
(2014) 03 DEL CK 0365
In the Delhi High Court
Case No : CS (OS) 638/2014

Sampat Pal

APPELLANT

Vs

Sahara One Media and Entertainment Ltd. and Others

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2014) 03 DEL CK 0365

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Chander Mohan Lal, Kush Sharma, Aalok Jain and Ishwer Upneja, Advocates for the Appellant; Rajiv Nayar, Sr. Advocate, M.S. Khadilkar, Hafeez Rahman, Abhinav Mukerji, Purnima Krishna and Ankit Kothari, Advocates for the Respondent

Judgement

Sanjeev Sachdeva, J.

CAV 225/2014.

Since the caveator has entered appearance, the caveat stands discharged.

IA No. 4135/2014 (for exemption)

Exemption allowed, subject to all just exceptions.

IA No. 4134/2014 (under Order 39 Rule 1 & 2 CPC)

1. Issue notice. Mr. S.Khadilkar, Advocate accepts notice on behalf of the defendants.
2. Learned senior counsel for the defendants submits that in view of the urgency, no reply is required to be filed.
3. The plaintiff has filed the present suit for permanent injunction and damages.
4. The plaintiff claims to be a social activist and runs an organisation in the name

and style of "Gulabi Gang". Gulabi Gang, as per the plaintiff is a women's movement initiated in the year 2006 by the plaintiff in one of the poorest districts of the country. The women group is known as Gulabi Gang or Pink Gang because the members wear bright pink sarees and wield bamboo sticks. As per the plaintiff, even though the name is Gulabi Gang, the group is not a gang in the usual sense of the term. The motto of the organization is the upliftment of rural women and taking of measures to redress any injustice or illegality committed against vulnerable and illiterate woman residing in remote parts of the country. As per the plaintiff, the Gulabi Gang has several thousand women members and male supporters. The organization Gulabi Gang hosts a website www.gulabigang.in describing the purpose of the organization and its activities.

5. It is stated that the plaintiff is acclaimed in her work and the public associates her with her organization Gulabi Gang and vice-versa. The work of the plaintiff has been noticed and appreciated world over and various documentaries and films have been made and released on the working of the Gulabi Gang both nationally and internationally. A book on the plaintiff and her gang has also been published in France and subsequently translated in other foreign languages. The plaintiff is stated to have been honoured by several awards both by private organisations and by the Government. The plaintiff claims to have established and acquire Goodwill and reputation both for herself and her organisation Gulabi Gang.

6. As per the plaintiff, defendants No. 1 and 2, who are production houses and engaged in producing films are, launching the film through internet, print and other electronic media under the name and title of "Gulaab Gang". The plaintiff contends that the said film is an adaptation of the life of the plaintiff as reflected in her website. As per the plaintiff, the promos of the film broadcast on the print and electronic media portray the life and work of the plaintiff and her organization in a horrific manner. The leading character in the film, as per the promo, has been shown in action with swords and sickles. As per the plaintiff, the manner of portrayal of the lead character, which represents the plaintiff, not only defames but also degrades her and other members of the organization and lowers her esteem in the eyes of the public at large. The plaintiff contends that the said portrayal is in contradiction to the reputation of the plaintiff as built through her work which is dedicated to upliftment of the women in various parts of the country. As per the plaintiff, the trailer of the movie distorts her present image and depicts her as an anti-social personality. Learned counsel for the plaintiff contends that the defendants have violated her right to privacy and are causing irreparable loss and damage to her reputation.

7. Learned counsel for the plaintiff further contends that the defendants have no right to make a film on her life and organization without any authorisation and permission from the plaintiff and without paying any royalty for the same. Learned counsel for the plaintiff submit that this infringement of copyright rights of the plaintiff are subject to the fact that defendant do not portray the plaintiff

in a negative light and depict the plaintiff in true character.

8. The plaintiff has further contended that the name of the defendants' film, i.e., Gulaab Gang is identical to the organization of the plaintiff, i.e., Gulabi Gang. As per the promos, the central character of the film is a female, who plays the role of Chief- Commander, which is very much similar to the role played by the plaintiff in her organization. The characters in the film wear pink sarees which is similar to the colour of the sarees worn by the members of plaintiff's organization on which the name of the organization has been coined, i.e., Gulabi Gang. As per the plaintiff, the defendants are trying to exaggerate the plaintiff's life story for commercial gain. The plaintiff contends that the promos of the movie clearly indicate that the movie is based on the life of the plaintiff and her organization, i.e., Gulabi Gang.

9. The plaintiff served a legal notice dated 13.06.2013 to the defendants except defendant No. 1. It is the contention of learned counsel for the plaintiff that defendant No. 1 was not in the picture on 13.6.2013 and acquired rights later. Learned counsel for the plaintiff contends that at the time when the legal notice was served on the defendants, the understanding of the plaintiff was that the movie that is being made is a movie on the life and story of the plaintiff and her organization. The plaintiff was not aware at that time that the plaintiff and her organization would be depicted in the negative and in complete contradiction to reality.

10. Defendant No. 2 is stated to have sent a reply to the legal notice only on 4.02.2014. The plaintiff further contends that it is only when the trailer of the film was published and released through print and other electronic media on 9.1.2014 that the plaintiff became aware of the defamatory nature of the film.

11. Learned counsel for the plaintiff has relied on the judgment of the Supreme Court in *Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others*, to contend that no doubt the delay in approaching the Court is a good ground for refusal of interim relief but where the case of the party is based on fundamental rights granted under the constitution, the Court may still grant relief even at a belated stage if the Court is satisfied that applicant has not been negligent in pursuing the case.

12. He has further relied upon the judgment of this court in *Hindustan Pencils (P) Ltd. Vs. India Stationery Products Co. and Another*, to contend that mere delay in approaching the Court is not fatal to the rights of the plaintiff. Learned counsel for the plaintiff contends that where delay is coupled with prejudice the delay is not fatal. Learned counsel for the plaintiff contends that in the present case through there may have been delay, however, the delay in approaching the Court will not take away the fundamental right of the plaintiff to her reputation which is of prime importance to the plaintiff. Learned counsel for the plaintiff further contends that no amount of monetary compensation can restore the life and reputation of the plaintiff if the movie portrays the plaintiff in a defamatory

fashion and the image of the plaintiff is ruined.

13. Learned senior counsel for the defendants, who appears on caveat, contends that the plaintiff has by her own conduct disentitled herself to the grant of the discretionary relief. He contends that as far back as in March, 2013, a reporter had published an article in Times of India. The article reports that when the plaintiff was informed that a movie is being shot on her life, she stated that she would not go upto someone to stop the shoot and when they (producers) do not feel the responsibility of seeking a permission from the person they are making the movie on, why should she bother but she would not allow the movie to be released in any case. Learned senior counsel for the defendant further contends that the plaintiff as far back as in June, 2013, had issued a seize and desist notice wherein the plaintiff has herself mentioned that the movie Gulaab Gang was a copy and adaptation of the plaintiff's work and the viewers particularly children and such vulnerable groups will view the contents of the film in a bad light which will belittle and also defame the message and work of the plaintiff and her organization in the movie. Learned senior counsel for the defendants further contends that in the notice, the plaintiff also talks of risk of ridiculing the plaintiff, her life and her work due to lack of her consent or permission. Learned senior counsel further contends that the plaintiff as far back as in June, 2013 was aware that the film if it was based on the life of plaintiff and her organisation may contain certain material which may not portray her in the correct light and depict her in bad light and may also defame her. Learned senior counsel further contends that the plaintiff waited for the Nth hour for the release of the film to be scheduled when a substantial amount of expenditure has already been incurred by the defendants on the promotion and release of the film which is scheduled to be released on 7th March, 2014, i.e., two days away. Learned senior counsel further contends that the claim of the plaintiff, as is apparent from the plaint, is primarily monetary and not for the purposes of seeking restraint on the release of the film.

14. For the purposes of grant of an ad interim injunction, the plaintiff has to satisfy three conditions. The prima facie case should in favour of the plaintiff, balance of convenience, and irreparable loss and injury.

15. In the facts of the present case, as enumerated above, the plaintiff, certainly, has a strong prima facie case in her favour inasmuch as the documents prima facie indicate that the movie appears to be based on the plaintiff's life and her organization. There is similarity between the name of the organizations, i.e. Gulabi Gang and the Gulaab Gang and the characters in the film portray the plaintiff's life and her work and wear pink sarees as are worn by the member of the organization of the plaintiff and also the fact that they hold lathis which is identical to the lathis held by the plaintiff's organization depicts clearly that the film talks about the life of the plaintiff, her work and the organization of the plaintiff.

16. As per the plaintiff, the organization of the plaintiff does not operate as a

gang in the usual sense of the term and does not use any weapons. However, in the promos, the life of the plaintiff has been portrayed in a horrific manner wherein the plaintiff has been shown in action with Swords and sickles. The promos show the plaintiff as an antisocial personality in contradiction to her real, life stature where she is a simple lady and serves as an inspiration for various other women of the society. Certainly, a film which appears to be based on the plaintiff's life, her work and the plaintiff's organization, if portrays the plaintiff, her life and her organization in a negative sense, the same would be highly defamatory to the plaintiff. The film which is stated to be released not only in the entire country on 7th March, 2014 but also internationally, in case it is defamatory to the plaintiff, would cause irreparable damage to the reputation of the plaintiff, her life and organization not only in the eyes of the public in India but also internationally. The plaintiff, certainly, has a strong prima facie case in her favour for grant of an ad-interim injunction.

17. The contention of the learned senior counsel for the defendant that the judgment of Zenit Mataplast (P) Ltd. (Supra) has no applicability and is without merit. As noted above, the Supreme Court has laid down that no doubt delay in approaching the Court is a good ground for refusal of interim relief but where the case of the party is based on fundamental rights granted under the constitution, the Court may still grant relief even at a belated stage if the Court is satisfied that applicant has not been negligent in pursuing the case. The delayed reply to the notice of the plaintiff and there being no material to show that the plaintiff was aware that the film was depicting the plaintiff, her life and the organization in a negative and defamatory fashion till the promos of January, 2014 were released explain the delay, if any, on the part of the plaintiff.

18. Learned senior counsel for the defendants has relied on the judgment of this Court in the case of Kanungo Media (P) Ltd. Vs. RGV Film Factory and Others, to contend that silence on the part of the plaintiff may amount to giving up of the rights if any that the plaintiff had. It is noticed that the said judgment deals with the issue of copyright rights of the plaintiff therein viz-a-viz copyright rights of the defendants. The said case did not deal with the issue where the reputation of the parties was at stake. The loss of the copyright right can always be compensated in terms of money whereas the reputation of an individual can never be compensated in terms of money.

19. Learned senior counsel for the defendants has relied on the judgment of Warner Bros. Entertainment Inc. and Another Vs. Harinder Kohli and Others, to contend that where the defendants have invested huge amount of money the balance of convenience would tilt in favour of the defendants and further to contend that delay in approaching the Court for grant of an equitable relief is also fatal. It is noticed that the said case also is a case pertaining to the copyright rights of the plaintiff therein viz-a viz copyright right of the defendant. As stated above, the same can always be compensated in terms of money but there can be no substitute or compensation for the reputation of an individual

because reputation once lost is lost for ever and a reputation can never be compensated in terms of money. The said judgments are not applicable in the facts of this case.

20. The news article relied upon by the defendants dated 10.3.2013 prima facie show that the plaintiff had an impression that the movie which was being made was on the life of plaintiff, her work and her organization. The article does not refer to any defamatory or derogatory depiction of the plaintiff, her life and organisation. The plaintiff had issued notice as far back as in June, 2013. The defendants sat over the notice and did not reply to the same for over seven months and gave a reply only on 04.02.2014. The promos which were released in January, 2014 have depicted the plaintiff, her life and her organization negatively. The promos have given the plaintiff a fresh cause of action to approach the Court. The defendants, in case, they make a film on an individual's life or an organization have to be careful in making the film that it is not derogatory or defamatory. If the defendants make a film depicting someone in a negative character/role the defendants take the risk and responsibility of the same. The delay in approaching the Court would not be fatal in case, it is the reputation of a person which is at stake. The balance of convenience on one side qua defendants is a monetary loss on the other hand qua the plaintiff is not only a monetary loss viz-a-viz her copyright rights, but also her reputation which cannot be compensated in terms of money. The balance of convenience, in my view, tilts in favour of the plaintiff.

21. In case an injunction is not granted and the defendants are permitted to release the film which depicts the plaintiff in a defamatory and derogatory fashion, the plaintiff will suffer an irreparable loss and injury. Plaintiff has even made a suggestion in Court that the plaintiff can be shown the film prior to its release so that if it contains any objectionable and defamatory content it could be pointed out and edited.. The said offer was not accepted by the defendants.

22. The defendants are, accordingly, restrained till the next date of hearing from broadcasting, distributing and promoting the film "Gulaab Gang" in its censored or uncensored prints.

23. Learned senior counsel for the defendants submits that the film has already been distributed to the distributors. The distributors are also restrained from releasing the film till the next date of hearing. The defendants shall inform the distributor of the injunction order passed by this Court.

List on 8th May, 2014.

CS(OS) 638/2014.

Plaint be registered as a suit.

Issue summons in the suit to the defendants. Mr.S.Kahdilker, Advocate accepts notice on behalf of the defendants.

Let written statement be filed in accordance with law.

Replication, if any be filed within four weeks.

Parties shall file their respective original documents with the pleadings.

List on 8th May, 2014.

A copy of order be given dasti under the signatures of the Court Master.