

**THE HON'BLE SRI JUSTICE T. VINOD KUMAR
AND
THE HON'BLE SMT. JUSTICE P. SREE SUDHA**

C.M.A. Nos. 22, 45 and 51 of 2023

COMMON JUDGMENT: (*Per Hon'ble Sri Justice T. Vinod Kumar*)

These Civil Miscellaneous Appeals are directed against the order dated 02.12.2022 passed in I.A.No.1623 of 2022 and in O.S. No. 510 of 2022 on the file of the III Additional District Judge-Cum- II Additional Metropolitan Sessions Judge-Cum-Principal Family Judge, Medchal Malkajgiri District, At Kukatpally.

2. Heard Sri A. Chandra Sekhar, Sri T. Rajani Kanth Reddy and Sri Sai Sanjay Suraneni, learned counsels for the appellants and Senior Counsel Sri K.V. Bhanu Prasad appearing on behalf of Sri V. Seetha Rama Avadhani learned counsel appearing on behalf of respondents, and perused the record.

3. Since, all the three Appeals arise out of the same order in the underlying Interlocutory application and the suit, these Appeals are being disposed of by this common judgment.

4. The appellants herein are defendants in the suit filed by the respondent No.1 herein as plaintiff *vide* O.S. No. 510 of 2022 for recovery of damages for defamation and mandatory injunction.

5. The respondent No.1 herein, had filed an Interlocutory Application *vide* I.A.No.1623 of 2022 under Order 39 Rule 1 and 2 CPC r/w Section 151 of CPC in the above said suit to restrain the appellants or their representatives, employees, agents, or any one acting on their behalf from publishing, circulating, spreading, advertising, exhibiting, screening, uploading, transmitting, broadcasting, relaying, or otherwise communicating to public, either by electronic, visual, verbal, media, reports, publications, films, Compact Discs, Pen Drives, or other electronic gadgets, devices, web magazines, journals, motion pictures, caricatures, etc., containing libelous, slanderous and defamatory contents. against the respondent No.1 and its management.

6. The trial Court *vide* order dated. 02.12.2022, while ordering notice to the appellants, had granted *ad-interim ex parte* injunction in favour of the respondent No.1.

7. Being aggrieved by the said order of the trial Court, the appellants have filed the present Appeals.

8. The appellants contend that the impugned order dated. 02.12.2022 passed by the trial court is a 'gag' order inasmuch as the said order is in violation of article 19(1)(a) and 19(1)(g) of the Constitution of India. The Constitutional courts had time and again emphasized that a 'gag' order amounts to throttling the neck of the media and imposes an unconstitutional prior restraint. Furthermore, the press is justified in telecasting, publishing, printing the truth in the interest of public which are carried in good faith and with *bonafide* intention and the same can't be curtailed.

9. Appellants further contend that the impugned order is in violation of principles of natural justice, particularly the principle of "*audi alterm Partem*" as the said order was passed without giving an opportunity of hearing to the appellants. The appellants further contend that the respondent No.1 had suppressed the fact that O.S. No. 8 of 2022 which was filed for similar reliefs, against the similar publications is pending adjudication before the I Additional District Judge at Khammam. The trial Court had

failed to appreciate the aforesaid fact while granting *ad-interim ex parte* injunction in favour of the respondent No.1.

10. The appellants further contend that the freedom of press, as enshrined in Article 19(1)(a) of the Constitution of India can be restricted by an individual or the State including the courts solely for the purposes mentioned in Article 19(2) and the restriction must be justified. The impugned order is a pre-publication or Pre-telecast injunction which in turn do not come within the purposes mentioned in Article 19(2) of the Constitution of India. Therefore, the impugned order is liable to be set aside.

11. *Per contra*, respondent No.1 contend that the respondent No.1 herein is an Engineering and Infrastructure company, having project profile all over the country and also executed few projects abroad.

12. The respondent No.1 contend that they have been subjected to a series of defamatory publications by the appellants, alleging their involvement in financial misconduct and political dealings. These publications have significantly tarnished the reputation and business standing of respondent No.1. The respondent No.1 further contend that the appellants published an item on

27.01.2022, stating that the respondent No.1 company has funded the marriage of a senior IAS officer's daughter and respondent No.1 was falsely linked to Big Wave Infra Pvt. Ltd. In addition, on 01.02.2022, e-magazine of DISHA published that the respondent No.1 expanded its business nationally by providing election funds amounting to Rupees 27 crores to BJP, alleging a '*quid pro quo*' arrangement.

13. The respondent No.1 further contend that on 02.02.2022 e-magazine of Toli Velugu, published the defamatory statements accompanied by the photographs of managing director of respondent No.1 alongside a senior IAS officer. These publications continued over several months, reiterating the allegations of bribery and political favouritism against the respondent No.1.

14. The Respondent No.1 contend that on 26.04.2022 and 27.04.2022, the appellants published articles in the *Toli Velugu* e-magazine and e-paper, respectively, under the caption "Badipy Avineethi Meghalu," pertaining to the "Mana Ooru–Mana Badi" project. These publications alleged that Respondent No.1 and its

management was involved in a significant scam related to the above said project.

15. The respondent No.1 herein filed a suit *vide* O.S. No. 8 of 2022 for permanent injunction against the defamatory statements, published and circulated by appellants, on the file of District Judge, Khammam and the same is pending adjudication.

16. The respondent No.1 contend that the trial court had rightly granted an ad-interim *ex parte* injunction order inasmuch as the respondent No.1 had established all the three essentials needed for granting an injunction i.e. the prima facie case, balance of convenience and irreparable injury in his favour.

17. We have taken note of the respective contentions urged.

18. At the Outset, it is to be noted that as per Order XXXIX Rule 3, any court while granting *ad-interim ex parte* injunction order without issuing notice to the opposite party shall record reasons for its opinion that the object of granting the injunction would be defeated by delay. Any person being aggrieved by such order, cannot approach the appellate or revisional Court straight away and is required to avail the remedies provided under the

Order 39, of the Code of Civil Procedure, itself. In the instant case the appellants preferred the present Civil Miscellaneous Appeal without availing the alternative remedy provided under Order XXXIX of C.P.C.

19. Though, the appellants had not taken any steps before the court below to get the said order vacated, vary, set aside or discharge, this Court is of the view that the present Civil Miscellaneous Appeals are liable to be allowed inasmuch as the impugned order is contrary to the Order XXXIX Rule 3 proviso and Rule 3A of C.P.C. It would be apt and appropriate to refer Provisio to Order XXXIX Rule 3, which reads as follows:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay....

It is also pertinent to note that the impugned order was passed without specifying any time within which time the appellants/respondents are required to take steps to get the same vacated. Therefore, the said order also takes away the right of the appellants to file counter, which the court is required to consider

within 30 days from the date of granting initial injunction under Order XXXIX Rule 3A.

20. The Apex Court in the case of **A. Venkatasubbiah Naidu v. S. Chellappan**¹ dealing with appeals filed under Order 43 rule 1 (r) of C.P.C directly before the High Court observed as under:

From a reading of the said judgment, it appears to our mind that it is only an extraordinary circumstance under which the aggrieved person can prefer an appeal against an ad interim injunction order. But, as a matter of course, the aggrieved person cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. It was a case where an application to vacate an ad interim injunction was filed and as the said application to vacate the same, was not disposed of within the stipulated time under the provisions of Order 39, Rule 3A C.P.C., the parties therein approached the Appellate Court and, in that context, the Supreme Court has held that an appeal is maintainable. But, however, it impliedly cautioned that in the normal course, the aggrieved party cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. It is only when there is an inaction on the part of the Courts in following the mandate provisions, then only the aggrieved party can approach the Appellate Court.

So, it is clear that though an appeal is maintainable, such an appeal should be filed only in an extraordinary circumstance under which the party is able to explain as to why he prefers an appeal in the High Court instead of choosing to file a petition to vacate the ad

¹ (2000) 7 SCC 695

interim injunction. Even in case of appeal against an ad interim injunction, the appellate Court will not be bound to apply its mind to all the contentions, which the Original Court is bound to consider on the case shown by the party affected by ad interim order.

The immediate remedy that is available to the opposite party in case of issuing temporary injunction without issuing notice, is under the provisions of Order 39, Rule 4 C.P.C which enables the Original Court to vary or set aside or discharge the ex parte order. In the light of the above provisions and also the legal propositions, no appeal lies, as a matter of course, against an ex parte order, except in extraordinary circumstances or the rarest of the rare cases where the order is perverse or bias or suffers from lack of jurisdiction, but it is not the case of the petitioner.

21. Considering the *ad-interim ex-parte* injunction passed in the present case, it is not only unreasoned but also does not specify the time period during which it would be in force, before the respondent causing their appearance in the matter, passing of the said order is contrary to the mandate under C.P.C and is thus impermissible.

22. The Supreme Court in ***Morgans Stanley Mutual Fund v. Kartick Das***², had laid down the salient principles which every court in India must follow, before granting *ex parte ad interim* injunction:

² (1994) 4 SCC 225

"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."

23. In the instant case the trial Court has granted an *ad-interim ex parte* injunction in favour of respondent No.1 restraining the appellants from publishing, circulating, advertising, uploading, transmitting or broadcasting any derogatory statements, libelous or defamatory statements by any means against the respondent No.1. It is to be noted that the nature of the impugned order passed

by the trial Court amounts to a 'GAG' order. A gag order refers to judicial or executive action that prohibits individuals from expressing or making any public statements. While gag orders are recognized as a tool to maintain the integrity of legal proceedings, their application should be scrutinized. The Courts must ensure that 'gag' orders are necessary, proportionate, and do not infringe upon constitutional rights, particularly the fundamental right to free speech. Furthermore, the fundamental rights can only be curtailed in accordance with Article 19(2) of the Constitution of India.

24. The Apex Court in the case of **Romesh Thappar V. State of Madras**³ has held as follows:

"12. We are therefore of the opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that Section 9(1-A) which authorises imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorised restrictions under clause (2), and is therefore void and unconstitutional."

³ AIR 1950 SC 124

25. The gag orders or order of restraint or injunction should be passed only when it is necessary to prevent substantial risk, to fairness of a trial. In the absence of any such substantial risk the Court cannot pass any restraint or gag order. (***See: S. Basavaraj vs. Bar Council of India and Ors***)⁴

26. The Apex Court in the case of ***Mohd. Zubair v. State (NCT of Delhi)***⁵ has held as follows:

34. Merely because the complaints filed against the petitioner arise from posts that were made by him on a social media platform, a blanket anticipatory order preventing him from tweeting cannot be made. A blanket order directing the petitioner to not express his opinion—an opinion that he is rightfully entitled to hold as an active participating citizen — would be disproportionate to the purpose of imposing conditions on bail. The imposition of such a condition would tantamount to a gag order against the petitioner. Gag orders have a chilling effect on the freedom of speech. According to the petitioner, he is a journalist who is the co-founder of a fact checking website and he uses Twitter as a medium of communication to dispel false news and misinformation in this age of morphed images, clickbait, and tailored videos. Passing an order restricting him from posting on social media would amount to an unjustified violation of the freedom of speech and expression, and the freedom to practice his profession.

⁴ 2024 SCC OnLine Kar 104

⁵ 2023 16 SCC 764

27. The Hon'ble Supreme Court in ***Imran Pratapgadhi Vs. State of Gujarat***⁶ highlighted the importance of freedom of expression and the duty of the courts to uphold such freedom and observed as follows:

38. Free expression of thoughts and views by individuals or groups of individuals is an integral part of a healthy, civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows, satire and art, make the life of human beings more meaningful. The Courts are duty-bound to uphold and enforce fundamental rights guaranteed under the Constitution of India. Sometimes, we, the Judges, may not like spoken or written words. But, still, it is our duty to uphold the fundamental right under Article 19 (1)(a). We Judges are also under an obligation to uphold the Constitution and respect its ideals. If the police or executive fail to honour and protect the fundamental rights guaranteed under Article 19(1)(a) of the Constitution, it is the duty of the Courts to step in and protect the fundamental rights. There is no other institution which can uphold the fundamental rights of the citizens.

⁶ 2025 SCC OnLine SC 678

28. In a recent decision, the Supreme Court in ***Wikimedia Foundation Inc v. Ani Media Private Limited & Ors***⁷, observed that:

30. However, those who offer criticism should remember that Judges cannot respond to such criticism but if a publication scandalizes the court or a Judge or Judges and if a case of contempt is made out, as highlighted by Justice Iyer in the sixth principle, certainly, courts should take action. But it is not the duty of the court to tell the media: delete this, take that down.

29. It is to be noted that the words “freedom of speech and expression” must, therefore, be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. Therefore, it includes the right to propagate one's views through the print media or any other communication channel, e.g. the radio and the television. It is obvious that subject to reasonable restrictions placed under Article 19(2), a citizen has a right to publish, circulate and disseminate his views and any attempt to thwart or deny the same would offend Article 19(1)(a). (***See: LIC v. Manubhai D. Shah (Prof.)***)⁸

⁷ 2025 INSC 656

⁸ (1992) 3 SCC 637

30. Further, the respondent No.1 being aggrieved by the defamatory publications made by the appellants dated. 27.01.2022, 28.01.2022, 29.01.2022, 01.02.2022, 02.02.2022, 26.04.2022, 27.04.2022, 03.05.2022, 18.5.2022, 27.5.2022, 28.05.2022, 12.09.2022, and 14.09.2022, filed a suit for recovery of damages for defamation and mandatory injunction *vide* O.S. No. 510 of 2022 on 02.12.2022. Upon examination of the aforementioned series of publications, it becomes evident that Respondent No.1 filed the suit for damages pertaining to the alleged defamatory content nearly a year after to the initial publication. Furthermore, it is pertinent to note that Respondent No.1 opted to file a suit for recovery of damages for defamation, rather than a Suit for defamation, which specifically addresses the defamation.

31. Thus, having regard to the discussions made above, the order dated. 02.12.2022 passed by the trial Court in the underlying interlocutory Application is a 'gag' Order inasmuch as the impugned order scuttles the throat of the press i.e. the appellants. The Supreme Court in various instances had underscored the protection of media freedom by opposing passing of gag orders.

A gag order can only be passed when there is a substantial risk to national security and to fairness of trial. Any restriction on the right to freedom of speech and expression under Article 19(1)(a) must strictly conform to the grounds enumerated in Article 19(2) of the Constitution.

32. Further, the Respondent No. 1 while filing the present Suit *vide* O.S. No. 510 of 2022 had deliberately suppressed it having filed another suit earlier *vide* O.S. No. 8 of 2022, on the file of I Additional District Judge, Khammam, in which the respondent No.1 had sought similar reliefs against similar publications and the said suit is pending adjudication. The above action of suppression by respondent no. 1 amounts to a clear abuse of the process of law and since, in the present instance, the ad-interim injunction was granted without adhering to the established legal principles that courts are mandated to follow before issuing such *ex parte* orders, this Court is of the view that the order dated. 02.12.2022 in I.A. No. 1623 of 2022 in O.S. No. 510 of 2022 cannot be sustained.

33. Resultantly, these Civil Miscellaneous Appeals are allowed in terms of the above observations. The impugned order of the trial Court dated. 02.12.2022 is set-aside. No order as to costs.

As a sequel, miscellaneous petitions pending if any shall stand closed.

T. VINOD KUMAR, J

P. SREE SUDHA, J

Date: 28.05.2025
Mrkr/Vsv