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

% ***Judgment reserved on: 24.08.2026***
Judgment pronounced on: 06.11.2026

CNR No. DLHC010426102024

\+ FAO 228/2024, CM APPL. 41177/2024 (Stay), CM APPL. 41178/2024 (Ex.) & CM APPL. 43347/2024 (To place on record addl. Documents)

HARPER COLLINS PUBLISHERS INDIA PVT. LTD.
.....Appellant

Through: Mr. Essenese Obhan, Ms. Ashima Obhan, Ms. Yogita Rathore and Mr. Tushar Chauhan, Advocates.

versus

MR. RANA KAPOOR & ORS. .....Respondents

Through: Mr. Naman Joshi, Mr. Guneet Sidhu and Mr. Aakash Deep Singh, Advocates for R-1.
Mr. Percival Billimoria, Senior Advocate along with Ms. Nattasha Garg, Mr. Anubhav Dubey, Mr. Thakur Ankit Singh, Ms. Rachita Sood, Ms. Priyamvada Paneru, Ms. Liza Arora and Mr. Anandi Katiyar, Advocates for R-2.

CNR No. DLHC010428932024

\+ FAO 230/2024, CM APPL. 41371/2024 (Interim Relief) & CM APPL. 54953/2025 (For Dispensation of Rejoinder Arguments o/b of the Appellant)

PAVAN CHAND LALL .....Appellant

Through: Mr. Percival Billimoria, Senior Advocate along with Ms.

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Nattasha Garg, Mr. Anubhav Dubey, Mr. Thakur Ankit Singh, Ms. Rachita Sood, Ms. Priyamvada Paneru, Ms. Liza Arora and Mr. Anandi Katiyar, Advocates.

versus

RANA KAPOOR & ORS. .....Respondents

Through: Mr. Naman Joshi, Mr. Guneet Sidhu and Mr. Aakash Deep Singh, Advocates for R-1.
Mr. Essenese Obhan, Ms. Ashima Obhan, Ms. Yogita Rathore and Mr. Tushar Chauhan, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeals, being FAO No. 228 of 2024, preferred by **Harper Collins Publishers India Pvt. Ltd.**[1] and FAO No. 230 of 2024, preferred by Pavan Chand Lall, have been filed under Order XLIII Rule 1(r) read with Sections 104 and 151 of the **Code of Civil Procedure, 1908** [2] **,** arising out of the **common order dated 10.07.2024** [3] passed by the **learned District Judge-07, Central District, Tis Hazari Courts, Delhi**[4] in **CS No. 356/2022**[5], titled *Rana Kapoor v. Harper Collins Publishers India Pvt. Ltd. & Ors.*

[1] HarperCollins
[2] CPC
[3] Impugned Order
[4] learned Trial Court
[5] Suit

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2. Two separate appeals have been preferred assailing the aforesaid Impugned Order. The first appeal, preferred by HarperCollins, arrays Mr. Rana Kapoor as Respondent No. 1, Mr. Pawan Chand Lall, the author of the book titled **"Yes Man: The Untold Story of Rana Kapoor"** [6], as Respondent No. 2, while Respondent Nos. 3 and 4 are *pro forma* parties who have not entered appearance and whose presence is stated to be not material for the adjudication of the present Appeal.

3. The second Appeal has been preferred by Mr. Pawan Chand Lall, wherein Mr. Rana Kapoor is Respondent No. 1, **HarperCollins** is Respondent No. 2, and Respondent Nos. 3 and 4 are the same *pro forma* parties.

4. Since both the Appeals arise from the same Order and involve a common subject matter, *namely*, the legality of the restraint imposed upon the publication, circulation and distribution of the Subject Book, the Appeals are being heard together and are being disposed of by this common Judgment.

5. For the sake of convenience, the parties shall hereinafter be referred to by their respective names.

BRIEF FACTS:

6. The dispute has its genesis in the publication of the Subject Book authored by the Appellant in FAO No. 230 of 2024, Pavan Chand Lall, and published by the Appellant in FAO No. 228 of 2024, HarperCollins.

7. The Subject Book was published on 22.12.2020 and concerns the life and career of Respondent No.1, Rana Kapoor, particularly in

[6] Subject Book

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the context of the rise and subsequent crisis of **Yes Bank Limited**[7].

8. Mr. Rana Kapoor was the co-founder, former Managing Director and Chief Executive Officer of Yes Bank, which was established in 2003 and, over the years, became a significant private sector bank.

9. The affairs of Yes Bank and the role of Respondent No.1 therein came under public scrutiny, particularly after proceedings were initiated by the Directorate of Enforcement and the Central Bureau of Investigation in March 2020. The matter received extensive coverage in the print and electronic media. The Subject Book was thereafter published on 22.12.2020 and, according to the Appellants, remained in circulation thereafter for a period from 22.12.2020 to 10.07.2024.

10. The Appellants also rely upon various articles, news reports and other material concerning Respondent No.1 which had been published and circulated in the public domain. One such publication relied upon in the present proceedings is the article titled **"No real clue- What Rana Kapoor told me when I asked him why Yes Bank failed"**[8]. The proceedings also concern another article titled **"Yes Man- New book maps Yes Bank's rise and fall through the story of Rana Kapoor"** [9] and an interview titled **"Yes Bank co-founder Rana Kapoor was extremely ambitious, didn't hesitate to take shortcuts"**[10].

11. Prior to the institution of the suit from which the present Appeals arise, Mr. Rana Kapoor had instituted proceedings against

[7] Yes Bank
[8] Article-I
[9] Article-II
[10] Subject Interview

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another publisher, *namely* Penguin Random House India Pvt. Ltd. & Ors., in CS No. 581/2021, in relation to allegedly defamatory material concerning him.

12. The circumstances surrounding the aforesaid proceedings and the date on which Mr. Rana Kapoor claims to have acquired knowledge of the Subject Book have also been relied upon by the Appellants in the present proceedings.

13. Mr. Rana Kapoor thereafter instituted the Suit before the learned Trial Court seeking, *inter alia*, permanent injunction restraining the Appellants from selling, distributing and circulating the Subject Book.

14. The suit was founded on the allegation that the contents of the Subject Book, as also the Articles and Subject Interview, were defamatory and infringed his rights relating to reputation, privacy and personality, besides allegedly prejudicing his right to a fair trial.

15. During the course of the proceedings, the Appellant, Pawan Chand Lall, was proceeded *ex parte* by the learned Trial Court. The application under Order XXXIX Rules 1 and 2 of the CPC was thereafter heard, and the arguments were ultimately concluded, and the learned Trial Court pronounced the Impugned Order on 10.07.2024.

16. By the Impugned Order, the learned Trial Court allowed the application under Order XXXIX Rules 1 and 2 CPC and, *inter alia*, restrained the defendants, their associates, agents and other persons acting on their behalf from selling, distributing or circulating the Subject Book during the pendency of the suit. The learned Trial Court further restrained the defendants from authoring, making, publishing, republishing, circulating or communicating to the public defamatory,

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libellous or slanderous statements against Mr. Rana Kapoor by way of the Subject Interview and Articles-I and II, and directed removal of the said Articles and Interview from the concerned websites and YouTube channels.

17. Aggrieved by the aforesaid directions, HarperCollins and Pavan Chand Lall, respectively, have preferred the present Appeals.

SUBMISSIONS ON BEHALF OF HARPER COLLINS:

18. Learned counsel for HarperCollins, at the outset, would submit that the Impugned Order is *ex facie* erroneous and contrary to the settled principles governing actions for civil defamation.

19. He would submit that an essential element of a claim for defamation is injury to the reputation of the person complaining of the alleged defamatory publication. It would be contended that although the Subject Book was published on 22.12.2020 and remained in circulation for a considerable period before the institution of the suit, the plaint does not set out any specific instance demonstrating that the reputation of Mr. Rana Kapoor, was actually harmed as a consequence of the publication.

20. Reliance in this regard is placed upon ***Mahaveer Singhvi v. Hindustan Times Ltd.***[11], and ***Prof. Imtiaz Ahmad v. Durdana Zamir***[12], to submit that harm to the reputation of the person alleging defamation is an essential consideration in determining whether a claim for defamation is made out and that, in the absence of any such pleading or material, the claim cannot be sustained merely on the basis of alleged injury to feelings or annoyance.

21. Learned counsel would further submit that the statements

[11] 2024 SCC OnLine Del 4409
[12] 2009 SCC OnLine Del 477

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complained of, at the highest, constitute comment and opinion upon matters concerning the affairs of Yes Bank and the role of Rana Kapoor therein, which had already received extensive coverage in the public domain. The material relied upon in the Subject Book, it would be submitted, includes articles, reports and judicial orders which were already available in the public domain, upon which the author has expressed his opinion.

22. It would also be pointed out that Mr. Rana Kapoor had identified 22 statements from the Subject Book as being defamatory, whereas the learned Trial Court considered only 16 of those statements and found only 3 to be defamatory. Even assuming, without admitting, that the findings in respect of those 3 statements were sustainable, learned counsel would submit that there could have been no justification for restraining the circulation of the entire Book.

23. Reliance is placed upon ***Ashutosh v. Arun Jaitley***[13], in support of the submission that an injunction in respect of particular offending statements cannot, without more, justify a restraint upon the publication of the entire work.

24. Learned counsel would submit that the learned Trial Court has also failed to appreciate the legal requirements governing a claim founded upon innuendo.

25. He would submit that where the defamatory meaning is not apparent from the words themselves and is sought to be derived from a secondary or extended meaning, the import of such innuendo is required to be specifically pleaded.

26. It would be submitted that Mr. Rana Kapoor failed to set out the

[13] 2016 SCC OnLine Del 3587

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alleged secondary meaning or the manner in which the statements conveyed such meaning and, consequently, could not have been granted relief on that basis. He would further submit that there was no *prima facie* case of defamation in law so as to warrant the grant of an injunction against publication.

27. Learned counsel would rely upon ***Bloomberg Television Production Services India (P) Ltd. v. Zee Entertainment Enterprises Ltd.***[14], to submit that courts ought not ordinarily grant injunctions against publication except in exceptional circumstances, particularly where the defence raised by the publisher cannot be said to be bound to fail at trial.

28. He would contend that, although the learned Trial Court noticed its reliance upon ***Bloomberg*** (supra), it failed to demonstrate how the statements in question were false, malicious or palpably false, or how they arose from any personal animosity towards Mr. Rana Kapoor.

29. It would further be submitted that the three-fold test for grant of an interim injunction, namely, *prima facie* case, balance of convenience and irreparable injury, was not satisfied.

30. He would contend that, in the absence of a *prima facie* case of defamation, the question of balance of convenience and irreparable injury could not have been answered in favour of Mr. Rana Kapoor.

31. Learned Counsel for HarperCollins would accordingly pray that the Impugned Order be set aside.

SUBMISSIONS ON BEHALF OF PAWAN CHAND LALL:

32. Learned senior counsel appearing for Pavan Chand Lall, the author of the Subject Book, would substantially adopt the submissions

[14] 2024 SCC OnLine SC 426

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advanced on behalf of HarperCollins and would submit that the Impugned Order causes a serious restraint upon his freedom of speech and expression as an author and journalist.

33. He would submit that the Subject Book was first published on 22.12.2020 and has remained in circulation thereafter, and that the statements contained therein are based upon material already available in the public domain and constitute the author's comment and opinion upon matters concerning Yes Bank and Mr. Rana Kapoor.

34. Learned senior counsel would submit that the grant of a pre-trial injunction against a literary work is an exceptional exercise, since such restraint operates in substance as a form of prior censorship. Reliance is again placed upon ***Bloomberg*** (supra), to submit that the Court is required to exercise particular caution before restraining journalistic or literary expression prior to a full-fledged trial.

35. He would further submit that the question whether the statements are justified by truth, fair comment or privilege cannot ordinarily be conclusively determined at the interlocutory stage. In this regard, reliance is also placed upon ***Khushwant Singh & Ors. v. Maneka Gandhi***[15]and ***Tata Sons Ltd. v. Greenpeace International & Anr.***[16]**,** to submit that the competing interests of reputation and freedom of expression are required to be carefully balanced and that an excessive restraint ought not to be imposed before the defence of the author has been tested in accordance with law.

36. Learned senior counsel would submit that the fact that the subject matter of the Subject Book concerns a public figure does not, by itself, eliminate the protection available to reputation; however,

[15] 2001 SCC OnLine Del 1030
[16] 2011 SCC OnLine Del 466

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equally, the public nature of the subject matter and the availability of the underlying material in the public domain are relevant circumstances in assessing whether the extraordinary remedy of an injunction ought to be granted.

37. He would further submit that the material relied upon by Pavan Chand Lall was not presented as an entirely new factual narrative divorced from the existing public record, but was drawn from articles, reports and judicial proceedings which had already entered the public domain.

38. Learned senior counsel would also submit that Mr. Rana Kapoor has not demonstrated any specific instance of injury to his reputation attributable to the Subject Book, despite the Subject Book having remained in circulation for a substantial period prior to the institution of the suit. The delay in seeking restraint, it would be submitted, is therefore a material circumstance which ought to have weighed with the learned Trial Court while examining the balance of convenience and irreparable injury.

39. He would accordingly submit that the Impugned Order does not satisfy the stringent standard applicable to a pre-trial restraint upon publication and that the restraint imposed upon the Subject Book is liable to be set aside.

SUBMISSIONS ON BEHALF OF Mr. RANA KAPOOR:

40. ***Per contra***, learned counsel appearing for Mr. Rana Kapoor would submit that the present Appeals do not disclose any ground warranting interference with the Impugned Order, which represents a reasoned exercise of discretion by the learned Trial Court upon consideration of the pleadings and material placed before it.

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41. At the outset, learned counsel would submit that the scope of appellate interference with an order granting or refusing interlocutory relief is limited. Reliance is placed upon ***Ramakant Ambalal Choksi v. Harish Ambala Choksi & Ors.***[17], as well as the principles governing appellate interference with discretionary orders, to submit that the Appellants cannot seek a re-appreciation of the material merely because another view may be possible.

42. He would submit that the learned Trial Court has considered the pleadings, the statements complained of, and the material relied upon by the parties and has thereafter applied the settled test of *prima facie* case, balance of convenience and irreparable injury. The findings recorded in the Impugned Order, it would be submitted, are neither arbitrary nor perverse so as to warrant interference in appellate jurisdiction.

43. Learned counsel would further submit that the status of Mr. Rana Kapoor as a public figure does not deprive him of the protection of his reputation. Reliance is placed upon ***Swami Ramdev v. Juggernaut Books Pvt. Ltd.***[18], to submit that the right to reputation continues to receive legal protection even where the person concerned is a public figure, and that the right to freedom of speech cannot be treated as an unfettered licence to publish defamatory imputations.

44. He would submit that the Appellants cannot escape liability merely by contending that similar allegations had previously appeared in the public domain. It would be contended that the repetition of an allegedly defamatory imputation does not, by itself, establish its truth. Reliance is again placed upon ***Swami Ramdev*** (supra), to contend that

[17] 2024 SCC OnLine SC 3538
[18] 2018 SCC OnLine Del 11549

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the publisher cannot simply adopt material published elsewhere and seek immunity on that account.

45. Learned counsel would further controvert the reliance placed upon ***Khushwant Singh*** (supra) and ***Tata Sons*** (supra), and would submit that the principles governing those decisions cannot be applied mechanically without regard to the nature and character of the statements complained of in the present case.

46. It would be submitted that the question before the Court is not merely whether the underlying subject matter was in the public domain, but whether the particular imputations contained in the Subject Book were capable of causing injury to the reputation of Mr. Rana Kapoor.

47. On the question of delay, learned counsel would submit that the chronology relied upon by the Appellants does not justify denial of interim protection. He would submit that Mr. Rana Kapoor remained incarcerated from 08.03.2020 to 19.04.2024 and that he acquired knowledge of the Subject Book only on 13.01.2022 during the course of the earlier proceedings instituted against another publisher. The institution of the present proceedings thereafter, it would be submitted, cannot be characterised as an unexplained or deliberate delay.

48. He would further submit that the subsequent delay in adjudication of the interim application was not attributable to Mr. Rana Kapoor, but resulted from circumstances such as changes in the roster and transfer of Judges. The Appellants, therefore, cannot derive an advantage from the time taken by the Court in adjudicating the application.

49. Learned counsel would finally submit that the learned Trial

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Court was justified in considering the nature of the statements, the surrounding circumstances, the pleadings of the parties and the competing interests of reputation and freedom of expression before granting the injunction.

50. The Impugned Order, it would be submitted, represents a proper exercise of judicial discretion, satisfies the requirements under Order XXXIX Rules 1 and 2 CPC, and does not suffer from any perversity or arbitrariness warranting interference in the present Appeals.

51. He would, therefore, pray that both the Appeals be dismissed and the Impugned Order be sustained.

52. No other submissions were advanced on behalf of the Parties.

ANALYSIS:

53. This Court has heard learned counsel for the parties and, with their able assistance, perused the material on record, including the Impugned Order.

54. At the outset, it is necessary to delineate the scope of the jurisdiction exercised by this Court in the present Appeals. The Impugned Order has been passed by the learned Trial Court in exercise of its discretion under Order XXXIX Rules 1 and 2 of the CPC. An order granting or refusing an injunction under the aforesaid provisions is appealable under Order XLIII of the CPC. The present proceedings, therefore, constitute an exercise of appellate jurisdiction against an interlocutory discretionary order.

55. The nature of such jurisdiction, however, is distinct from the jurisdiction exercised by the Court of first instance while considering an application for interim injunction. The appellate court is not required to substitute its own discretion merely because, upon an

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independent consideration of the material, it may be possible to arrive at another view.

56. The parameters governing appellate interference with an order granting or refusing interlocutory relief have been authoritatively settled by the Supreme Court in ***Wander Ltd. v. Antox India (P) Ltd.***[19].

57. In ***Wander*** (supra), the Hon'ble Supreme Court held that an appeal against the exercise of discretion in relation to an interlocutory injunction is an appeal on principle. The appellate court would not ordinarily interfere with the discretion exercised by the Court of first instance and substitute its own discretion, unless such discretion is shown to have been exercised arbitrarily, capriciously or perversely, or the Court below has ignored the settled principles governing the grant or refusal of interlocutory injunctions.

58. The Hon'ble Supreme Court further cautioned that the appellate court ought not to reassess the material merely with a view to arriving at a conclusion different from that reached by the Court below, where the conclusion arrived at is a reasonably possible one on the material available.

59. The aforesaid principle has subsequently been reiterated by the Hon'ble Supreme Court, including in ***Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan***[20], wherein it was emphasised that the mere availability of another possible view cannot, by itself, justify appellate interference with the exercise of discretion under Order XXXIX CPC.

60. Recently, the aforesaid principles have been considered and

[19] 1990 SCC OnLine SC 490
[20] (2013) 9 SCC 221

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reiterated by the Hon'ble Supreme Court in ***Ramakant Ambalal Choksi*** (supra)**.**

61. The Hon'ble Supreme Court, after considering ***Wander*** (supra) and the subsequent authorities, reiterated that an appellate court, while exercising jurisdiction under Order XLIII of the CPC, is required to adjudicate upon the validity of the order granting or declining interim injunction within the settled contours governing such jurisdiction.

62. The jurisdiction of this Court in the present Appeals must, therefore, be exercised within the aforesaid parameters. This Court is not required to determine, at this interlocutory stage, whether the case of either party would ultimately succeed at trial. The enquiry is confined to examining whether the learned Trial Court, while granting the interim injunction, exercised its discretion in accordance with the settled principles governing such relief and whether the conclusion arrived at is one which could reasonably have been reached on the material available before it.

63. At the same time, the aforesaid limitation does not denude this Court of its appellate jurisdiction. Where the discretion exercised by the Court below is found to be arbitrary, capricious or perverse, where relevant considerations have been ignored, or irrelevant considerations have been taken into account, or where the settled legal principles governing the grant of interlocutory injunction have not been properly applied, this Court would be justified in interfering with the Impugned Order.

64. The question, therefore, is not whether this Court may have arrived at a different conclusion, but whether the exercise of discretion by the learned Trial Court falls within the permissible bounds of appellate review. The relevant findings recorded by the learned Trial

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Court, insofar as they bear upon the issues arising for consideration in the present Appeals, are extracted hereunder:

"ORDER

Vide this order, I shall decide an application filed under Order 39 Rule 1 & 2 CPC seeking a stay order against defendants. I have heard arguments on the said application at length from Sh. Naman Joshi, Ld. Counsel for the plaintiff and Ms. Swathi Sukumar, Ms. Ashima, Ms. Akanksha Dua, Ms. Yogita Rathore and Sh. Ritik Raghuwanshi, Ld. Counsel for defendant no.1. Defendant no. 2 to 4 are ex parte. File perused.

2. The present suit was filed for relief of declaration, permanent and mandatory injunction by claiming that plaintiff is a reputed and well recognized person in banking sector and he was co-founder of Yes Bank Ltd. and under his leadership, the Yes Bank saw great success and robust growth and its capital of INR 200 crores reached to INR 93,000 crores in 018 and plaintiff also generated employment opportunities for more than 24,000 people. It is also claimed that the plaintiff was also awarded various prestigious awards (list of the same are mentioned in the plaint). It is alleged that defendant no.1, which is a publishing house and defendant no.2 who is an author, published a book under the name and title as ***"Yes Man: The Untold Story of Rana Kapoor"*** and the said book finds mentioned various references/remarks which are defamatory in nature and violate the fundamental right under Article 21 of the plaintiff. It is further claimed that the said false allegations may prejudice the ongoing investigation and the trial against the plaintiff.

3. In the written statement filed on behalf of the defendant no.1, it is claimed that under Article 19 of the Constitution of India, the defendant no.1 has a right to publish an article or a book and there is no objectionable or defamatory content in the said book against the said plaintiff. Both the parties relied on various case laws which are as under:

Cases relied by the plaintiff

(i) ***'Swami Ramdev v. Juggernaut Books Pvt. Ltd. and Ors.'***

, C.M.(M) No. 556/2018 @ Paras 72, 150, 180, decided by

Hon'ble High Court of Delhi.

(ii)***'Nilesh Navlakha and Ors. v. Union of India, 2021 SCC***

OnLine Bom 56' Hon'ble High Court of Bombay;

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(iii)'***State of Maharashtra v. Rajendra Jawanmal Gandhi, (1997) 8 SCC 386, R.K. Anand v. Delhi High Court, (2009) 8 SCC 106, and Sidhartha Vashisht @Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1;***

(iv) Hon'ble High Court of Bombay in ***'Mushtaq Moosa Tarani v. Government of India and Ors., 2005 SCC OnLine Bom 385 @ Paras 50, 53, 58, 61, 65.***

Cases relied by the Defendant no.1.

1.National Stock Exchange of India Vs. Moneywise Media Pvt. Ltd. & Ors. - 2015 SCC OnLine Born 4790

2.Tata Sons Limited Vs.Greenpeace International & Anr. - 2011 SCC OnLine Del 466

3.Prof. Imtiaz Ahmad Vs. Durdana Zamir, -2009SCC OnLine Del 477

4. M/s Crop Care Federation of India Vs. Rajasthan Patrika.C.S. (OS) 531/2005

5.Khushwant Singh Vs. Maneka Gandhi - 2001 SCC OnLine Del 1030

6.Pushpa Sharma Vs. D.B. Copr. Ltd. and Ors., 2018 SCC OnLine Del 11537

7.R. Rajagopal Vs. State of T.N.(1994) 6 SCC 632

8. ESSEL Infraprojects Limited and Anr. Vs. Devamdera Prakash Mishara -2014 (1) AIR BOM R 482

9.Harvest Securities Pvt. Ltd. Vs. BP Singapore Pvt. Ltd. and Anr.-2014 SCC Online Del 2384

10.Susheel Ansal Vs. Endemol India Pvt. Ltd. -2023 SCC Online Del 121

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11.Durga Oraon Vs. State of Jharkhand,-2012 SCC OnLine Jhar 77

12. Navigators Logistics Ltd. v Kashif Qureshi & Ors., (2018) 254 DLT 307

13. Elcom Innovation Pvt. Ltd. v Harish Sharma & Ors., 2022 SCC OnLine Del 1123

14.Sahara India Real Estate Corpn. Ltd. v. SEBI, (2012) 10 SCC 603

15. Industrial Finance Corporation of India v Maharashtra State Co-Operative, 2016 SCC OnLine Bom 5080

16. M/S Gokaldas Paper Products v M/S Lilliput Kidswear Ltd. & Anr., CCP (CO.) No. 9 of 2013 Order dated 05.04.2023 passed by the Ho'ble High Court of Delhi

17. Shri Gopal Engg. & Chemical Works v M/s/ POMX Laboratory, DRJ 1992 (22)

18. B.L. and Co. and Ors. v Pfizer Products Incl., 2001SCC Online Del: 637

19. S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1.

20. Bloomberg Television Production Services India vs. Zee Entertainment Enterprises Limited, Special Leave to Appeal (C) No. 6696/2024.

Arguments/submissions of the Ld. Counsel for the plaintiff.

4. Ld. Counsel for the plaintiff argued that the present suit was filed as the Book in question will directly affect the life and profession of the Plaintiff as well as the ongoing investigations against him. The Book's contents can cause irreparable harm to the Plaintiff's reputation, if its further circulation/sale is not stopped. He further

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argued that the plaintiff is seeking mainly the reliefs of (1) declaratory decree holding the contents of the Book, Interview, Article 1 and Article 2 as defamatory; (2) a permanent injunction restraining the sale/distribution/circulation of the Book in question; (3) a mandatory injunction for recall and destruction of all unsold copies/inventory of the Book, etc.

5. It is argued that a combined reading of the Book, Articles and contents of the Interview clearly reveal that the Defendant No.2's propensity to dubiously analyses the "thoughts" and "psychology" of the Plaintiff, cast unfounded/baseless aspersions on his business career and family life. He also submitted that it is a well settled proposition of law that the right to reputation supersedes the right to publication. In this regard, he relied on the case of '***Nilesh Navlakha and Ors. v. Union of India, 2021 SCC OnLine Bom 56'*** Bombay High Court where it was held that in cases of conflict between the right to a free and fair trial and the right to freedom of speech and expression, the former must be zealously guarded over the latter.

6. He further argued that assuming without conceding that the Plaintiff is indeed a "public figure", in that case also this does not *ipso facto* give a license to the defendant for defamation of the plaintiff. In this regard, the Ld. Counsel for the plaintiff relied on the case of ***'Swami Ramdev v. Juggernaut Books Pvt. Ltd. and Ors.'***, C.M.(M) No. 556/2018 @ Paras 72, 150, 180, decided by Hon'ble High Court of Delhi.

7. Referring to a spectrum of decisions on media trials, including ***'State of Maharashtra v. Rajendra Jawanmal Gandhi, (1997) 8 SCC 386, R.K. Anand v. Delhi High Court, (2009) 8 SCC 106, and Sidhartha Vashisht @Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1***, the Ld. Counsel for the plaintiff emphasized that trial by media should not hamper fair investigation by the investigating agency and should not prejudice the right of defence of the accused in any manner as it will amount to a travesty of justice.

8. The Ld. Counsel for the plaintiff urged that investigation(s) are still ongoing and various agencies yet to file their chargesheet(s). The criminal laws of India require that a person's guilt be proved beyond reasonable doubt and an accused is presumed innocent unless the contrary is proved in a court of law. Broadcast of

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materials in the mainstream media tends to influence the minds of the general population, Hon'ble Judges, Ld. Prosecutors and witnesses who are all human and, therefore, they are not immune to discussion, debate, and influences, as was held by the Hon'ble High Court of Bombay in **'Mushtaq Moosa Tarani v. Government of India and Ors., 2005 SCC OnLine Bom 385.**

9. It is also asserted that in a similar case, the interim injunction granted in Karkardooma Court, dealing with a similar book, has been upheld by the Hon'ble High Court of Delhi, therefore, present application also deserves to be allowed.

Submissions/arguments on behalf of the defendant no.1

10. Ld. Counsel for the defendant no.1 relied on the case of **'Tata Sons Limited v. Greenpeace International and Anr., 2011 SCC OnLine Del 466'** and argued that the statements complained of, are not defamatory in the light of publicly available material about the Plaintiff. The Plaintiff is a public figure and has been covered by various news articles in relation to the pending criminal proceedings against him, which are extracted in **Annexure A**. She further argued that there is no pleading as to how the Plaintiff's reputation has been lowered, which is an essential ingredient of the tort of defamation. There is no averment that any third person had read the Book which tarnished the image of the Plaintiff. Such a pleading is a *sine qua non* for a claim of defamation. In this regard, she relied on the following observations of decision in ***Prof. Imitaz Ahmad v Durdana Zamir, 2009 SCC Online Del 477:***

> *"Where a person alleges that his reputation has been damaged, it only means he has been lowered in the eyes of right-thinking persons of the society or his friends/relatives. It is not enough for a person to sue for words which merely injure his feeling or cause annoyance to him. Injury to feeling of a man cannot be made a basis for claiming of damages on the ground of defamation. Thus, the words must be such which prejudice a man's reputation and are so offensive so as to lower a man's dignity in the eyes of others. Insult in itself is not a cause of action for damages on the ground of defamation.....It is not the case that people have abandoned him or boycotted him because of this imputation. The plaintiff has not*

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named a single person who had changed his opinion after filing of the complaint by the defendant."

11. Therefore, it is submitted that there is no factual basis for the plaintiff to seek an injunction against the Book in question and the standard in law for a defamation action can be gleaned from the following judgments:

i. The statements should be malicious and palpably false ***(Pushp Sharma v. D. B. Corp. Ltd. & Ors., 2018 SCC Online Del 11537);***

ii. Even where the publication is based upon facts and statements which are not true, unless the Plaintiff establishes that the publication was made by the defendant with reckless disregard of truth. It has to be shown by the Plaintiff that the publication is proved to be false and actuated by malice or out of personal animosity ***(R. Rajagopal v. State of Tamil Nadu, 1994 (6) SCC 632, Paragraphs 26 (3) and 29;);***

iii.Exaggerated or hyperbolic speech, in respect of matters of public concern does not entitle the Plaintiff to seek injunction in a case of defamation ***(Tata Sons Limited v. Greenpeace International & Anr., 2011 SCC OnLine Del 466, Paragraphs 29-36,38-39);*** and

iv.No injunction can be granted in relation to matters that fall within the domain of thought provocation and debate and criticism ***(Swami Ramdev v Juggernaut Books Pvt. Ltd. & Ors., 2018 SCC OnLine Del 11549)***.

Submission of Defendant no.1 on the point that plaintiff is a public figure and ought to tolerate criticism

12. The Plaintiff is a public figure who has voluntarily been in the limelight, including by being the first banker to have hired a PR agent to manage his public image and has made himself indistinguishable from Yes Bank Limited. He was in the habit of issuing press releases, like the one issued on Republic Day in 2016, personally congratulating the French President for supply of Rafale Jets (At Page 203 of the Defendant No. 1's documents along with Written Statement). He has always conducted himself as a public

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figure. The Plaintiff was admittedly at the helm of affairs serving as founder, chief executive officer and managing director at the bank named Yes Bank Limited, by virtue of which, the Plaintiff was holding office of a public institution in which the public at large has an interest. Therefore, the legal standards in respect of publication about the Plaintiff's role in the Yes Bank crisis are different from that of a lay person.

13. The Ld. Counsel for the plaintiff argued that plaintiff is a public figure and, therefore, following observations should be kept in mind while deciding the present application:

> i. Public gaze cannot be avoided when holding public office. Where prior publications exist, interlocutory injunction cannot be granted. Silence in respect of prior publication amounts to acquiescence or at least lack of grievances in respect of publication of the material. Persons holding public office should show greater tolerance for comments and criticism. For the purpose of publication, if it is to the interest to the public, it would suffice. People have a right to hold a particular view and express freely on the matter of public interest. ***Khushwant Singh v. Menaka Gandhi, 2001 SCC Online Del 1030, Paragraphs 20, 21, 22, 59, 63, 67, 68, 69, 70, 71 and 75;***
>
> ii.In 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. The Defendant has a right to publish its story as it appears from public records, even without consent or authorization; ***R. Rajagopal v State of Tamil Nadu, 1994 (6) SCC 632;***
>
> iii. In a case of a public figure instituting a case of defamation, if the defendant demonstrates that he acted after reasonable verification of facts, it is sufficient to dislodge the claim for injunction. If public interest is involved, defamation action cannot be used to negate or stifle genuine criticism, even pointed criticism or criticism that is harshly worded. ***'National Stock Exchange of India Limited v Moneywise Media Private Limited & Ors.', 2015 SCC OnLine Bom 4790;***

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iv.A Plaintiff who is a public figure will have to show that the statements were made out of malice. ***Tata Sons Limited v Greenpeace International & Anr., 2011 SCC OnLine Del 466.***

14. Ld. Counsel for the defendant no.1 submitted that in March 2020, the Plaintiff was arrested on various criminal charges and had undergone judicial custody on several charges, including money laundering and bribery. Further to his arrest, there have been several publications which named the Plaintiff and commented against him starting from March 2020. The Defendant herein has filed several of these publications as part of its list of documents, the existence of which have been admitted by the Plaintiff in its affidavit of admission/denial of documents. The contents of some of the publications have been annexed as Annexure A.

15. None of the statements in the Book even remotely approach the kind of statements already made about the Plaintiff in the public domain, including through several news articles, which constitute the Plaintiff's public image. A perusal of the extracts of the Book reproduced in the Plaint, complained to be defamatory, show that the statements complained of, are not ex facie defamatory, but rather it is the Plaintiff's case they are in the nature of innuendo. The Plaintiff has not pleaded what the innuendo is behind the statements which are allegedly defamatory to the Plaintiff.

16. When it is a case of defamation by innuendo, the pleading needs to specify what is the import of the innuendo alleged to be defamatory. Reference may be made in this regard to the case of **'ESSEL Infraprojects Limited & Anr. v Devendra Prakash Mishra & Ors.'**, 2014 SCC OnLine Bom 1780 which holds that the words complained of as being defamatory have to be set out, in cases where the defamatory sense is not apparent the "innuendo" / secondary or extended meaning of the same must be set out in clear terms in the plaint. If the words are reasonably capable of bearing more than one literal meaning or if the defamatory meaning relied on is inferential, it is desirable and may even be necessary to plead the defamatory meaning or meanings. Therefore, in the absence of pleading on the import of the innuendo, disentitles the plaintiff from the relief claimed.

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17. All statements from the book complained of in the Plaint are based on public domain sources and is truth and fair comment. Every statement alleged to be defamatory in the Plaint has been justified by the Defendant No. 1 in its written statement either on the basis of prior publication either as part of judicial record or public records or on the basis that it is a fair comment. The relevant portions of the Written Statement are available at Paragraphs 44 (Pages 29 to 51), 50 (Pages 61 to 66), 51 (Pages 66 to 75), 67 (Pages 92 to 94) and 95 (Pages 115 to 118); all at Volume 1. By publishing the Book, the Defendant No. 1 has not engaged in sensationalizing this case but is merely conducting an exploration on how public faith in the Indian banking sector has been compromised. Regardless of the fact that every statement published in the Book is justified and justifiable, the Plaintiff has failed to plead the innuendo, and the effect of the innuendo, behind the allegedly defamatory statements in the Book.

18. Ld. Counsel for the defendant no.1 urged that a holistic reading of the Book, beginning with the "Author's Note" and the "Prologue" on the banking sector, show that the entire exercise in the Book is that of making a fair comment on the state of affairs in the banking industry, of which unfortunately Yes Bank, which was almost exclusively controlled by the Plaintiff has become an example of how a bank is not supposed to be run. All the prior publications recognize the Plaintiff's role in the collapse of Yes Bank, hence it is not possible to speak about the crisis in Yes Bank without naming the Plaintiff.

Plaintiff's Reliance on the judgment in Swami Ramdev's case

19. The Plaintiff in its arguments has extensively relied on the judgment in the case of ***Swami Ramdev v. Juggernaut Books Pvt. Ltd. & Ors***, to canvas that injunction ought to be granted in favor of the Plaintiff. The Hon'ble Court's finding in the case of Swami Ramdev (Supra) can be summed up as follows:

i. The statements complained in the case dealt extensively with the life of Swami Ramdev. (Para 13 to 18 of Swami Ramdev, at Volume 4)

ii. The Book also contained specific allegations against Swami Ramdev in regards to the death of Swami

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Yoganand and the disappearance of Shankar Dev. (Para 139 & 148 of Swami Ramdev, at Volume 4)

iii.The Court found that there exists a "closure report" in the case of death of Swami Yoganand and there also exists an "untraced report" in the case of Shankar Dev. These being prior publications which were in existence at the time of publication of the Book; prima facie the portions of the Book which are contrary to it cannot be found to be justifiable and only these portions of the Book were injuncted. (Para 172,178, 181 of Swami Ramdev, at Volume 4)

iv.In regards to the other portions of the Book which have extensively dealt with the life of Swami Ramdev, complained in the Plaint, the court found that, the same prima facie falls within the domain of thought provocation and debate and criticism and the prayers in relation thereto cannot granted. (Para 182 of Swami Ramdev, at Volume 4).

No real and substantial risk of prejudice being caused to the right to fair trial of the plaintiff.

20. The Plaintiff's claim that the publication of the Book affects his right to a fair trial in the criminal proceedings is a bald averment as the Plaintiff has failed to show real or substantial risk of prejudice being caused by the publication of the Book. The Plaint has no pleading on how the publication of the Book has interfered with his right to a fair trial. It is trite that judges and judicial officers are specially trained in law, and not to be swayed by published materials they may come across. In this regard, reliance is placed on the following judgments:

i.Sahara India Real Estate Corporation Limited v SEBI, 2012 (10) SCC 603, Paragraphs 46, 47 and 50; at Volume 3:

(With regard to postponement of publication related to ongoing criminal matters, it has to be shown that the publication interferes with the administration of justice and that there is a real and substantial risk of prejudice caused to the Plaintiff by the publication); and

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ii.Durga Oraon v State of Jharkhand, 2012 SCC OnLine Jhar 77, Paragraphs 2 and 6; at Volume 6:

(Criminal trials are decided by evidence given in a case and administration of justice is not influenced by consideration of any publication).

21. It is to be noted that as late as May 2023, when the Plaintiff was denied bail in one of the ongoing criminal proceedings against him, the bail order of the Hon'ble High Court of Bombay reiterated the charges that have been brought against the Plaintiff, and has been filed as an additional document by Defendant No. 1 on July 8, 2023. Furthermore, there are several news publications which have given a wide range of reportage on this bail order, which have been filed as additional documents by Defendant No. 1 on July 8, 2023 (at Volume 7). The fact that the Plaintiff has not taken any action against these publications, shows that there is no real and substantial risk that has been caused to the Plaintiff, so as to prejudice his right to fair trial. If the Plaintiff was truly aggrieved by the publicity he has received from these articles, he ought to have taken action to protect himself and his right to reputation. Rather he has shown, from his conduct, that no true harm or hardship has been caused to him, he has acquiesced to the reportage in this regard and with regard to his alleged involvement in several high-profile white collar crimes and cannot object to the publication of the Book at this stage.

Consent of the Plaintiff is not required to publish the Book

22. The plaintiff alleges that no prior consent was obtained by the defendant in the publication of the book. It is submitted that as laid down by Hon’ble Supreme Court in the case of R. Rajagopal v. State of Tamil Nadu, 1994 (6) SCC 632, the defendant has a right to publish without the prior consent of the plaintiff. The defendant had no obligation to approach the plaintiff, as has been contended by the plaintiff. Without prejudice to the foregoing, the plaintiff was contacted before the publication of the Book.

Plaintiff's claim of personality rights has no basis

23. While the Plaintiff's claim to personality rights was not argued during oral arguments, it has been pleaded in passing. However, personality rights claims arise from the use of a personality as a trademark on goods or services. It does not have applicability in the

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case of publication of a book about a person. No such cause of action on how the commercial interest of the Plaintiff's personality are affected has been pleaded. In the absence of any pleading, no case has been made out for the grant of reliefs under such a claim. The first judgment in India to deal with the concept of personality rights was **D.M. Entertainment Pvt. Ltd. v Baby Gift House and Ors.,** 2010 SCC OnLine Del 4790; at Volume 11, in which dolls in the likeness of the famous singer Daler Mehndi were injuncted from being sold. However, even in those facts, the Hon'ble Delhi High Court held as under:

> "Para 16. The right of publicity can in a jurisprudential sense. Be located with the individual's right and autonomy to permit or not permit the commercial exploitation of his likeness of some attributes of his personality. However, a word of caution has to be expressed here. In a free and democratic society, where every individual's right to free speech is assured. the over emphasis on a famous person's publicity rights can tend to chill the exercise of such invaluable democratic right. Thus, for instance, caricature, lampooning, parodies and the like which may tend to highlight some aspects of the individuals personality traits, may not constitute infringement of such individual's right to publicity. If it were held otherwise an entire genre of expression would be unavailable to the general public." (emphasis supplied).

24. Recently, in a case involving personality rights, the Hon'ble High Court of Delhi in the case of **Digital Collectibles Pte Ltd and Ors. V Galactus Funware Technology Private Limited and Anr., 2023 SCC OnLine Del 2306 (at Volume 11)** has held as follows:

> *"Para 127. The extent of right of publicity also has to be considered in the context of the right to freedom of speech and expression protected under Article 19(1)(a) of the Constitution of India. Even if the right of publicity were to be considered to be an absolute right in India, it still must be subservient to Article 19(1)(a) of the Constitution of India. This is exactly what Bhat, J. sought to explain in paragraph 14 of his judgment in DM.*

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> *Entertainment (supra) and carved out exceptions in the form of caricature. lampooning, parodies and the like. Even in the U.S., courts have held the right of publicity to be subservient to the right of free speech under the First Amendment. Some of the defences recognized by the U.S. courts include newsworthiness, cartoons, caricatures, parodies and other information available in public domain.*

Para 128. In my opinion, use of celebrity names, images for the purposes of lampooning, satire, parodies, art, scholarship, music, academics, news and other similar uses would be permissible as facets of the right of freedom of speech and expression under Article 19(1)(a) of the Constitution of India and would not fall foul to the tort of infringement of the right of publicity." (emphasis supplied)

Plaintiff's claim of right to be forgotten / left alone is not based on pleadings and is false

25. The Plaintiff in his arguments has made the claim of 'right to be forgotten/left alone' as a facet of right to privacy and reputation, although no such right is pleaded in the Plaint. The Plaintiff's arguments are completely hypothetical that, if Mr. Kapoor is acquitted, his right to be forgotten would be affected. Such a speculative or hypothetical situation cannot form the basis of a claim, and the Plaintiff may approach the Court if and when he is acquitted.

26. Further, the Supreme Court of India in the case of R. Rajagopal v State of Tamil Nadu, 1994 (6) SCC 632 at Paragraphs 26 (1) and (2) (at Volume 6) has held that right to privacy/right to be forgotten is subject to the exception that any publication becomes unobjectionable if such publication is based on public records including court records. Therefore, the right of the Plaintiff to be forgotten/left alone does not in any manner restrict the Defendant No. 1's freedom of speech and expression under Article 19 of the Indian Constitution as the Book is based on publicly available material and also judicial records, forming an unobjectionable part of public record.

27. Ld. Counsel for the defendant no.1 argued that the Plaintiff has failed to make out a prima facie case as the orders sought by the

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Plaintiff are impermissible in law as held by above cited authorities. Further, on account of acquiescence to prior publication and the delay in approaching the Hon'ble Court, the balance of convenience lies in favor of declining injunction as also because the Plaintiff has not made any pleading on loss of reputation. A grant of injunction will cause irreparable loss to the valuable right of the public to know the subject matter and the right of the publisher i.e. Defendant No. 1 to publish material on the subject matter.

28. Currently, the Plaintiff stands accused of serious financial impropriety in his role at Yes Bank. However, even before such allegations were leveled and the Plaintiff was arrested by the concerned authorities in the year 2020, the High Court of Bombay in the case titled Madhu Ashok Kapur & Ors. v. Rana Kapoor & Ors. dated June 4, 2014 made the following observations:

> *"Paragraph 13.4. Mr. Khambata says that Rana Kapoor runs Yes Bank like his personal fiefdom. His word is law. He bends the company to his will. This seems to me to be excessive. It calls into question the bona fides and credentials of every single member of Yes Bank's Board, and it does not sit well with the undoubted progress that the company has made in the short years since its inception. Perhaps it is true that Rana Kapoor has not been opposed, or, at any rate, there is nothing on record to indicate any opposition. What of it? Possibly he is so consummate in his work that no opposition is necessary. That is not unknown in vibrant organisations often identified with a single individual. Rana Kapoor's pre-eminence or dominance in the affairs of Yes Bank does not per se show illegality or unlawfulness.*
>
> *Paragraph 13.5. The problem is deeper. Both Rana Kapoor and Yes Bank have, vis-à-vis the Plaintiffs, chosen to adopt a course that is unsupported by the Articles or any fair reading of the relevant statutes. If that be so, neither can invoke any equity to continue acting in that vein. The result is an inevitability, and the chips must fall where they may. There is sufficient space and room for Yes Bank to correct its course in the time ahead.*

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29. Pertinently, these observations were never challenged or removed from public consumption by the Petitioner and the same form part of the public record till date. Some of the publications have made the following comments:

> *"News article titled, "Greed and Fraud carrying the picture of the Plaintiff dated March 23, 2020 (At Page 156 of Defendant No. I's documents along with Written Statement):*
>
> *News article titled, "Yes Bank founder Rana Kapoor hid 832 cr in wife's company without her knowledge: ED" dated April 23, 2022 which also states that: "The supplementary charge sheet, filed earlier this month, also revealed that RAB Enterprises, fully owned by Rana Kapoor's wife Bindu, had received funds to the tune of 832 crore" (At Page 168 of Defendant No. 1's documents along with Written Statement);*
>
> *News article titled, "Former CEO Ranveet Gill puts the blame on Rana Kapoor for Yes Bank collapse" dated May 06, 2020 (At Page 173 of Defendant No. 1's documents along with Written Statement); (emphasis supplied)*
>
> *News article titled, "Yes Bank Saga: How did it become a house of bad loans and what's the way ahead" dated July 31, 2020 which states that: "...the addition of non-performing assets (NPAs) was largely the making of Rana Kapoor's mismanagement and greed for big money. Kapoor destroyed the institution he built to please the unholy corporate nexus. At the end of it, everything collapsed like a pack of cards. Kapoor's Worli residence, Samudra Mahal, took up the role of Yes Bank's high value credit operations centre at one point. Those who were given bagful of money by Kapoor included DHFL, Anil Ambani Group, Essel, Vodafone and IL&FS. These firms topped the chart of stressed borrowers of Yes. In some cases, Kapoor gave loans to shady promoters merrily in return of favours. One big example is Yes Bank loans to Wadhawans..." (At Pages 177 and 178 of Defendant No. 1's documents along with Written Statement); (emphasis supplied)*

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News article titled, "Crisis-Hit Yes Bank's Founder Rana Kapoor Arrested For Alleged Fraud dated March 08, 2020 which carries a picture of the effect the crisis in Yes Bank had on the public at large. (At Pages 191 and 192 of Defendant No. 1's documents along with Written Statement);

News article titled, "Rana Kapoor, now in custody for a money laundering case, was once the toast of the country's high society and banking circles" dated March 15, 2020 which says "Arrogant and ambitious, is how many people describe Kapoor. He would stop at nothing and have no qualms about stabbing you in the back if he needed to. He's done that with many, many people." Says a longtime associate. "He refuses to acknowledge that it was irresponsible leading and unethical practices during his tenure that has brought Yes Bank to the brink. He blames the current management. It's a testament to Kapoor's influence that despite his fall from grace, people Mirror reached out to for comment, declined to do so on record. (At Pages 194 and 195 of Defendant No. 1's documents along with Written Statement); (emphasis supplied)

News article titled, "The rise and mighty fall of Rana Kapoor" dated April 06, 2006 which says the following: "These put Kapoor - a man with a hugely inflated sense of self-worth with a buccaneer's attitude to banking at centre stage with no strategy to take care of ground realities. It only fed his considerable ego and, as was his wont, saw him resort to managing affairs creatively on the run. The many questionable transactions that have come to light involving Kapoor, his wife Bindu, and their three daughters Radha, Roshni and Rakhee show up a desperate individual who tried to game the system, only to get gamed by wilder beings"; "He started small: The first banker to hire a PR agent to build up his profile while still at his BankAm desk; A control-freak, Kapoor would involve himself in the minutiae of every small credit decision; This obsession with the media sometimes reached ridiculous levels. Like when he issued this press release on Republic Day in 2016: "I would like to extend a warm welcome to French President Francois Hollande. I am greatly

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encouraged by the agreements signed by our two leaders... the landmark deal for procuring 36 Rafale Jets will greatly benefit India's armed forces" (At Pages 201, 202 and 203 of Defendant No. 1's documents along with Written Statement); (emphasis supplied)

News article titled, "Inside the house that Rana Kapoor builf dated March 09, 2020 which says: "A familiar Page-3 fixture in mainline dailes, Kapoor used to reward his bank's top performers with so- called "Golder Pin Awards" and host parties for them at home;" and "Kapoor's flamboyance and penchant for publicity are not the only reasons behind Yes Bank's flame out. His story reveals many systemic warning bells were ignored and papered over. Right from the beginning, the man and the bank were one. All business decisions at Yes Bank, even where the bank's board was involved, ultimately hinged on Kapoor's whims and fancies." (At Pages 209, 210 and 211 of Defendant No. I's documents along with Written Statement); (emphasis supplied)

News article titled, "Yes Bank CEO Rana Kapoor: The fall of a high- flier" dated March 18, 2020 (At Page 218 of Defendant No. 1's documents along with Written Statement);

News article titled, "Rana Kapoor: No Banker" dated March 13, 2020 which says: "Kapoor is anything but a staid banker. He is another flamboyant Delhite clad in bespoke suits and speaking with more authority than credibility... A series of loans issued by Yes Bank under his watch turned to NPAs as borrowers claimed inability to repay the money and Kapoor allegedly resorted to money laundering. In the process, he belied public trust by flouting norms and stuffing cash into his family businesses through a clutch of companies where his wife Bindu Kapoor, or his three daughters. Radha Kapoor Khanna, Rakhee Kapoor Tandon and Roshini Kapoor, were directors"; "For most of the 16 years that Rana Kapoor was at the helm of Yes Bank (2003-2019), he reportedly ruled with an iron fist and used it as his fiefdom, lending recklessly and, in large part, succeeding in cooking books"; "Rana Kapoor became the face of the bank as its

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MD and CEO and remained so until irregularities surfaced and the RBI forced him out on January 31, 2019;" and "A hands-on banker, Kapoor spent time with the borrower, however small. It was also normal for Kapoor to fire his relationship managers over a text message" (At Pages 224, 225, 226, 227 and 228 of Defendant No. 1's documents along with Written Statement; (emphasis supplied) and News article titled, "The life and times of YES Bank's flamboyant and self-absorbed Rana Kapoor" dated March 17, 2020 (At Page 236 of Defendant No. 1's Written Statement). (emphasis supplied)"

30. It is contended by Ld. Counsel for the defendant no.1 that a reading of the above extracts and the news articles show that the Plaintiff, i.e. Mr. Rana Kapoor, was synonymous, indistinguishable and inseparable with Yes Bank Limited. In fact, it is still not possible to speak about Yes Bank without referring to the Plaintiff. These news articles also show that the Plaintiff was someone who enjoyed publicity and being present prominently in the public domain. The collapse and crisis of Yes Bank Limited are significant as the matter was not just about a singular institution and/or regulation, but rather, the matter has had a significant impact on the banking system of the country and, therefore, it is the right of the public to be informed about it, to comment on it, and to engage in public debates about the matter. It is trite that the money available with Yes Bank were public funds and, as such, the hardships faced by ordinary people are a matter of public interest, and such debate cannot be stifled by the whims of an individual.

31. The contents of the Book are already in the public domain and truthful, therefore the publication and circulation of the Book is neither defamatory nor violative of the right to privacy of the Plaintiff. In this regard, the following cases are relied upon:

"Khushwant Singh v. Menaka Gandhi, 2001 SCC Online Del 1030, Paragraphs 20, 21, 22, 63, 67, 68, 69, 70, 71 and 75:

(Public gaze cannot be avoided when holding public office. Where prior publications exist, interlocutory injunction cannot be granted. For the purpose of

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publication, if it is to the interest to the public, it would suffice);

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

(In 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. It has to be shown by the Plaintiff that the publication is proved to be false and actuated by malice or out of personal animosity. The Defendant No. 1 has a right to publish its story as it appears from public records, even without consent or authorization); and

Pushp Sharma v D. B. Corp. Ltd. & Ors., 2018 SCC Online Del 11537, Paragraphs 22 and 23:

(Electronic media and internet per se ought not to dilute valuable right of freedom of speech, even in a case of defamation the ordinary principles of governing interim injunctive reliefs apply. It has to be demonstrated at the threshold that the offending content is malicious or palpably false for grant of an interim injunction).”

32. The Plaintiff has failed to establish that the Book published by Defendant No. 1 or the contents of it are, "false and actuated by malice or out of personal animosity or that the content alleged to be defamatory is malicious or palpably false," which is the standard set by various judgments. It is respectfully submitted that the Plaintiff has failed to demonstrate the same in its pleadings. In light of the facts enumerated above, it is submitted that the Plaintiff by way of clever drafting has concocted a cause of action only to file the case belatedly after obtaining an ex-parte interim order in the proceedings before the Karkardooma Court in the Karkardooma Suit. A delayed and fraudulent approach to the court is no ground for grant of any interim relief, reliance in this regard has been placed on the following judgments:

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Sushil Ansal v. Endemol India Pvt. Ltd., 2023 SCC OnLine Del 121. Paragraphs 18, 20 and 21:

(It is of great significance that in a case of injunction against a publication, the time when the Plaintiff first derived knowledge of the offending material and whether the Plaintiff has approached the court in good faith is examined. If the Court finds that the Plaintiff has either failed to initiate action with promptitude or approached the court at the first available opportunity, that would be a circumstance which would weigh heavily against the grant of an ad interim injunction. Further, if the Court were to find that the material which is likely to be broadcast or published already exists in the public domain and has existed as such for a considerable period of time without an objection having been raised, that too would detract from the right of the Plaintiff to seek ad interim injunctive relief); and S.P. Chengalvaraya Naidu v Jaganath (dead) by Lrs, & Ors., 1994 (1) SCC 1, Paragraphs 5 and 6:

Reasons for decision

33. After considering the submission of both sides and the going through the guiding factors as laid down in the several precedents/case- laws which are relied by both sides, this court is of the view that before analysing the factual matrix of the case, we should understand as to what is the connotation and meaning of the word 'defamation'. In the book of **Law of Torts,** Salmond & Heuston, 20th Edition, the word **'defamation'** has been defined as **"A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the estimation of right-thinking members of society generally[21] and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem."** The statement is judged by the standard of an ordinary, right-thinking member of society. Hence the test is an objective one, and it is no defence to say that then statement was not intended to be defamatory, or uttered by way of a joke. [22] However, no action will lie for the publication of a defamatory statement, if the defendant pleads and proves that it is true.

34. Ld. counsel for the plaintiff has pointed out the specific paragraphs/sentences of the book in question to claim that they are

[21] Sim v. Stretch (1936) 52 T.L.R. 669, 671, per Lord Atkin.
[22] Capital and Counties Bank v. Henty (1882) 7 App. Cas. 741, 772

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grossly libelous and tarnish the goodwill and reputation of the Plaintiff and that the Defendant No. 2 has knowingly made baseless and false allegations against Plaintiff to sensationalize and monetize the Book.

35. This court gave a careful reading not only to the said extracted contents but to the entire book to understand and appreciate the said allegations and their impact on the plaintiff. This court also kept in mind the established position of law as brought on record by both parties by referring to various precedents on the subject.

36. One thing is clear that a publisher or reporter is within its/his right to print anything whether defamatory or not, provided same is based on truth or fair comment or fair criticism. But at the same time, even if a person is a public figure, he cannot be defamed based on untrue facts or when the content is palpability false or malicious. The previous news articles, as relied by the Ld. Counsel for the defendant no.1 may be available in the public domain in large number but they are also required to be examined whether they are based on true facts or not or whether they are actuated by malice or out of personal animosity or that the content alleged to be defamatory is malicious or palpably false, which is the standard set by various judgments. When the defamatory statement is put forward by way of rumor or report only, it is not sufficient to prove that the rumor or report really existed but it is necessary to prove that it was true.

37. Secondly, the facts which are mentioned in the book, without any previous news article or other source, are required to be examined on the basis of their face value.

38. Thirdly, based on large number of case-laws cited by both sides, this court is of the opinion that nobody has a right to defame a person even if said person is a public figure unless the allegations are based on true facts or substantial material; consent of the plaintiff is not required for such publication and even such material (of the category which are in question) cannot influence the Judges who decide the cases based on evidence, facts and law and cannot be terms as media trial.

39. Fourthly, the Ld. Counsel for the defendant no. 1 emphasised that there is a difference in the publication of a book and a news article because generally a book does not have wide publication

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like a newspaper and same can be read only by the reader who purchases it after spending the amount of the book. Therefore, it will not a defamation in the eyes of general public. On the contrary, Ld. Counsel for the plaintiff argued that the aforesaid argument is not correct because even for buying newspaper, subscription amount is paid. He also strenuously argued that the news articles are short-lived in the memory of reader whereas a book is a permanent record and in case the plaintiff is acquitted at the end of trial of criminal cases, said acquittal order will not come on record in the said book. In the opinion of this court, a defamatory statement not based on truth or substantial supporting material, if accessible to public at large (consisting of a few persons or a huge mass), whether contained in any news article, book, website or any other platform, is a breach of the fundamental right under Article 21 of the Constitution of India and it does not make any difference whether it is published in a news article or a book. Therefore, the argument of the defendant no.1 is found meritless.

40. Now, this court proceeds to appreciate the extracted content after taking into consideration the reply of the defendant no.1 and aforesaid understanding of law as under:

S.L. No.	**Extracted content of the book**	**Court observation**
(i)	For what shall it profit a man if he gains the whole world and suffers the loss of his soul? The Bible	This is a general quotation of the holy Bible, reproduced in the book and same does not indicate any reference to the plaintiff. Therefore, same is not defamatory.
(ii)	The image of Kapoor wearing a medical mask and being moved from jail to jail, being heckled by journalists as he was escorted by khaki clad police constables, created an impression that couldn't be further removed from the arrogant, erstwhile tycoon who had built a top ranked bank, brick by brick, before his own actions led it to cave in and come teeteringly close to implosion. It was well known that Kapoor wanted to	The defendant no.1 claimed that this is based on a website monecontrol.com. The content of a website if not based on truth, same cannot be taken as an admissible defence of truth. The words 'arrogant', 'erstwhile tycoon' are judgmental without any action or reaction of the plaintiff, which is derogatory.

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	be featured on Page 3. Little did he know that he would be plastered all over the front page of newspapers, and not for the right reasons.	
(iii)	After high school, he joined Shri Ram College of Commerce, where he got his degree in economics. At the time, the top- ranked colleges for studying economics were St Stephen's followed by Hindu College. Shri Ram College was not best known for economics but for commerce subjects, for which the qualifying marks were much higher at around 97 per cent, as compared to 75 per cent needed for economics. Even so, Kapoor's drive for higher education was evident as he proceeded to the United States for an MBA at Rutgers, a state university in New Jersey.	The aforesaid observation of the author with regard to comparison of two colleges is without any basis or any report.
(iv)	The word on the street was that Chopra had made calls to top management-not uncommon then for getting friends and family placed at the Bank of America (BankAm), where he and his company had large accounts, to help Kapoor get a job at the Barakhamba Road branch.	Mr. Chopra has been referred in the said book as he maternal uncle of plaintiff and the allegation of making call by Chopra to help Kapoor get a job is without any basis and directly imputes allegation on the selection process of Kapoor by use of influence. The same is clearly a defamatory statement.
(v)	Even as a young thirty-something banker, he would hire his own public relations team by bringing in an agency to help promote his image and get noticed, those who worked with him say.	The observation of the author that the Kapoor was not someone who work well within a framework is direct imputation on the competency of plaintiff.

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	The banking world then was as it is now, driven by regulations. governance and rules. Kapoor, from the get-go, wasn't someone who worked well within a framework like that, recalls a fellow banker.	
(vi)	As the head of the Delhi branch, Kapoor's management style was described by those who worked under him as being unreasonably sensitive to any event that would make him look bad.	The defendant no.1 claimed that this is based on a website nationalheraldindia.com. The content of a website if not based on truth, same cannot be taken as an admissible defence of truth. The words 'unreasonably sensitive' are claimed to be based on hearsay version of other employee, which is not a truth nor had any reference of any action or reaction of the plaintiff of any specific instance.
(vii)	The irony of it was this Kapoor, who didn't have an MBA from IIM and which BankAm had almost set in stone as a prerequisite to join, ended up running a branch where at least four of the top five guys who were reporting to him were IIM-ers and could intellectually run circles around him.	The defendant no.1 claimed that this is it is a common knowledge that IIM and IIT are superior colleges and were preferred by BankAM. This may be true that they are the prestigious institutions but it cannot be assumed that students of other colleges or for that matter without any formal education, cannot perform well. Take example of great Mathematician Ramanujan who did not have any formal education but he reached to a highest level of scholarly work. Moreover, the plaintiff also had an MBA from a foreign University, which is indicated in the book. Defendant no.1 also relied on some linkedin websites.

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		The content of a website if not based on truth, same cannot be taken as an admissible defence of truth. The content is defamatory by underestimating the qualification and ability of plaintiff.
(viii)	For Kapoor especially, the pressure must have been overwhelming given that he was outclassed in terms of technical qualifications, and possibly, inherent ability.	In reply, it is stated that this is factual and a fair comment but nothing in support has been placed. Therefore, this is apparently a false opinion.
(ix)	Kapoor would usher them to managers who were expected to 'help them out', which was not how the game worked at BankAm.	Defendant no.1 claimed that this is based on feedback from former colleagues and senior bankers. This is hearsay and vague version which is not admissible under law.
(x)	There was the buzz that he was organizing credit approvals for clients without managerial sanction. Documents were being issued without being signed and all the protocols being followed The expense spending on bank accounts were also usually high. And then came the final straw.	Defendant no.1 claimed that this is based on feedback from former colleagues and senior bankers. This is hearsay and vague version which is not admissible under law. The defendant also clamed that this was buttressed by CBI and ED in court. Therefore, the content is not based on truth but it was only an argument and thus defamatory unless proved in court.
(xi)	He went and issued commitment letters in funding for half a dozen large corporate houses for an aggregate amount of a couple billion dollars. One of them was Reliance Industries (RIL). Not that RIL wasn't able to qualify for the funds but Kapoor, in a rush to	Defendant no.1 claimed that this is a matter of corporate istory and fact as per colleagues. No extract of history has been placed on record. The version of colleague is hearsay and vague which is not admissible under law. Doing of fast work is appreciable but

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	impress the promoters and win kudos for himself, would have said that he could do things faster than the bank would have let him.	attaching a purpose to win kudos is not a fair comment.
(xii)	The rumour was that Varun Batra, who worked with Kapoor at Grindlays and wanted to leav, was told by Kapoor that he would not be given his regular notice period and exit terms. He would have to leave the very next day.	Defendant no.1 claimed that this is a matter of corporate history and fact as per Colleagues. No extract of history has been placed on record. The version of colleague is hearsay and vague which is not admissible under law.
(xiii)	Media reports would later allege that she even negotiated kickbacks for Kapoor.	Defendant no.1 cited some bail order. Therefore, this cannot be said to be defamatory though the truth part is matter of trial.
(xiv)	According to media reports, when the loan was made to Thapar's company, Avantha Group already owed Yes Bank 1,333 crore but had gotten credit of another 2,500 crore. By normal banking standards and credit checks, Avantha should not have been eligible for further loans but that's why the company had to come to Yes Bank in the first place.	Defendant no.1 cited some bail order. Therefore, this cannot be said to be defamatory though the truth part is matter of trial
(xv)	Thapar's house fit the bill, regardless of cost According to those familiar with the real estate business in Delhi, the deal was all but done with Thapar and Bhatia even having shaken hands on the transaction. Then Kapoor got a whiff of the impending deal and decided that he wanted first dibs. According to official documents, a company applied for a no objection certificate (NOC)	Defendant no.1 claimed prior publication of this content on some websites. But there is nothing to support that the said allegations were based on truth or only assumptions. Unless the matter under was investigation and chargesheets were filed against plaintiff and his wife for alleged irregularity, the defendant no.1 was not within its right to publish such allegations.

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	from Yes Bank to buy the house for ₹375 crore. It was also given on the condition that the full loan would be paid Then, in August of 2017, that offer was withdrawn and a new offer entered the fray Bliss Abode, a Yes Bank - related (and predictably named) company was being used for the purpose of buying fancy homes, in which Kapoor's wife was a director Bliss Abode would put 378 crore on the table to buy Thapar's house. It was swiftly approved by a management credit committee headed by none other than Kapoor himself and was followed by an NOC that was granted as swiftly. Once it bought the house, Bliss Abode entered into a mortgage arrangement with one of Yes Bank's borrowers Indiabulls Housing Finance for a loan worth 685 crore that was realized in two tranches of 285 crore and₹90 crore and another 310 crore - loan to companies Imagine Estate and Imagine Home, also companies in which Kapoor's wife was a director. But Kapoor's Roman – style expansion plans of a burgeoning real estate empire across the Indian metros would hit a pothole.	
(xvi)	Kapoor was asking everyone he met for tips and recommendations on where to dine. Seth recommended a Chinese restaurant called	The defendant no.1 replied that it was based on a what's app chat with Mr. Suhel Seth. If said witness appears and deposes

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	Golden Dragon. The next day when he met him at the convention centre, Seth says Kapoor emphatically made it a point to tell him that he had booked the entire restaurant when he went there the day before. It was almost as if he was making a point about how he could afford anything.	so, then it may not be defamatory but till the conclusion of trial, it is not sure whether it is a truth or not.

41. From the aforesaid assessment of contents, this court is of the considered opinion that plaintiff established a prima facie case in his favour against the defendants for harming his reputation without completely based on true facts. The balance of convenience will also lie in favour of the plaintiff because, the reputation of the plaintiff once defamed in the eyes of reader of the book, it cannot be reversed back, if the plaintiff finally succeeds in the present case whereas the defendant will have only monetary loss only which is not greater than the reputation of the plaintiff because there is a general saying that "It takes long years to build a reputation for a person/institution but it just takes a moment to spoil it".

42. In view of aforesaid discussion, the application under Order 39 Rule 1 and 2 CPC is allowed with following directions:

A. Defendants and/or their associates, affiliates, servants, agents, directors, partners, employees, representatives, and all other persons acting for and on their behalf are restrained from selling and/or distributing and/or circulating the Book titled as "Yes Man: The Untold Story of Rana Kapoor" authored by the Defendant No. 2, in any manner whatsoever during the pendency of the Suit.

B. The Defendants and/or their associates, affiliates, servants, agents, directors, partners, employees, representatives and all other persons acting for and on their behalf are further restrained from authoring, making, publishing, republishing, circulating and/or communicating to the public in any manner whatsoever any defamatory / libelous statements and/or slanderous statements against the Plaintiff by way of the Interview

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titled as "Yes Bank co- founder Rana Kapoor was extremely ambitious, didn't hesitate to take shortcuts" during pendency of the present suit.

C. The Defendants and/or their associates, affiliates, servants, agents, directors, partners, employees, representatives and all other persons acting for and on their behalf are restrained from authoring, making, publishing, republishing, circulating and / or communicating to the public in any manner whatsoever any defamatory / libelous statements and / or slanderous statements against the Plaintiff by way of the Article - I titled "No real clue What Rana Kapoor told me when I asked him why Yes Bank failed" dated 12.01.2021 during pendency of the present suit (https://theprint.in/ kapoor-told-me-when-i-asked-him-why- yes-bank-fauked/583860/) and the Article - II titled "Yes Man-New book maps Yes Bank's rise and fall through the story of Rana Kapoor" dated 26.01.2021 during the pendency of the present Suit (https://theprint.in/ rise-and-fall-through-the-story-of-rana-kapoor/592432/);

D. The Defendants are directed to remove the Article-I, Article - II, and the Interview during the pendency of the Suit from their website and respective YouTube channels.

43. Put up for further proceeding on 11.09.2024. Copy of order be given dasti to the defendant no.1 only."

65. A perusal of the Impugned Order reveals that the learned Trial Court, after noticing the rival submissions of the parties, *namely*, Mr. Rana Kapoor and the Appellant, HarperCollins, proceeded to examine the statements/extracts from the Subject Book which had been specifically complained of by Mr. Rana Kapoor. It is relevant to note that the Appellant, Pawan Chand Lall, had been proceeded *ex parte* before the learned Trial Court.

66. The learned Trial Court, however, did not find each of the statements relied upon by Mr. Rana Kapoor to be defamatory. In fact,

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upon its examination of the material, the learned Trial Court identified Statements (iv), (vii) and (x), extracted at paragraph no. 40 of the Impugned Order, as being defamatory, while Statement (ii) was found to be derogatory, and the remaining statements complained of by Mr. Rana Kapoor were not found to warrant such a conclusion.

67. Simultaneously, the learned Trial Court proceeded to restrain the Appellants from publishing, circulating or distributing the Subject Book in its entirety. Thus, while the examination undertaken in the Impugned Order was confined to the particular statements which were the subject matter of the grievance raised by Mr. Rana Kapoor, the operative direction travelled beyond those statements and extended to the Subject Book as a whole.

68. The Impugned Order further proceeds on the premise that the fact that certain material forming the basis of the statements was available in the public domain would not, by itself, absolve the Appellants of liability, and that the underlying material would still require examination as to its truthfulness and the circumstances in which it came to be published.

69. The learned Trial Court also examined the question of whether the statements complained of could be regarded as defamatory, while simultaneously taking into consideration the fact that Mr. Rana Kapoor was a public figure.

70. It is also discernible from the Impugned Order that the learned Trial Court was conscious of the fact that the Subject Book had already been published and was in circulation. Nevertheless, while considering the balance of convenience and irreparable injury, the learned Trial Court proceeded on the basis that injury to reputation, once caused, may not be capable of being adequately reversed, and

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consequently considered the balance of convenience to lie in favour of Mr. Rana Kapoor.

71. Significantly, the learned Trial Court did not find that the publication of the Subject Book would prejudice or otherwise affect the criminal proceedings pending against Mr. Rana Kapoor. To that extent, the learned Trial Court returned a finding in favour of the Appellants.

72. The aforesaid aspects of the Impugned Order would therefore have to be examined in the context of the settled principles governing pre-trial injunctions in actions concerning alleged defamation, particularly where the publication sought to be restrained is a literary work which has already been published and circulated for a considerable period of time. In this regard, the principles governing the grant of pre-trial injunctions in matters concerning publication, as elucidated by the Hon'ble Supreme Court in ***Bloomberg*** (supra), assume particular relevance. The relevant portion of the said judgment is reproduced hereinbelow:

> **"4.** The threefold 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 threefold test must not be applied mechanically [*DDA* v. *Skipper Construction Co. (P) Ltd.*, (1996) 4 SCC 622, para 38 : (1997) 89 Comp Cas 362.] , 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 analyse how the threefold 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.
>
> **5.** 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

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three-Judge Bench of this Court in *Morgan Stanley Mutual Fund* v. *Kartick Das* [*Morgan Stanley Mutual Fund* v. *Kartick Das*, (1994) 4 SCC 225 : (1994) 81 Comp Cas 318] , in the following terms : (SCC pp. 241-42, para 36)

> "*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 some time 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."

6. 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 [*R. Rajagopal* v. *State of T.N.*, (1994) 6 SCC 632] . 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* [*Bonnard* v. *Perryman*, (1891) 2 Ch 269 (CA)] . 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 [*Holley* v. *Smyth*, 1998 QB 726 (CA)] . The Court of Appeal in *Bonnard* [*Bonnard* v. *Perryman*, (1891) 2 Ch 269

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(CA)] held as follows : (Ch p. 284)

> "… 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)

7. In *Fraser* v. *Evans* [*Fraser* v. *Evans*, (1969) 1 QB 349 : (1968) 3 WLR 1172 (CA)] , the Court of Appeal followed the Bonnard principle and held as follows : (QB p. 360)

> "… insofar 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. *Perryman* [*Bonnard* v. *Perryman*, (1891) 2 Ch 269 (CA)]). The reason some times 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)

8. 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

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> 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."

73. It would also be necessary to examine whether the learned Trial Court, while exercising its discretion under Order XXXIX Rules 1 and 2 of the CPC, correctly applied the principles governing the three-fold test of *prima facie* case, balance of convenience and irreparable injury, as also the heightened degree of caution applicable where the injunction has the effect of restricting publication or circulation.

74. In the present case, it is significant that Mr. Rana Kapoor has not assailed the findings of the learned Trial Court insofar as the other statements complained of by him were concerned. The findings returned by the learned Trial Court in respect of those statements have, therefore, not been called into question in the present Appeals.

75. The controversy before this Court, insofar as the contents of the Subject Book are concerned, consequently stands narrowed down to the four statements, *namely*, Statements (ii), (iv), (vii) and (x), which alone require consideration in the present Appeals, Statements (iv), (vii) and (x) having been found to be defamatory and Statement (ii) having been found to be derogatory.

76. It is in this context that the rival submissions of the parties require consideration. The Appellants have principally contended that the learned Trial Court failed to appreciate the settled principles governing pre-trial injunctions in matters concerning alleged defamation, particularly where the publication sought to be restrained is a literary work.

77. Reliance has been placed, *inter alia*, on ***Bloomberg Television Production Services India (P) Ltd.*** (supra), as also on ***Khushwant***

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Singh (supra), ***Tata Sons Ltd.*** (supra), ***Ashutosh*** (supra) and other decisions by the Appellants.

78. The submission of the Appellants, in substance, is that an injunction at the interlocutory stage, particularly against publication, constitutes a serious restraint upon freedom of speech and expression and, therefore, requires a heightened degree of caution. It is also their submission that the statements complained of are based, at least in part, upon material available in the public domain and constitute an exercise of fair comment by the author.

79. The Appellants have further contended that the Subject Book had already been published and circulated for a considerable period prior to the institution of the proceedings and that the absence of any demonstrated instance of loss of reputation during such period materially affects the question of balance of convenience and irreparable injury.

80. These submissions, in the considered view of this Court, merit consideration. At the same time, the mere fact that the publication is a literary work, or that the statements contained therein concern a public figure, does not, by itself, place the publication beyond the reach of the ordinary principles governing the protection of reputation. The right to freedom of speech and expression, though fundamental, is not unqualified, and the protection of reputation constitutes an equally relevant consideration.

81. The enquiry before this Court is, therefore, not whether the Subject Book, as a literary work, is entitled to protection in the abstract, but whether, having regard to the specific statements found by the learned Trial Court to be *prima facie* defamatory, the requirements for grant of interlocutory relief stand satisfied and, if so,

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the extent to which such relief ought to operate.

82. For ease of reference, the four statements identified by the learned Trial Court, the findings returned thereon in the Impugned Order, and the view taken by this Court upon consideration thereof, are set out hereunder:

S. No.	STATEMENTS	TRIAL COURT FINDINGS	THIS COURT'S FINDINGS
(ii)	The image of Kapoor wearing a medical mask and being moved from jail to jail, being heckled by journalists as he was escorted by khaki clad police constables, created an impression that couldn't be further removed from the arrogant, erstwhile tycoon who had built a top ranked bank, brick by brick, before his own actions led it to cave in and come teeteringly close to implosion. It was well known that Kapoor wanted to be featured on Page 3. Little did he know that he would be plastered all over the front page of newspapers, and not for the right reasons.	The defendant no.1 claimed that this is based on a website monecontrol.com. The content of a website if not based on truth, same cannot be taken as an admissible defence of truth. The words 'arrogant', 'erstwhile tycoon' are judgmental without any action or reaction of the plaintiff, which is derogatory.	The reference to Mr. Kapoor as an "arrogant, erstwhile tycoon", when read in conjunction with the further assertion that "his own actions led it to cave in and come teeteringly close to implosion", goes beyond a mere narration of facts or a fair comment upon matters in the public domain. The expression "arrogant" is, in the context in which it has been employed, a direct characterisation of the personality of Mr. Kapoor, while the attribution of the collapse of the institution to his "own actions" conveys a specific and adverse inference as to his conduct and responsibility. The reliance placed by the Appellant on the material available on *Moneycontrol.com*, by itself, cannot justify the

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			manner in which the aforesaid characterisation has been made. The question at this stage is not merely whether an image or certain factual material had appeared in the public domain, but whether the additional characterisation and inference sought to be conveyed by the author can, at this interlocutory stage, be treated as protected comment. The passage, when read as a whole, conveys an impression which is capable of lowering the reputation of Mr. Kapoor in the estimation of a reasonable reader. This Court finds no infirmity in the conclusion of the learned Trial Court that the aforesaid passage is capable of conveying an adverse and derogatory impression. However, the Trial Court having characterised the statement as derogatory, and not defamatory, the same does not independently sustain a finding of *prima facie* defamation. Since the said passage has been held to be derogatory, and the final determination of its character is vested in the learned Trial Court, its

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			publication is to be kept in abeyance till such determination, as recorded hereinafter
(iv)	The word on the street was that Chopra had made calls to top management-not uncommon then for getting friends and family placed at the Bank of America (BankAm), where he and his company had large accounts, to help Kapoor get a job at the Barakhamba Road branch.	Mr. Chopra has been referred in the said book as he maternal uncle of plaintiff and the allegation of making call by Chopra to help Kapoor get a job is without any basis and directly imputes allegation on the selection process of Kapoor by use of influence. The same is clearly a defamatory statement.	The statement does not merely narrate a historical circumstance but imputes the use of personal influence in relation to the employment of Mr. Kapoor, thereby casting an adverse reflection upon the manner in which such employment was allegedly secured. The expression "the word on the street was" does not, by itself, dilute the nature of the imputation. The allegation remains one which is capable of being understood by a reasonable reader as suggesting that Mr. Chopra had intervened with the management of the Bank to secure the employment of Mr. Kapoor on account of their familial relationship. In the absence of any material, at this stage, demonstrating the factual basis for such an allegation, the statement cannot be treated merely as a fair comment or an expression of opinion. This Court, therefore, finds no infirmity in the conclusion of the learned

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			Trial Court that the aforesaid statement is *prima facie* defamatory.
(vii)	The irony of it was this Kapoor, who didn't have an MBA from IIM and which BankAm had almost set in stone as a prerequisite to join, ended up running a branch where at least four of the top five guys who were reporting to him were IIM-ers and could intellectually run circles around him.	The defendant no.1 claimed that this is it is a common knowledge that IIM and IIT are superior colleges and were preferred by BankAM. This may be true that they are the prestigious institutions but it cannot be assumed that students of other colleges or for that matter without any formal education, cannot perform well. Take example of great Mathematician Ramanujan who did not have any formal education but he reached to a highest level of scholarly work. Moreover, the plaintiff also had an MBA from a foreign University, which is indicated in the book. Defendant no.1 also relied on some linkedin websites. The content of a website if not	The statement does not merely make a comparison between the educational qualifications of Mr. Kapoor and those of the persons working under him, but proceeds further to suggest that, notwithstanding his lack of an MBA from an IIM, he was placed in a position where persons possessing such qualifications were reporting to him and were intellectually superior to him. The expression that such persons "could intellectually run circles around him" is plainly a comment upon the intellectual ability and professional competence of Mr. Kapoor and, when read in the context of the statement as a whole, is capable of lowering him in the estimation of a reasonable reader. The submission that IIMs are prestigious institutions, and that the preference allegedly accorded to candidates from such institutions by BankAm was common knowledge, does not, by itself, justify the further inference sought to be conveyed regarding the

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		based on truth, same cannot be taken as an admissible defence of truth. The content is defamatory by underestimating the qualification and ability of plaintiff.	intellectual ability or professional competence of Mr. Kapoor. The fact that persons reporting to him may have possessed qualifications from such institutions cannot, without more, lead to the conclusion that they were intellectually superior to him or that they could "run circles around him". The reliance placed on material available on LinkedIn also cannot, by itself, constitute a defence to the aforesaid characterisation. The relevant consideration at this stage is whether the statement, as published, conveys an adverse imputation concerning the abilities and competence of Mr. Kapoor. In the present case, the statement travels beyond a mere factual comparison of educational qualifications and conveys a derogatory assessment of his intellectual capacity. This Court, therefore, finds no infirmity in the conclusion of the learned Trial Court that the aforesaid statement is *prima facie* defamatory.
(x)	There was the buzz that he was organizing credit approvals for	Defendant no.1 claimed that this is based on feedback	The statement attributes to Mr. Kapoor conduct concerning the

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	clients without managerial sanction. Documents were being issued without being signed and all the protocols being followed The expense spending on bank accounts were also usually high. And then came the final straw.	from former colleagues and senior bankers. This is hearsay and vague version which is not admissible under law. The defendant also clamed that this was buttressed by CBI and ED in court. Therefore, the content is not based on truth but it was only an argument and thus defamatory unless proved in court.	functioning of the Bank, namely, allegedly organising credit approvals without managerial sanction, issuance of documents without signatures and non-compliance with prescribed protocols, apart from unusually high expenditure on bank accounts. These are not mere expressions of opinion or generalised criticism, but specific imputations concerning the manner in which Mr. Kapoor is alleged to have discharged his professional responsibilities. The submission that the statement was based upon feedback received from former colleagues and senior bankers does not, at this stage, by itself establish the truth of the allegations contained therein. The expression "there was the buzz" also does not alter the nature of the imputation conveyed to the reader. What is relevant is the substance of the allegation communicated, which attributes specific acts of impropriety and disregard of established banking protocols to Mr. Kapoor.

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			The further reliance placed upon proceedings before the CBI and ED cannot, at the interlocutory stage, by itself establish the truth of the specific allegations contained in the passage. The mere fact that allegations may have been raised or contentions advanced in proceedings before investigative or judicial authorities cannot, without examination of the underlying material and their ultimate veracity, constitute proof of the truth of the specific imputations made in the Subject Book. This Court, therefore, finds no infirmity in the conclusion of the learned Trial Court that the aforesaid statement is *prima facie* defamatory, particularly since the statement attributes specific acts of professional impropriety and non-compliance with banking protocols to Mr. Kapoor.

83. The aforesaid statements having been extracted hereinabove, and the findings returned by the learned Trial Court in respect thereof having been noticed, this Court has independently considered the nature and tenor of each of the four statements, as also the context in

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which the same occur in the Subject Book. The exercise at this stage is necessarily confined to determining whether the view taken by the learned Trial Court that the said statements are capable of being regarded as *prima facie* defamatory, calls for interference within the limited parameters governing an appeal against an interlocutory discretionary order.

84. In this regard, this Court is conscious that the statements cannot be examined in isolation from the context in which they occur in the Subject Book. At the same time, where a particular passage contains an imputation concerning the character, conduct, professional ability or reputation of an identifiable individual, the fact that such passage forms part of a larger literary work would not, by itself, take the same outside the scope of consideration in a claim founded on defamation.

85. Having undertaken the aforesaid exercise, this Court is not persuaded to take a view different from that taken by the learned Trial Court in respect of Statements (ii), (iv), (vii) and (x). Insofar as Statements (iv), (vii) and (x) are concerned, the nature of the expressions employed and the imputations conveyed thereby are such that, at this interlocutory stage, the conclusion that the said statements are capable of adversely affecting the reputation of Mr. Rana Kapoor cannot be said to be arbitrary, capricious or perverse. To the extent Statement (ii) is concerned, this Court finds no reason to interfere with the characterization accorded to the same by the learned Trial Court as derogatory. The aforesaid findings, therefore, do not warrant interference within the limited appellate jurisdiction available to this Court.

86. It is noted that the Appellants have placed primary reliance upon ***Bloomberg*** (supra), to contend that a pre-trial injunction ought

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not to be granted where the defence raised by the defendant cannot be said to be bound to fail at trial. This Court agrees that ***Bloomberg*** (supra) correctly lays down the general principle that Courts ought to exercise caution in granting pre-trial injunctions against publication, particularly where the defence raised by the defendant is genuine and requires adjudication at trial.

87. Applying this principle to the present case, the Appellants have sought to justify Statements (ii), (iv), (vii) and (x) on the basis that the underlying material was available in the public domain and that the statements constitute fair comment. This Court has independently considered the aforesaid statements and, at this interlocutory stage, is not persuaded that the defence of justification or fair comment, in respect of these specific statements, is so clearly established as to render the claim of Mr. Rana Kapoor bound to fail at trial. The existence of material in the public domain, by itself, cannot conclude the question of whether the particular imputations conveyed in the Subject Book are justified or protected as fair comment. Those questions necessarily remain open for determination at trial.

88. The principle enunciated in ***Bloomberg*** (supra), therefore, does not, in the facts of the present case, warrant interference with the finding of a *prima facie* case insofar as the aforesaid statements are concerned. The question as to whether the material relied upon by the Appellants ultimately establishes justification, truth or fair comment remains a matter for adjudication at trial.

89. This Court has also considered the contention of HarperCollins that Mr. Rana Kapoor has failed to plead the innuendo, i.e., the secondary or extended meaning of the statements alleged to be defamatory by innuendo. The principle that, where a defamatory

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meaning is not apparent from the words themselves, the innuendo and its import must be specifically pleaded, is well-established.

90. However, the aforesaid principle would apply where the statement is sought to be regarded as defamatory only by reason of a secondary meaning which is not apparent from its natural and ordinary reading. Where the imputation is capable of being understood as defamatory in its natural and ordinary meaning, the requirement of specifically pleading innuendo would not arise.

91. This Court, having independently examined Statements (iv), (vii) and (x), which were held by the learned Trial Court to be defamatory, as also Statement (ii), which was held to be derogatory, is satisfied that the learned Trial Court has proceeded on the basis of the meaning conveyed by the statements in their natural and ordinary sense. Consequently, the absence of a specific pleading of innuendo cannot, in the facts of the present case, constitute a complete answer to the claim in respect of the aforesaid statements.

92. It is, however, necessary to emphasise that the aforesaid conclusion is only with respect to the existence of a *prima facie* case. The Court is not, at this stage, required to finally pronounce upon the truth or falsity of the imputations, the availability of the defence of justification or fair comment, or the ultimate effect of the statements when considered in the entirety of the Subject Book. Those are matters which would necessarily fall for determination upon a more detailed consideration of the pleadings and evidence at the stage of trial.

93. The conclusion that the aforesaid statements disclose a *prima facie* case of defamation, however, does not by itself answer the further question as to the nature and extent of the interim relief which

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ought to follow. The fact that certain passages in a literary work may, at the interlocutory stage, be found to be *prima facie* objectionable does not necessarily mean that the publication of the work as a whole must be interdicted. The relief has necessarily to bear a reasonable relationship with the nature and extent of the *prima facie* injury or prejudice found to warrant protection.

94. This aspect assumes particular significance in the present case since the learned Trial Court, while examining the various statements relied upon by Mr. Rana Kapoor, did not find all of them to be defamatory. The finding of *prima facie* defamation is confined to Statements (iv), (vii) and (x), while Statement (ii) was found to be derogatory and the remaining statements were not found to warrant a conclusion of defamation. Mr. Rana Kapoor has not challenged those findings. The question, therefore, is whether, having found only the aforesaid statements to be *prima facie* defamatory, the learned Trial Court was justified in extending the restraint to the Subject Book in its entirety.

95. It is this aspect which, in the opinion of this Court, requires closer examination, particularly having regard to the nature of the Subject Book as a literary work, the limited nature of the findings returned by the learned Trial Court, and the requirement that interlocutory relief be moulded in a manner commensurate with the *prima facie* case found to exist.

96. It is noted that the learned Trial Court has proceeded to hold that the balance of convenience lies in favour of Mr. Rana Kapoor, principally on the consideration that injury to reputation, once caused, may not be capable of being adequately reversed. This consideration is undoubtedly relevant. However, the assessment of balance of

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convenience must necessarily take into account the competing prejudice which may result from the grant of the relief sought.

97. The Subject Book was published on 22.12.2020 and, admittedly, remained in circulation for a considerable period before the proceedings culminated in the Impugned Order. The Appellants have placed considerable reliance upon this circumstance and upon the fact that no specific material demonstrating loss of reputation during this period has been brought to the notice of the Court.

98. The explanation furnished by Mr. Rana Kapoor regarding the period during which he remained incarcerated and the date on which he claims to have acquired knowledge of the Subject Book has also been noticed by this Court. The period of incarceration cannot, by itself, be treated as disentitling him from seeking relief.

99. However, once knowledge of the publication is attributed to January 2022, the subsequent passage of time remains a relevant circumstance while examining whether a blanket restraint upon a work which has already been published and circulated for a substantial period is necessary at the interlocutory stage.

100. Similarly, the prejudice which may be caused to the Appellants cannot be disregarded. The Impugned Order, in its present form, does not merely prevent further dissemination of the statements found to be *prima facie* defamatory. It prevents the Appellants from publishing, selling, distributing or circulating the Subject Book in its entirety. Such a direction necessarily operates upon those portions of the Subject Book which have neither been found to be defamatory nor made the subject matter of any successful challenge before this Court. The prejudice to the Appellants is therefore not confined to the financial consequences of discontinuing circulation, but also extends

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to the restraint upon the continued dissemination of those portions of the Subject Book which have not been found to be defamatory.

101. The balance of convenience, therefore, cannot be viewed only from the perspective of the possible injury to the reputation of Mr. Rana Kapoor. It must also take into account the consequence of restraining an entire literary work when the *prima facie* finding of defamation is confined to particular passages thereof. The competing interests are required to be balanced in a manner which protects the reputation of the person concerned without imposing a restraint wider than what is necessary to address the *prima facie* injury.

102. This Court is also conscious of the submission that the Subject Book concerns the rise and fall of Yes Bank and the role of its principal figures, including Mr. Rana Kapoor, and that the subject matter is one which has received substantial public attention. This circumstance does not, by itself, furnish a defence to a *prima facie* defamatory statement. It does, however, form part of the circumstances in which the Court is required to determine the extent of interim restraint.

103. The present case, therefore, would require this Court to, evaluate the two competing rights, each of which is a precious one and render a commensurate relief. This Court, at this stage, is not making a choice between the competing claims of reputation and freedom of expression in absolute terms. The same is a duty cast upon the concerned Trial Court.

104. The duty cast upon this Court, at this stage, is to ensure that till such time as the final adjudication is not effected, to consider whether the order of totally injuncting the publication of the book would be justified while measuring the rival claims of both sides. This Court is

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of the opinion that, pending trial, the ban on the publication of the book is clearly not warranted. A total ban on the publication of the book, to the mind of this Court, tilts the balance in the favour of one category of rights asserted, namely that of the right to social reputation, without addressing the right to freedom of speech and expression which is guaranteed by the Constitution. Cleary, an order that effectively takes away one right in preference for the other, that too at a stage before the rival contentions can be analysed and appreciated in detail, is a bit extreme and unwarranted. The learned Trial Court appears to have lost sight of the need for maintaining a balance of the rights asserted on behalf of the rival parties. The right way forward, therefore, at this stage, would be to calibrate the relief in a manner such that neither right is unduly stifled or given precedence over the other. This Court is consequently of the view that the protection which is warranted can be secured without necessarily bringing the entire Subject Book within the scope of the injunction.

105. The aforesaid approach finds further support in the decision of this Court in ***Swami Ramdev*** (supra), wherein, while considering the grant of interim relief in respect of a literary work dealing with a public figure, this Court underscored the need to balance the competing claims of the right to social reputation and the right to freedom of speech and expression. The Court held that a blanket restraint on publication, at the interlocutory stage, would be unwarranted where the protection of reputation could be adequately secured without bringing the entire literary work within the scope of the injunction. Emphasising that neither right ought to be unduly stifled or accorded precedence over the other, this Court held that the appropriate course would be to calibrate the relief in a manner that

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preserves the competing rights. The relevant observations in ***Swami Ramdev*** (supra) are extracted hereinbelow:

> **"127**. 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 a 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) 839, dignity is a quintessential quality of a personality, for it is a highly cherished value as observed by the Supreme Court in *Subramniam Swamy* v. *Union of India*, (2016) 7 SCC 221 laying down further vide para 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 para 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.
>
> **128.** The observations of the Supreme Court in paras 133 to 144 of the verdict of the *Subramaniam Swamy* (supra) are to the effect:
>
> > "*133. In* Charu Khurana *v.* Union of India *124, it has been ruled that dignity is the quintessential quality of a personality, for it is a highly cherished value. Thus perceived, right to honour, dignity and reputation are the basic constituents of right under Article 21. Submission of the learned counsel for the petitioners is that reputation as an aspect of Article 21 is always available against the high handed action of the State. To state that such right can be impinged and remains unprotected inter se private disputes pertaining to reputation would not be correct. Neither this right be overridden and blotched notwithstanding malice, vile and venal attack to tarnish and destroy the reputation of another by stating that curbs and puts unreasonable restriction on the freedom of speech and expression. There is no gainsaying that individual rights form the fundamental*

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fulcrum of collective harmony and interest of a society. There can be no denial of the fact that the right to freedom of speech and expression is absolutely sacrosanct. Simultaneously, right to life as is understood in the expansive horizon of Article 21 has its own significance. We cannot forget the rhetoric utterance of Patrick Henry:—

> "*Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death!*"

134. In this context, we also think it apt to quote a passage from Edmund Burke:—

> "*Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters 126.*"

135. The thoughts of the aforesaid two thinkers, as we understand, are not contrary to each other. They relate to different situations and conceptually two different ideas; one speaks of an attitude of compromising liberty by accepting chains and slavery to save life and remain in peace than to death, and the other view relates to "qualified civil liberty" and needed control for existence of the Patrick Henry, Speech in House of Burgesses on 23-3-1775 (Virginia) 126 Alfred Howard, The Beauties of Burke (T. Davison, London) 109 140 society. Contexts are not different and reflect one idea. Rhetorics may have its own place when there is disproportionate restriction but acceptable restraint subserves the social interest. ***In the case at hand, it is to be seen whether right to freedom and speech and expression can be allowed so much room that even reputation of an individual which is a constituent of Article 21 would have no entry into that area. To put differently, in the name of freedom of speech and expression, should one be allowed to mar the other's reputation as is understood within the ambit of defamation as defined in criminal law****.*

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136. ***To appreciate what we have posed hereinabove, it is necessary to dwell upon balancing the fundamental rights. It has been argued by the learned counsel for the petitioners that the right conferred under Article 19(1)(a) has to be kept at a different pedestal than the individual reputation which has been recognized as an aspect of Article 21 of the Constitution. In fact the submission is that right to freedom of speech and expression which includes freedom of press should be given higher status and the individual's right to have his/her reputation should yield to the said right****. In this regard a passage from* Sakal Papers (P) Ltd. *(supra) has been commended us. It says:—*

> "*……Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public.* ***If a law directly affecting it is challenged, it is no answer that the restrictions enacted by it are justifiable under clauses (3) to (6). For, the scheme of Article 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and clause (1) does not prefer one freedom to another. That is the plain meaning of this clause. It follows from this that the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom***."

137. ***Having bestowed our anxious consideration on the said passage, we are disposed to think that the above passage is of no assistance to the petitioners, for the issue herein is sustenance and balancing of the separate rights, one under Article 19(1)(a) and the other, under Article 21. Hence, the concept of equipose and counterweighing fundamental rights of one with other person. not a case of mere better enjoyment of another freedom****. In* Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj *v.* The State of Gujarat127 *,* ***it has been observed that a particular fundamental right cannot exist in isolation in a watertight compartment. <u>One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between</u>***

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competing claims of different interests. *In* Delhi Transport Corporation *v.* D.T.C. Mazdoor Congress128 *the Court has ruled that Articles relating to fundamental rights are all parts of an integrated scheme in the Constitution and their waters must mix to constitute that grand flow of unimpeded and impartial justice; social, economic and political, and of equality of status and opportunity which imply absence of unreasonable or unfair discrimination between individuals or groups or classes. In* St. Stephen's College *v.* University of Delhi129 *this Court while emphasizing the need for balancing the fundamental rights observed that:*

> *96…. it is necessary to mediate between Article 29(2) and Article 30(1), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change.*"

138. In Mr. 'X' *v.* Hospital 'Z'130 *this Court stated that,*

> "*44…..where there is a clash of two Fundamental Rights, the right to privacy as part of right to life and Ms. 'Y's right to lead a healthy life which is her Fundamental Right under Article 21, the right which would advance the public morality or public interest, would alone be enforced through the process of court, for the reason that moral considerations cannot be kept at bay and the Judges are not expected to sit as mute structures of clay in the hall known as the courtroom, but have to be sensitive, "in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day".*

That apart, we would also add that there has to be emphasis on advancement of public or social interest.

139. In Post Graduate Institute of Medical Education & Research, Chandigarh *v.* Faculty Association131 *while emphasizing the need to balance the fundamental rights, this Court held that:—*

> "*… It is to be appreciated that Article 15(4) is an enabling provision like Article 16(4) and the reservation under either provision should not exceed legitimate limits. In making reservations for the Backward Classes, the State cannot ignore the fundamental rights of the rest of the citizens. The special provision under Article 15(4) [sic 16(4)] must therefore strike a balance between several relevant considerations and proceed objectively".*

140. In Ram Jethmalani *v.* Union of India132 ***it has been held that the rights of citizens, to effectively seek the***

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protection of fundamental rights have to be balanced against the rights of citizens and persons under Article 21. The latter cannot be sacrificed on the anvil of fervid desire to find instantaneous solutions to systemic problems through defamation speech, for it would lead to dangerous circumstances and anarchy may become the order of the day.

141. In Sahara India Real Estate Corporation Ltd. *(supra) while describing the role of this Court in balancing the fundamental rights, the Constitution Bench observed that the Supreme Court is not only the sentinel of the fundamental rights but also a balancing wheel between the rights, subject to social control. The larger Bench further observed that:—*

> ***"Freedom of expression is not an absolute value under our Constitution. It must not be forgotten that no single value, no matter exalted, can bear the full burden of upholding a democratic system of government.***
>
> ***Underlying our constitutional system are a number of important values, all of which help to guarantee our liberties, but in ways which sometimes conflict. Under our Constitution, probably, no values are absolute. All important values, therefore, must be qualified and balanced against other important, and often competing, values. This process of definition, qualification and balancing is as much required with respect to the value of freedom of expression as it is for other values".***

142. In Maneka Gandhi *(supra), it has been held:—*

> "*5. … It is indeed difficult to see on what principle we can refuse to give its plain natural meaning to the expression 'personal liberty' as used in Article 21 and read it in a narrow and restricted sense so as to exclude those attributes of personal liberty which are specifically dealt with in Article 19. We do not think that this would be a correct way of interpreting the provisions of the Constitution conferring fundamental rights. The attempt of the Court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction. The wavelength for comprehending the scope and ambit of the fundamental rights has been set by this Court in* R.C. Cooper case *(supra) and our approach in the interpretation of the fundamental rights must now be in tune with this wavelength. We may point out even at the cost of repetition that this Court has said in so many terms in* R.C. Cooper case *(supra) that each freedom has*

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different dimensions and there may be overlapping between different fundamental rights and therefore it is not a valid argument to say that the expression 'personal liberty' in Article 21 must be so interpreted as to avoid overlapping between that article and Article 19(1)."

Krishna Iyer, J., in his concurring opinion, has observed thus:—

"*96. ……. the law is now settled, as I apprehend it, that no article in Part III is an island but part of a continent, and the conspectus of the whole part gives the direction and correction needed for interpretation of these basic provisions.* ***Man is not dissectible into separate limbs and, likewise, cardinal rights in an organic constitution, which make man human have a synthesis. The proposition is indubitable that Article 21 does not, in a given situation, exclude Article 19 if both rights are breached****.*

97. We may switch to Article 19 very briefly and travel along another street for a while. Is freedom of extra-territorial travel to assure which is the primary office of an Indian passport, a facet of the freedom of speech and expression, of profession or vocation under Article 19? My total consensus with Shri Justice Bhagwati jettisons from this judgment the profusion of precedents and the mosaic of many points and confines me to some fundamentals confusion on which, with all the clarity on details, may mar the conclusion. It is a salutary thought that the summit Court should not interpret constitutional rights enshrined in Part III to choke its life-breath or chill its ilan vital by processes of legalism, overruling the enduring values burning in the bosoms of those who won our independence and drew up our founding document. We must also remember that when this Court lays down the law, not ad hoc tunes but essential notes, not temporary tumult but transcendental truth, must guide the judicial process in translating into authoritative notation and mood music of the Constitution."

Beg, J. has stated that:—

"*Articles dealing with different fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution. Their waters must mix to constitute that grand flow of unimpeded and impartial Justice (social, economic and political), ...*"

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143. In *Mohd. Arif alias Ashfaq* v. *Registrar*, Supreme Court of India and others133, wherein the majority in the Constitution Bench has observed that the fundamental right to life among all fundamental rights is the most precious to all human beings.

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, 148 reproduction of a passage from Noise Pollution (V), In re 137 would be apposite. It reads as follows:—**

> "*... 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*

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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 Sugan Chand Aggarwal *v.* Govt. of NCT of Delhi135 *and* P.A. Jacob *v.* Supdt. of Police136. *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.*"

We are in respectful agreement with the aforesaid enunciation of law. Reputation being an inherent component of Article 21, we do not think it should be allowed to be sullied solely because another individual can have its freedom. It is not a restriction that has an inevitable consequence which impairs circulation of thought and ideas. In fact, it is control regard being had to another person's right to go to Court and state that he has been wronged and abused. He can take recourse to a procedure recognized and accepted in law to retrieve and redeem his reputation. Therefore, the balance between the two rights needs to be struck. "Reputation" of one cannot be allowed to be crucified at the altar of the other's right of free speech. The legislature in its wisdom has not thought it appropriate to abolish criminality of defamation in the obtaining social climate."

****

134. Though undoubtedly, the verdict of the Supreme Court in *Subramaniam Swamy* (supra) relates to the aspect of upholding the constitutional validity of Section 499 and 500 of the Penal Code, 1860 and Section 199 of the Criminal Procedure Code, 1973 nevertheless, the ambit of the right to reputation under Article 21 of the Constitution of India and that it has necessary existence in conjunction with the right to freedom of speech and expression in a manner whereby both the fundamental rights of the right of reputation inherent under Article 21 of the Constitution of India and the right to freedom of speech and expression ordained under Article 19(1)(a) of the Constitution of India are both to co-exist in harmony and as a consequence thereof, as observed in para 137 of

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the said verdict already adverted to herein above and also as observed in *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj* v. *The State of Gujarat*, (1975) 1 SCC 11, it has been observed that a particular fundamental right cannot exist in isolation in a watertight compartment and one fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole and that it is essential to observe that as laid down vide paras 68 and 69 of the said verdict which read to the effect:

> "*68. The position has further become clear in* Ganga Bai *v.* Vijay Kumar *wherein this Court has ruled thus:—*
>
> > "***There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statue one may, at one's peril, bring a suit one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit."***
>
> ***69. We have referred to this aspect only to clarify the position that it is beyond any trace of doubt that civil action for which there is no codified law in India, a common law right can be taken recourse to under Section 9 of the Civil Procedure Code, 1908, unless there is specific statutory bar in that regard.",—***

the right to civil action for infringement of the right to reputation and thus to sue against defamation is a cause of action for which though there being no codified law in India, civil action can be taken recourse to under Section 9 CPC 1908 and thus the observation of the Hon'ble Supreme Court in relation to the ambit and contours of the right to reputation as being inherent under Article 21 of the Constitution of India with which the right to freedom of speech and expression under Article 19(1)(*a*) has to be balanced and that the right to reputation cannot be sacrificed or crucified at the altar of the right of freedom of speech and expression, has equal force in a civil action.

*****

135. The balancing of the fundamental right of the individual to his/her reputation under Article 21 of the Constitution of India in coexistence in harmony with the exercise of the right of freedom of speech and expression of another under Article 19(1)(*a*) of the Constitution of India has been upheld once again as brought forth through the observations in paras 312, 313 and 314 of the majority judgment in the famous Aadhar case, vide verdict dated 26-9-2018, which read to the effect:

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"312) This very exercise of balancing of two fundamental rights was also carried out in Subramanian Swamy *v.* Union of India, Ministry of Law106 ***where the Court dealt with the matter in the following manner:***

> ***"122. In*** State of Madras *v.* V.G. Row [State of Madras *v.* V.G. Row, ***(1952) 1 SCC 410 : AIR 1952 SC 196 : 1952 Cri LJ 966], the Court has ruled that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.***
>
> ***xx xx xx***
>
> ***105 515 US 646 (1995)***
>
> ***106 (2016) 7 SCC 221***
>
> ***130. <u>The principles as regards reasonable restriction as has been stated by this Court from time to time are that the restriction should not be excessive and in public interest. The legislation should not invade the rights and should not smack of arbitrariness. The test of reasonableness cannot be determined by laying down any abstract standard or general pattern. It would depend upon the nature of the right which has been infringed or sought to be infringed. The ultimate "impact", that is, effect on the right has to be determined. The "impact doctrine" or the principle of "inevitable effect" or "inevitable consequence" stands in contradistinction to abuse or misuse of a legislation or a statutory provision depending upon the circumstances of the case. The prevailing conditions of the time and the principles of proportionality of restraint are to be kept in mind by the court while adjudging the constitutionality of a provision regard being had to the nature of the right.</u> The nature of social control which includes public interest has a role. The conception of social interest has to be borne in mind while considering reasonableness of the restriction imposed on a right. The social interest principle would include the felt needs of the society.***
>
> ***xx xx xx Balancing of fundamental rights***
>
> ***136. <u>To appreciate what we have posed hereinabove, it is</u>***

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necessary to dwell upon balancing the fundamental rights. It has been argued by the learned counsel for the petitioners that the right conferred under Article 19(1)(a) has to be kept at a different pedestal than the individual reputation which has been recognised as an aspect of Article 21 of the Constitution. In fact the submission is that right to freedom of speech and expression which includes freedom of press should be given higher status and the individual's right to have his/her reputation should yield to the said right. In this regard a passage from Sakal Papers (P) Ltd. [Sakal Papers (P) Ltd. *v.* Union of India, ***(1962) 3 SCR 842 : AIR 1962 SC 305] has been commended to us.***

It says: (AIR pp. 313-14, para 36) "36. … Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public. If a law directly affecting it is challenged, it is no answer that the restrictions enacted by it are justifiable under clauses (3) to (6). For, the scheme of Article 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and clause (1) does not prefer one freedom to another. That is the plain meaning of this clause. It follows from this that the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom."

(emphasis supplied)

137. Having bestowed our anxious consideration on the said passage, we are disposed to think that the above passage is of no assistance to the petitioners, for the issue herein is sustenance and balancing of the separate rights, one under Article 19(1)(a) and the other, under Article 21. Hence, the concept of equipoise and counterweighing fundamental rights of one with other person. It is not a case of mere better enjoyment of another freedom. In Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj *v.* State of Gujarat [Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj *v.* State of Gujarat, ***(1975) 1 SCC 11], it has been observed that a particular fundamental right cannot exist***

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in isolation in a watertight compartment.

One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the directive principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between competing claims of different interests…

*****

174. It is essential to observe that vide the order of Hon'ble Division Bench in *Pushp Sharma* v. *D.B. Corp. Ltd.* and Forum for *Media and Literature* v. *D.B. Corp. Ltd.* (supra), the observations in para 21 thereof spell out categorically as already dealt with in the present judgment of this Court highlight the necessity of the Court to balance the rights of freedom of speech and expression and of the right to reputation rather than to dilute them. The verdict of the Hon'ble Division Bench referred to hereinabove, vide para 23 thereof *inter alia* observes to the effect "*Unless it is demonstrated at the threshold that the offending content is malicious or palpably false, an injunction and that too an ex-parte one, without recording any reasons should not be given.*

*****

"183. Thus as the petitioner about whom the BOOK is written about is living human being and thus entitled to be treated with dignity and has a right of social reputation as an ordinary citizen even if he be a public figure, and as reputation is a cherished value and an element of personal security, portions of the BOOK which make readers think that he is an ambitious villain, until so proved in the Court of Law are necessarily to be restrained from being published and distributed for sale till disposal of the suit bearing no. 619/2017 pending before the learned ACJ-CCJ-ARC(E), Karkardooma Courts, Delhi. This is so as the right to reputation of a living individual under Article 21 of the Constitution of India cannot be sacrificed and crucified at the altar of the right to freedom of speech and expression of another and both have to be harmonized and balanced in as much as no amount of damages can redeem the damage to reputation of any person and merely because there have been previous publications on the same issue, the same does not permit any repetitions of prima facie defamatory insinuations against him.

****

185. As regards the submissions made in relation to other portions of the BOOK as detailed in the petition, the same prima facie fall within the domain of thought provocation and debate and criticism and the prayers in relation thereto cannot presently be accepted.

186. The petitioners C.M.(M) 556/18 & C.M.(M) 557/18 are

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> disposed of accordingly and all interim orders made in the suit bearing no. 619/2017 pending before the learned ACJ-CCJ-ARC(E), Karkardooma Courts, Delhi and in MCA No. 8/2017 and in MCA No. 10/2017 disposed of by the ASCJ (East) and by this Court in CM(M) 556/18 and CM(M) 557/18 are modified accordingly."
>
> ***(emphasis supplied)***

106. The same calibrated approach is warranted in the present case. The learned Trial Court, upon examining the statements specifically complained of, found Statements (iv), (vii) and (x) to be defamatory, while Statement (ii) was found to be derogatory. The finding in respect of these specific statements, therefore, cannot by itself justify a restraint upon the Subject Book in its entirety.

107. There is, in addition, a further circumstance which this Court cannot lose sight of. The Appellant, Pawan Chand Lall, has, before this Court, sought to advance submissions founded upon his position as the author of the Subject Book and upon the freedom available to an author to express his views and opinions. The material on record, however, reflects that Pawan Chand Lall did not appear before the learned Trial Court and was proceeded *ex parte*.

108. This Court is cognizant of the fact that the author was proceeded *ex parte* cannot, by itself, determine the merits of the controversy. Simultaneously, where the author, who is now asserting before this Court the factual and legal basis underlying the passages in question, chose not to appear before the learned Trial Court, this Court would be circumspect in undertaking, for the first time in appellate proceedings, an examination of factual matters which were not placed before the learned Trial Court by him.

109. The aforesaid circumstance, however, does not justify extending the injunction beyond the material in respect of which the

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learned Trial Court has actually returned a finding of *prima facie* defamation. The fact that Pawan Chand Lall did not contest the proceedings before the learned Trial Court cannot convert the *prima facie* findings concerning four particular statements into a finding that the Subject Book as a whole is defamatory.

110. The discretion to grant an interlocutory injunction necessarily carries with it the power, and indeed the obligation, to mould the relief in accordance with the circumstances of the case. The object of such relief is to preserve the subject matter of the dispute and prevent the apprehended injury during the pendency of the proceedings; it is not to grant, at the interlocutory stage, a relief which travels beyond the injury which the Court has found sufficient to warrant protection.

111. In the present case, the apprehended injury identified by the learned Trial Court arises from Statements (iv), (vii) and (x). Statement (ii), though not found to be defamatory, has been held to be derogatory, and this Court has found no reason to differ from that view at this stage. Whether Statement (ii) is, in the final analysis, derogatory or otherwise objectionable is a determination vested in the learned Trial Court. In such circumstances, it would be appropriate that the publication of Statement (ii) be kept in abeyance until that determination is made, particularly as the prejudice to the Appellants from such a course is confined to a single passage. The remaining contents of the Subject Book have not been found, at this stage, to constitute defamatory or derogatory material, and Mr. Rana Kapoor has also not challenged the findings in respect of those other statements.

112. The restraint, therefore, ought to be confined to the material in respect of which the *prima facie* finding has been sustained, namely

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Statement (ii), (iv), (vii) and (x). Such a course would protect the reputation of Mr. Rana Kapoor against further dissemination of the specific imputations found to be *prima facie* defamatory or derogatory, while avoiding an unnecessary restraint upon the remaining contents of the Subject Book. The relief proposed would be in cadence with the Judgments and the law espoused therein, as discussed in detail hereinbefore.

113. This approach also accords with the principle that an interlocutory injunction, particularly one which operates upon publication, ought to be no wider than necessary. The Court must remain conscious that the findings at this stage are provisional and that the final determination of the truth, justification, fair comment, privilege and other defences can only follow upon a fuller adjudication at trial.

CONCLUSION:

114. Consequently, while this Court finds no reason to interfere with the findings returned by the learned Trial Court in respect of Statements (iv), (vii) and (x), or with its characterization of Statement (ii) as derogatory, the consequential direction restraining the publication, sale, distribution and circulation of the Subject Book in its entirety cannot be sustained in its present form.

115. The Impugned Order is accordingly modified to the extent that the restraint in respect of the Subject Book shall operate only against those portions thereof in which Statements (ii), (iv), (vii) and (x), as identified in the Impugned Order, occur. The remaining portions of the Subject Book shall not be covered by the injunction merely by reason of the findings returned in respect of the aforesaid statements.

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116. It is clarified that the aforesaid modification is confined to the scope of the interim relief and shall not be construed as a final expression of opinion on the merits of the allegations or the defences available to the parties. The learned Trial Court shall adjudicate the Suit uninfluenced by any observation contained in the present Judgment, save to the extent expressly determined herein for the purposes of the interlocutory relief.

117. Accordingly, the present Appeals, along with pending Applications, if any, are disposed of in the aforesaid terms.

118. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 06, 2026/jk

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