in a subtle and direct way that I am uncomfortable, he still wouldn't stop his nonsense talks.

I've known many such cases where this Mahesh Murthy has used his power to exploit girls through sexual harassment. This so called 'Venture Capitalist' is the one who considers himself an example to budding entrepreneurs.

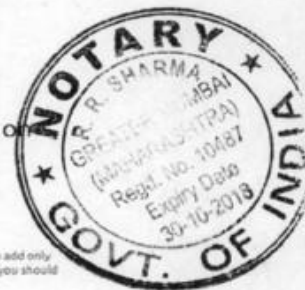
Guys, c'mon, let us not fall prey to such filthy people. Let us spread awareness on such people on whom hundreds of girls fall victim to. Let this not be the future. We need to take strict action against such people else they would continue such actions on innocent- and before he tries it on your wife/sister/friend, stand up and take some action against it!

ANOTHER VICTIM – COUPLE OF DAYS BEFORE

This story comes a day after another women entrepreneur Pooja Chauhan Co founder of Vayuz.com raised similar concerns on her linked in page about mahesh murthy.

Pooja Chauhan
 Co-founder @ Vayuz.com - Mobile | Web | Wearable | Big Data | Digital Strategy

Finally took a courage to put this across. I wished Mahesh Murthy Merry Christmas n a new year I got a response something like that. Unfortunately my LinkedIn app allows me to add only one picture but I want to know from my fellow entrepreneurs and investors do we deserve this! So next time when you talk to investors you should mentally prepare yourself.



.....”

42. Similarly, reference may also be had to the relevant portions of the FACTORDAILY publication attributed to defendants No. 15 and 16 which reads as follows:

“He asked me how’s JAM doing, and I said yeah we’re doing fine, but of course it’s tough to get advertising...we had some conversation like that. So he said okay, let’s meet up and let’s discuss... I didn’t even think twice... so many people you meet like this. It’s part of my profession and my job is to meet people,” says Bansal, who grew up in Mumbai and did her MBA from IIM Ahmedabad in 1991-1993.

“Then, couple of months later, he sent me a message saying let’s meet for chai, or coffee or whatever, and I met him at Mocha... I mean not for any particular reason, but thinking ok may be exchange of ideas...something...how to take JAM forward. I mean the way you meet anybody”, says Bansal, who has authored seven books since then, including the book “Stay Hungry, Stay Foolish” on entrepreneurship, which has sold over half a million copies.

“Very quickly he just started talking personal, he himself mentioned about his ‘open marriage’... Ok...the first thing after a few.. couple of, you know, may be 10 minutes, he started talking about open marriage. I didn’t even know what an open marriage was... and was just curious ki ye kya hota hai (what is it)... and I had never met a person who had an open marriage. The way he said it, made it sound like everyone has an open marriage... that’s the way to be,” she says.

Then, according to Rashmi, he shifted to sit on her side, closer to her.

“He leaned forward and touched me inappropriately,” she recalls. “So basically he had the guts to actually reach across and touch me.”

In a later conversation with FactorDaily, we asked Bansal whether she remembered anything more specific, she said: “Well I do

remember there was an unwanted advance towards me which I didn't like... like... I just....”

Was it verbal? “Yeah, verbally, and then he put his hand on my thigh — I remember that — and maybe he touched my cheek. I cannot recall the details now. But I just, I just get a creepy feeling... like (thinking)... about it.”

Shocked and confused, Bansal got up and left the cafe.

“But in the car, on my way to my office I started crying. I felt cheap and violated and disgusted.”

For his part, Murthy says in his email that while he knows of Bansal and remembers meeting her at Mocha cafe, “It was cordial but unpleasant meeting (sic)”.

“We disagreed on at least two issues that I recall: her plans and potential funding needs for JAM Magazine which she used to then run and which I said I had little faith in. And second, a philosophical disagreement about MBAs from IIMs tending to become employees more than entrepreneurs,” says Murthy.

“I am not sure what Ms. Bansal's allegations are but if, as you imply, they are about ‘inappropriate verbal or physical contact’ then I absolutely deny them as a complete and utter lie and fabrication. Nothing of that sort happened or could have happened. It was in a cafe where others were present, in broad daylight,” he adds.

“Oh, and it's certainly strange that she or you should choose to air them now, 13 or 14 years later,” he says.

Bansal also talks about an article on business networking in the September 2004 issue of *Businessworld* magazine, where she hinted at the Mocha cafe incident without naming Murthy.

“There is one last issue with online networking – that of trust. Most of the people you meet online are genuinely helpful, good, decent folks. But don't forget that rotten apples do exist. This is something

to keep in mind, especially if you're female — single or married. If a prominent Mumbai Rzyer suggests 'let's meet at Mocha', be warned the stimulation he's seeking ain't intellectual," she had written in the Businessworld column.

According to her, though he was not named and the "prominent Mumbai Rzyer" could have been anybody, Murthy wrote an email to her responding to the article.

"I hear from quite a few Rzyers and others back in India that you've written an article in Businessworld about networking that makes a pointed gossipy reference to me in a deeply disparaging way," Murthy said in the email. Other parts of the email also alleged Bansal was talking behind his back to others about his alleged inappropriate behaviour.

Murthy, in his email reply to FactorDaily, asked for time to respond to this. "I am traveling in Europe now and do not have online or mobile access to the email account Passionfund which I used back in 2003 and 2004. I stopped using this account over a decade ago and the emails you refer to may be backed up on a hard drive in Bombay and I arrive back only on April 24. I request you to give me time to get back, find the drive and access this, if at all possible." FactorDaily will update this report when and if Murthy responds to it.

Back to my meeting with Bansal in the Laxmi Mills compound.

As we're talking, Bansal looks broken, sad and just stops short of crying.

What took her more than 13 years to come out in public and share her story?

"I saw him doing this to other people and people like Wamika who's hardly in her twenties. I mean she's a young girl, obviously didn't approach him for that purpose and she went through the same shit," she says, referring to Wamika Iyer's complaints (<https://indianceo.in/news/exclusive-noted-vc-mahesh-murthys->

[misbehavior-women-entrepreneurs/](#)) that surfaced in February this year. Murthy responded to the charges that have surfaced in the past few months (and an incident dating back to 2007) in a Medium post titled “The confessions of a serial offender (<https://medium.com/@maheshmurthy/the-confessions-of-a-serial-offender-230a0a780afe>).”

For Bansal, mother of an 18-year-old daughter, the recent developments have been the trigger for sharing her own experience.

“I am sorry but girls always think may be I have done something to encourage him or you know... this is how stupid we are. We actually think maybe I gave him some signals... I should have got up and left when he started talking about open marriage,” she says.

“I feel like it’s kind of an unfinished business for me, why did I let it happen to me and I would not like to see more and more young girls get into this,” she says. ”

xxx”

43. Clearly the publications narrate the interaction of the plaintiff with defendants No. 1, 2, 15 and 16. Thereafter, the publications note the allegations, contentions and conclusions of defendants No. 1 & 2 and defendants No. 15 & 16 respectively. The observations so made by the defendants through these posts seek to portray the plaintiff as a person who has behaved inappropriately. I may also note that it is an admitted fact that the plaintiff has had no personal meeting with defendants No. 1 and 2. He claims not to have ever met defendant No. 16. He admits having met defendant No. 15.

44. The issue that arises now is that do these publications and the other posts attributed to the other defendants stated in the facts and circumstances warrant

this court continuing the interim order banning the publication of the said posts/articles?

45. At the outset, I cannot help noticing the way the suit is framed. The plaintiff has impleaded 18 defendants including one Mr. Ashok Kumar/defendant No. 12. Order 1 Rule 3 CPC describes the persons who may be joined as defendants. All such persons may be joined in one suit as defendants where right to relief arises from the same act or transaction or a series of acts or transactions and if a separate suit is brought against such persons, any common questions of law and fact would arise.

In the present case, the plaintiff essentially states that the publications done by defendant No. 1 inspired defendant No. 2, defendant No. 15 and defendant No. 16 to make their publications. It is claimed that other defendants have made their publication in response to the acts of defendants No. 1, 2, 15 and 16. The plea appears to be a bald plea. There appears to be no co-relation between the publications done by defendant No. 1 in LinkedIn, defendant No. 2 in Indian ceo and defendants No. 15 and 16 in factordaily. Prima facie, the acts of alleged publications of defendants No. 1, 2, 15 and 16 appear to be distinct acts and do not prima facie justify joining all the defendants in one suit. Each of these publications appear to arise out of separate alleged incidents.

46. Further, the plaint rambles on narrating various publications, communications, etc. by various defendants/other entities claiming them to be connected to the publications done by defendants No. 1, 2, 15 and 16. The plaint also attaches 26 annexures claiming them to be publications or communications indulged in by various defendants/entities. The plaint appears to be a bit of a hotch potch.

47. As noted above, a Coordinate Bench of this court stated that the test to determine as to whether a restraint of publication is to be made is a two-pronged test of necessity and proportionality which are points of departure from the usual practice of not to grant interim injunction. As noted, an injunction order would only be passed if reasonable alternative methods or measures would not prevent the risk.

48. The facts show that as per defendants No.1, 2, 15 and 16, they have had an unpleasant or perhaps more than unpleasant experience with the plaintiff. These facts, the said defendants and other defendants seek to place in public domain. Prima facie, it cannot be said that the said defendants have no case whatsoever or are misusing the freedom of speech to tarnish/defame the plaintiff. The plaintiff has admitted the exchange of messages with defendants No.1 and 2. He admits meeting defendant No.15.

49. Further, it cannot be said that the said defendants are behaving in a malicious or mala fide manner. The plaintiff claims that defendants No.1 and 2 were disgruntled as the plaintiff rejected their business proposals. Hence, they took the step of publishing defamatory posts. This allegation of the plaintiff at this stage appears to be a bald plea.

Regarding the publication by defendants No. 15 and 16 the only plea of the plaintiff is that this relates to alleged events more than a decade old. The plaintiff admits that defendants No. 15 and 16 are successful individuals. There is no explanation given why defendants No. 15 and 16 have chosen to make the necessary publications. There appears to be no reason to conclude that the said defendants have acted in a mala fide manner.

50. In my opinion, it would not be reasonable in the facts and circumstances to fetter the narration of alleged facts and comments of defendants No. 1, 2, 15

and 16 and other defendants. The said defendants have a right to exercise their right of freedom of speech. If these incidents and claims of the said defendants are in trial proved to be false, the plaintiff would have a right to claim damages.

51. The plaintiff has failed to make out a prima facie case. In my opinion, balance of convenience is also not in favour of the plaintiff.

52. Accordingly, the interim order dated 18.04.2017 and 28.04.2017 is vacated. The present applications are disposed of accordingly.

**(JAYANT NATH)
JUDGE**

**JULY 06, 2020
rb/v**

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