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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CS(OS) 944/2024**

Between: -

1. MS. RUCHI KALRA

W/O MR. ASISH MOHAPATRA

R/O H-12, SECOND FLOOR,
GREEN PARK MAIN, HAUZ KHAS,
DELHI-110016

2. MR. ASISH MOHAPATRA,

S/O MR. PURNA CHANDRA MOHAPATRA,
R/O H-12, SECOND FLOOR,
GREEN PARK MAIN, HAUZ KHAS,
DELHI-110016

3. MR. NITIN JAIN

S/O MR. NAVEEN JAIN

R/O FLAT NO. D-141, DLF CREST,
GOLF COURSE ROAD, DLF PHASE-5,
SECTOR 54, GURUGRAM, HARYANA-122009

4. OFB TECH PRIVATE LIMITED

A COMPANY REGISTERED UNDER THE COMPANIES ACT, 2013

HAVING ITS REGISTERED OFFICE AT:

B-1102, SANKALP ICONIC TOWER,
OPP. VIKRAMNAGAR, BOPAL AMBLI ROAD,
BODAKDEV, AHMEDABAD CITY,
AHMEDABAD, GUJARAT-380054

AND HAVING ITS CORPORATE OFFICE AT:

GLOBAL BUSINESS PARK,



6TH FLOOR TOWER A, SECTOR 26,
MG ROAD, GURUGRAM, HARYANA-122002

AND ALSO AT:

G-22 C (UGF) D-1 (K-84),
GREEN PARK MAIN,
NEW DELHI-110016

5. OXYZO FINANCIAL SERVICES LTD.

HAVING ITS REGISTERED OFFICE AT:

FIRST FLOOR, VIPUL AGORA MALL, 101,
MEHRAULI-GURGAON ROAD, SECTOR 28,
GURUGRAM, SARHOL, HARYANA 122001

....PLAINTIFFS

(Through: Mr. Tanmaya Mehta, Mr. Sanyam Khetarpal and Ms. Lisa Sankrit, Advocates.)

AND

1. SLOWFORM MEDIA PVT. LTD.

A COMPANY REGISTERED UNDER THE COMPANIES ACT, 2013

HAVING ITS REGISTERED OFFICE AT:

E-210, SECOND FLOOR, H-16, MHADA BUILDING,
SION TRANSIT CAMP ROAD, PRATIKSHA NAGAR,
MUMBAI, MAHARASHTRA-400022

ALSO AT:

SLOWFORM PTE. LTD.
68, CIRCULAR ROAD, #02-01,
SINGAPORE-049422

2. MS. HARVEEN AHLUWALIA

EDITOR INTERNET

(ONLINE MEDIA PLATFORM OF SLOWFORM MEDIA PVT. LTD.)

HAVING ITS OFFICE AT:

E-210, SECOND FLOOR, H-16, MHADA BUILDING,
SION TRANSIT CAMP ROAD, PRATIKSHA NAGAR,
MUMBAI, MAHARASHTRA-400022



3. MR. ASHISH K. MISHRA

EDITOR-IN-CHIEF,

THE MORNING CONTEXT

(ONLINE MEDIA PLATFORM OF SLOWFORM MEDIA PVT. LTD.)

HAVING ITS OFFICE AT:

E-210, SECOND FLOOR, H-16, MHADA BUILDING,
SION TRANSIT CAMP ROAD, PRATIKSHA NAGAR,
MUMBAI, MAHARASHTRA-400022

EMAIL: SUPPORT@THEMORNINGCONTEXT.COM

4. MS. PRIYA BUBNA

DIRECTOR,

SLOWFORM MEDIA PVT. LTD.

E-210, SECOND FLOOR, H-16, MHADA BUILDING,
SION TRANSIT CAMP ROAD, PRATIKSHA NAGAR,
MUMBAI, MAHARASHTRA-400022

5. MR. SURENDAR THIRUMURTHY

DIRECTOR,

SLOWFORM MEDIA PVT. LTD.

E-210, SECOND FLOOR, H-16, MHADA BUILDING,
SION TRANSIT CAMP ROAD, PRATIKSHA NAGAR,
MUMBAI, MAHARASHTRA-400022

**6. MINISTRY OF ELECTRONICS AND INFORMATION
TECHNOLOGY**

(GRIEVANCE CELL) (GOVERNMENT OF INDIA)

ELECTRONICS NIKETAN,

6, CGO COMPLEX,

LODHI ROAD, NEW DELHI: 110003

7. JOHN DOE

AND ANY OTHER MEDIA/ PRINT PLATFORM CONTAINING
DEFAMATORY MATERIAL AGAINST THE PLAINTIFFS

...DEFENDANTS



(Through: Mr. Kirtiman Singh, Sr. Advocate with Mr.Kushal Gupta, Ms.Akanksha Singh, Mr. Maulik Khurana, Mr.Rajeev Khatana, Advocates for D-1 to 5.)

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Reserved on: 20.02.2025

Pronounced on: 24.03.2025

JUDGMENT

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I.A. 46557/2024 (under Order 39 Rule 1 and 2 of CPC)

I.A. 2506/2025 (under Order VII Rule 11 of CPC)

PRELUDE

“In this race of technology, the law must be the charioteer steering the course of technology, not a bystander watching its lightning sprint. When the tide of technology rises, the law cannot remain anchored in the past.”

1. As technology gallops, the law cannot afford to crawl. The ever-evolving technological landscape demands that legal principles adapt swiftly to address emerging challenges and prevent mischief. When traditional legal doctrines interact with the boundless and fluid nature of the internet, their application does not always yield results identical to those in the physical world. Yet, no matter how stark or unexpected these changes may be, they must ultimately be reconciled within the framework of the law of the land, ensuring that justice remains not just a relic of the past but a force that



evolves to meet the demands of the present. At the same time, the judicial process is expected to arrive at just solutions to ever-evolving dynamic scenarios with a strict regard to the rule of law.

2. A pivotal question before this Court in the present case is whether hyperlinking to alleged defamatory content constitutes republication, thereby giving rise to a fresh cause of action. This inquiry is particularly significant given that hyperlinking serves as a fundamental mechanism for information sharing on the internet, often without any direct alteration or explicit endorsement of the linked content.

3. The Court, in this judgment, seeks to plant the sapling of the jurisprudence revolving around hyperlinking in the case of internet publication. Additionally, the adjudication of online defamation claim requires a delicate balancing act between two competing legal imperatives i.e., the right to freedom of speech and expression and the right to protect one's reputation, which is deeply intertwined with human dignity and the right to life. In this context, the Court shall also consider the principles governing the grant of pre-trial injunctions in defamation suits, particularly where such relief is sought to prevent the continued dissemination of contentious content. Before embarking on the voyage of the legal position, it is pertinent to have a brief sojourn of the facts of the case.

SUIT IN NUTSHELL

4. Plaintiff no.1 is a businesswoman who co-founded a unicorn start-up called OFB Tech Private Limited i.e. plaintiff no.4 and Oxyzo Financial Services Ltd. i.e. plaintiff no.5. Plaintiff no.2 is a co-founder and CEO of



plaintiff no.4 and plaintiff no.3 is also one of the co-founders of plaintiff no.4. Plaintiff no.4 claims to have a valuation of Rs.44,000 Crores.

5. The plaintiffs before this Court claim that they are high net worth individuals, derived from their holdings in the company, and have a high reputation in society. There have been various assertions in the plaint with respect to financial capacity and the growth journey of plaintiff nos.4 and 5 under the purported leadership of plaintiff nos.1 to 3, an illustration of which is not necessary in the present context.

6. Defendant no.1 claims to be a private limited media company that publishes an internet magazine by the name of the morning context, whereas, defendant nos.3, 4 and 5 are the directors of defendant no.1 and defendant no.2 is the independent editor and leads the internet coverage of the morning context, which is owned by defendant no.1 - a research and media company. Defendant no.2 claims to have more than one lakh active readers in India.

THE CONTROVERSY

7. On 17.05.2023, defendant no.2 published an alleged defamatory article titled "*the work culture of OfBusiness does not like to talk about*" accessible at <https://themorningcontext.com/internet/the-work-culture-ofbusiness-doesnt-like-to-talk-about>. This article is stated to have been researched on various social media platforms, including X (formerly Twitter), LinkedIn, and Instagram. The same article was referred to in another article dated 08.11.2023 by way of hyperlink, which was published on the website of defendant no.1. On 29.12.2023 again, the said article was recommended by defendant no.1 as the best stories and the most dominant themes of the year across startups, business and current affairs. Thus, the



articles dated 08.11.2023 and 29.12.2023 are stated to have hyperlinked the article dated 17.05.2023. The fourth article, published on 07.10.2024, also hyperlinked the article dated 17.05.2023.

8. In the instant case, it is the first article dated 17.05.2023 (*hereinafter the impugned article*) which is sought to be challenged, seeking a declaration of the same to be defamatory and for its removal and publication etc. Besides the aforesaid, the damages for defamation to the tune of Rs. 2,02,00,000/- have also been claimed, along with interest.

Earlier suit

9. It is incumbent to indicate that against the article dated 07.10.2024 under the title “*Of Business co-founders and management allegedly assaulted an employee, says FIR*”, a civil suit bearing number CS(OS) 825/2024 titled ***Ashish Mohapatra v. Slowform Media Pvt. Ltd. & Ors.*** has been instituted against the present defendants. In the said civil suit, *vide* order dated 15.10.2024, this Court directed to issue summons to the defendants and on an application under Order XXXIX Rule 1 and 2 of CPC, this Court found that *prima facie*, the impugned article is not protected under the defence of truth, fair comment and privilege; and therefore, was defamatory, espousing the cause of some disgruntled employees of OFB for adverse consequences. Therefore, this Court directed the defendant nos. 1 to 5 therein to take down/ remove/ restrict access/ block the mentioned URL of the article dated 07.10.2024 within a period of three weeks. The defendants were also restrained from, in any manner, directly or indirectly, publishing, posting, communicating, or circulating the impugned article or any material containing the defamatory imputations made therein.



10. Against the said injunction order passed by this Court, an appeal was preferred by defendant no.1 bearing number FAO(OS) 169/2024 titled as ***Slowform Media Pvt. Ltd. and Ors. v. Asish Mohapatra & Ors.*** i.e. the original defendants therein.

11. The Division Bench of this Court on 29.11.2024 observed that the appellants therein had an alternative remedy of filing an application under Order XXXIX Rule 4 CPC and the appeal was, therefore, disposed of by granting liberty to the appellants therein to file the appropriate application.

The relevant extracts of the order dated 29.11.2024, read as under:-

“2. Though a number of contentions and submissions have been advanced by learned counsel for the appellants, yet this Court is of the view that the appellants have an alternative effective remedy of filing an application under Order XXXIX Rule 4 CPC, especially keeping in view the observation of the learned Single Judge in the impugned order itself that the observations therein are prima facie.

3. At this stage, learned senior counsel for the respondents state that they would not press their contempt petitions till the appellant’s application under Order XXXIX Rule 4 CPC, which is proposed to be filed by the appellants, is decided.4. Consequently, the present appeal along with the applications is disposed of giving liberty to the appellants to file an application under Order XXXIX Rule 4 CPC within three working days. In the event such an application is filed, the learned Single Judge is requested to decide the same in accordance with law as expeditiously as possible preferably within four weeks, without being influenced by any observations made in the impugned order.

5. This Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open.”

12. Pursuant to the liberty accorded *vide* order dated 29.11.2024, the defendants therein, preferred an application under Order XXXIX Rule 4 CPC, and notice was issued on the said application on 18.12.2024. Thereafter, the plaintiff therein preferred I.A. 3255/2025 under Order XXXIX Rule 1 and 2 CPC, seeking an injunction against the article dated



17.05.2023, and notice on the said application was also issued on 07.02.2025.

13. Consequently, on 12.02.2025, the plaintiff therein withdrew the I.A. 3255/2025, considering that the said article was the subject matter of the present suit. Furthermore, the I.A. 47516/2024 under Order XXXIX Rule 4 CPC has been directed to be listed on 29.04.2025. Therefore, the civil suit bearing CS(OS) 825/2024 was, thus, pending at that stage.

14. It is of primal significance to indicate that it is the impugned article, which was hyperlinked in the second article dated 08.11.2023, the third article dated 29.12.2024, and the fourth article (injunction article) dated 07.10.2024, which is the subject matter of the challenge in the instant civil suit.

Present Suit

15. The instant civil suit was taken up for hearing on 29.11.2024. Summons were directed to be issued and accepted by the defendants. Notice on an application for an injunction was also issued. When the matter was taken up on 30.01.2025, an application under Order VII Rule 11 of CPC came to be filed by the defendants for the rejection of the plaint, realizing that CS(OS) 825/2024 was also pending. Notice of the application under Order VII Rule 11 of CPC was also issued on 30.01.2025, and thereafter, the Court directed for the listing of the matter on the date when the other civil suit was coming up for hearing. Thereafter, the hearing of the instant civil suit got deferred and has been taken up for consideration of pending applications bearing I.A. 46557/2024 and I.A. 2506/2025.



APPLICATION UNDER ORDER VII RULE 11 OF CPC

16. Mr. Kirtiman Singh, learned senior counsel appearing for the defendants, made the following broad submissions to sustain the challenge under Order VII Rule 11 of the CPC:-

- (i) Despite being aware of the contents of the impugned article, the plaintiffs consciously omitted to assail the impugned article in the earlier suit. The suit is, therefore, barred under Order II Rule 2 CPC read with Order VII Rule 11(d) of CPC. To substantiate the aforesaid submission, it is stated that the suit does not disclose any distinct or independent cause of action, separate from the one already raised in the earlier suit. The plaintiffs, therefore, must have prayed all reliefs in the earlier suit which were then available.
- (ii) When the impugned article was admittedly hyperlinked with an article dated 07.10.2024, subject matter of the earlier civil suit, there was no reason as to why the plaintiffs, if at all were aggrieved by the said article, should not have prayed for declaring the same to be defamatory.
- (iii) The suit is barred by limitation. It is stated that the impugned article was published on 17.05.2023 and on the date of publication itself, the plaintiffs were fully aware of it and did not challenge the said article; therefore, the limitation expired one year after the date of publication.

17. Learned counsel for the plaintiffs, despite notice, did not prefer to file any reply to the application under Order VII Rule 11 of CPC and instead decided to make his oral submissions.



ORAL REPLY TO APPLICATION UNDER ORDER VII RULE 11 OF
CPC

18. Mr. Tanmay Mehta, learned counsel appearing for the plaintiffs, submits that unless the cause of action in the two suits is identical, Order II Rule 2 of CPC would have no application. To support the said contention, reliance is placed on the case of ***Dalip Singh v. Mehar Singh Rathee and others***¹. He submits that the cause of action is not identical, as the two defamatory articles are different. Merely because there is an overlap in the allegation/ defamatory content; it does not take away the right of the plaintiffs to take independent remedy against both articles. According to him, each article has a different cause for defamation.

19. He further argues that the combined suit could have been rejected under Order II Rule 3 of CPC for misjoinder of causes and to support the said contention, reliance is placed on the decision of this Court in the case of ***K.A. Paul v. K. Natwar Singh & Ors.***² and the decision of the Supreme Court in the case of ***Rathnavathi and Another v. Kavita Ganashamdas***³.

20. He further argues that if the plaintiffs have chosen to file two suits, the same cannot be found fault with and to support the said contention, reliance is placed on the decision of the Supreme Court in the case of ***Pramod Kumar and Another v. Zalak Singh and others***⁴.

21. Additionally, it is submitted that Order II Rule 2 of CPC does not apply when the cause of action is continuing. To support the aforesaid

¹ (2004) 7 SCC 650.

² 2009 SCC OnLine Del 2382.

³ (2015) 5 SCC 223.

⁴ (2019) 6 SCC 621.



contention, reliance is placed on the decision of the Supreme Court in the case of ***Bengal Waterproof Limited v. Bombay Waterproof Manufacturing Company and Another***⁵.

22. With respect to the argument that the suit is barred by limitation, it is contended by learned counsel for the plaintiffs that the impugned article dated 17.05.2023, since was repeatedly hyperlinked, therefore, it is incumbent upon the plaintiffs to take the remedy. He submits that each hyperlinking of the impugned article gives a fresh cause of action; and therefore, by virtue of the last hyperlinking in the article dated 07.10.2024, the suit is within one year and the same is thus, not barred by limitation.

APPLICATION UNDER ORDER XXXIX RULE 1 AND 2 OF CPC

23. The plaintiff submits that in the impugned article, it is alleged that on several instances, the company has not accepted resignation letters for weeks and months, despite frequent reminders and requests. Employees who spoke, are repeatedly asked to stay and they are told that the company is capable of ruining their career, if they go against the company's wishes and they are often reminded that they are dealing with influential bosses who wield a lot of power in the Indian startup and venture capital world.

24. The said allegations are stated to have been shared and circulated directly or indirectly, which, according to the plaintiffs, are defamatory and if allowed to remain on the website and other social media platforms, then the extent of damages to the plaintiffs would be disadvantageous and unascertainable in monetary terms. It is, thus, stated that under almost the

⁵ (1997) 1 SCC 99.



same circumstances, the article dated 07.10.2024 has been enjoined by this Court. Therefore, applying the same analogy, the impugned article also deserves to be enjoined and appropriate directions for its removal and non-publication, etc. are required to be issued.

25. The learned counsel further submits that the impugned article cannot be covered under the garb of investigative journalism as the article transcends the boundary of fair comment and thus, it ought to be enjoined as the online presence of this article is repeatedly harming the reputation of plaintiffs.

26. The plaintiffs, therefore, submit that looking at the reputation of the plaintiffs and their phenomenal growth in the recent past, they have a strong *prima facie* case on merits, the balance of convenience also lies in their favour and if the injunction is not granted, they will suffer irreparable loss.

REPLY TO APPLICATION UNDER ORDER XXXIX RULE 1 AND 2
OF CPC

27. It is stated that after a lapse of about 18 months from the impugned publication, the instant civil suit has been filed with an attempt to exploit the defendants. It is also stated that the plaintiffs are also guilty of deliberately refraining from placing on record the complete email chain exchanged between the plaintiffs and the defendants. Email dated 17.05.2024, sent by plaintiff no.1 to defendant no.2 after publication of the impugned article, has deliberately not been placed on record. In the said email, plaintiff no.1 acknowledged and did not deny the existence of the WhatsApp screenshots provided in the impugned article. Plaintiff no.1 also offered context to the ongoing internal disputes with the former employees, thereby corroborating



the existence of such disputes. The relevant extract of the email has been placed on record.

28. It is stated that disclosure of sources is not mandatory and depends on balancing the public interest at large. It is also stated that the impugned article is primarily based on information received from the former employees of plaintiff no.4 along with supporting documents including but not limited to (i) screenshots of WhatsApp chats between the former employees of Plaintiff No. 4 and Plaintiff No. 2 and 3; (ii) information available on LinkedIn posts of former employees of plaintiff no. 4 (Of the two LinkedIn posts, LinkedIn post by Mr. Saha remains active. The LinkedIn post by Mr. Sunil Rajput, is no longer available. However, Mr. Rajput's comments on Mr. Saha's post (which contains screenshots of email sent by Mr. Rajput to plaintiff no. 2) remain accessible as of date); (iii) copy of a complaint dated April 19, 2023, filed by a former employee of plaintiff no. 4 with the Labour Commissioner in Hyderabad; and (iv) copy of a letter dated May 5, 2023, issued by the Labour Department of Telangana to plaintiff no. 4.

29. It is further stated that the plaintiffs *vide* their email dated 17.05.2023 have admitted the existence of the WhatsApp chats and LinkedIn posts reproduced in the impugned article and they only challenged the veracity of the screenshots on the ground that (i) they do not disclose the identity of former employees of plaintiff no. 4 company who have been cited as anonymous sources by the defendants; and (ii) the WhatsApp chats do not reflect phone numbers of plaintiff nos. 2 and 3 – hence the Plaintiffs did not confirm if the WhatsApp chats belong to plaintiff nos. 2 and 3.



30. It is further submitted that the retention of the identity of the former employees is protected under Article 19 of the Constitution of India and the same is not statutorily required to be disclosed. Moreover, source protection is extremely crucial for the freedom of speech and expression, without which sources will be deterred from assisting the press in informing the public on matters of public interest. It is stated that even the identity of the former employee of plaintiff no.4 i.e., Mr.Rahul Saha, who is the author of the LinkedIn post publicly sharing his negative experiences with the plaintiff company, has not been masked in the impugned article. One of the other former employees namely, Mr. Sunil Rajput has also agreed to the statement of Mr. Rahul Saha regarding withholding of the full and final settlement.

31. It is claimed that the impugned article is a true, *bonafide* reporting based on reasonable verification of facts, published without malice and is protected by the defences of truth, fair comment and qualified privilege. It is also stated that ‘malice in law’ cannot be presumed in the present case.

32. It has also been submitted that the impugned article is not a sensationalized narrative designed to capture attention by focusing on the plaintiffs and injunction can only be granted after a full-fledged trial is conducted and thus, reliance is placed on the decisions of the Supreme Court in the case of ***Bloomberg Television Production Services India Private Limited & Ors. v. Zee Entertainment Enterprises Limited***⁶.

⁶ 2024 SCC OnLine SC 426.



33. Reliance is also placed on the decision of the English Court in the case of **Bonnard v. Perryman**⁷ and the decision of this Court in the case of **Tata Sons Limited v. Greenpeace International & Anr.**⁸

34. I have heard the learned counsels appearing for the parties and have given thoughtful consideration to both applications and shall now proceed to examine them in a sequential manner.

ANALYSIS OF APPLICATION UNDER ORDER VII RULE 11 OF CPC

35. Before embarking on the merits of the case, it is pertinent to delineate the ambit of Order VII Rule 11 of the CPC.

Delineating the jurisprudential horizon of Order VII Rule 11 of the CPC

36. The remedy under Order VII Rule 11 CPC is an independent and stand-alone special procedure, empowering the Court to summarily dismiss a suit at the threshold without proceeding to record evidence or conduct a trial, if any of the prescribed grounds are met. The objective of this provision is to prevent unnecessary prolongation of litigation, abuse of process, to reduce costs and to enable the judicial system to allocate its time to more deserving causes, once it is found that no valid cause of action exists or the suit is barred by limitation or by other grounds envisaged therein. The Supreme Court in **Dahiben v. Arvindbhai Kalyanji Bhanusali**⁹, summed up the law applicable for the rejection of a plaint, and held that a plaint shall be rejected if it fails to disclose a cause of action, is undervalued or insufficiently stamped despite Court directions, appears to be barred by law, is not filed in duplicate, or if the plaintiff fails to comply with

⁷ [1891] 2 Ch 269.

⁸ 2011 SCC OnLine Del 466.

⁹ (2020) 7 SCC 366.



procedural requirements. The rule also includes a proviso allowing the Court to extend the time for compliance in exceptional circumstances to prevent grave injustice. This principle was reaffirmed in the Supreme Court decision in the case of **Shri Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle**¹⁰, underscoring the necessity of curbing frivolous litigation to ensure judicial efficiency.

37. The real object of Order VII Rule 11 CPC is to keep out of Courts irresponsible lawsuits and it provides for an independent remedy to the defendant to challenge the maintainability of the suit itself at the very threshold, irrespective of its right to contest the same on merits. The Supreme Court in **Sopan Sukhdeo Sable v. Asstt. Charity Commr.**¹¹, held as under:

“17. .. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by a searching examination of the party, in case the court is prima facie of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.

20....Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.”

¹⁰ 2024 SCC OnLine SC 3844

¹¹ (2004) 3 SCC 137.



38. Furthermore, in **Hardesh Ores (P) Ltd. v. Hede & Co.**¹², the Supreme Court further held that it is not permissible to cull out a sentence or a passage from the plaint and to read it in isolation while considering a prayer for the rejection of the plaint. It is the substance and not merely the form, which has to be looked into. The plaint has to be construed comprehensively as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact, as the discovery of truth is dependent on the outcome of appreciation of evidence after taking on record the evidence of the parties in light of the principles of relevancy, admissibility and reliability of evidence.

39. In **Azhar Hussain v. Rajiv Gandhi**¹³, the Supreme Court further held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste the judicial time of the Court, in the following words :-

“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

40. Moreover, the power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before the conclusion of the trial,

¹² (2007) 5 SCC 614.



as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra*¹⁴. Furthermore, the Supreme Court in the case of *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*¹⁵, reiterated that the power under Order VII Rule 11 CPC can also be exercised *suo moto* by the Court.

41. Thus, on the conspectus of the settled position of law, it is crystal clear that powers vested in the Court under Order VII rule 11 CPC are not incumbent upon a formal application moved by the defendant but can also be exercised by the Court on its own. The power is meant to prevent abusive litigation, which needs to be curbed summarily once any of the grounds prescribed in the Rule are satisfied. Having said that, at this stage, it is not permissible to cull out a sentence or a passage from the plaint and to read it in isolation and the plaint has to be construed as it stands, without addition or subtraction of words.

42. The entire fulcrum of the Order VII Rule 11 CPC application in this case rests on the following assertion:-

- i. The suit is barred under Order II Rule 2(2) CPC as it is the plaintiff's case that the article was republished by virtue of hyperlinking the article in the subsequent article dated 07.10.2024, which was the subject matter of the earlier suit. Thus, this “republishing”, as per the claim of the plaintiff, would constitute as a part of the same cause of action and therefore, ought to have been agitated in the prior suit.
- ii. Secondly, it is not a case of republication as hyperlinking does not mean republication and therefore, the time limit for limitation will

¹³ 1986 Supp SCC 315.

¹⁴ (2003) 1 SCC 557.



start ticking from the date of publication i.e., 17.05.2023. Consequently, the suit was barred by limitation as it was filed beyond one year from the date of first publication i.e., 17.05.2023.

43. In order to effectively deal with these arguments, it is pertinent to first analyze the meaning of ‘publication’ in the context of defamation.

Decoding the ambit of ‘publication’ in defamation

44. Publication of the defamatory statement is an essential element of the cause of action in a suit for damages for defamation. The injury caused by a libel arises from the effect produced upon its readers. Publication means the act of making the defamatory statement known to any person or persons other than the plaintiff himself (see Salmond on Torts, page-215, Fourteenth Edition). It is the communication of words or doing the defamatory act in the presence of at least one person other than the person defamed. In the case of ***Khima Nand v. Emperor***¹⁶, it was held as under:-

“There can be no offence of defamation unless the defamatory statement is published or communicated to a third party, that is, to a party other than the person defamed.”

45. Publication is the act of making known the defamatory matter, after it has been written, to some person other than the person about whom it is written. Liability for a publication arises from participation or authorisation. Thus, where a libel is published in a newspaper or book, everyone who has taken part in publishing it, or in procuring its publication, or has submitted material published in it, is *prima facie* liable (see Gatley, page-234, Eighth Edition). To put it otherwise, an act of publication involves a wide range of

¹⁵ (2022) 10 SCC 1.

¹⁶ 1936 SCC OnLine All 307.



actions and could be done in any manner, however, the elementary test is whether the act complained of has exposed the defamatory matter to any person other than the defamed person.

46. Reference can be made to the decision of this Court in the case of **Frank Finn Management Consultants v. Subhash Motwani**¹⁷ wherein it was held that publication in the sense of a libel is not the mechanical act of printing of the magazine but is of communication of the libelous article to at least one person other than the plaintiff or the defendant. The relevant extracts of the decision read as under:-

“17. The wrong within the meaning of Section 19 of the CPC in an action for defamation is done by the publication. The defendants are confusing publication in the sense of printing, with publication as in the case of libel. The publication in the sense of a libel is not the mechanical act of printing of the magazine but is of communication of the libelous article to at least one person other than the plaintiff or the defendant. In this regard also see Aley Ahmed Abdi v Tribhuvan Nath Seth 1979 All. LJ 542. If the magazine, as aforesaid, has a circulation at Delhi, then it cannot be said that the wrong would not be done to the plaintiff at Delhi and thus the courts at Delhi would have jurisdiction under Section 19 of the Act. A Division Bench in T.N.Seshan v All India Dravida Munnetira Kazahagam 1996 AlHC 4283(AP) has taken the same view. Even if the test of Section 20 of the CPC were to be applied, even then the cause of action in part at least would accrue in Delhi. A Single Judge of the High Court of Bombay in the The State of Maharashtra v. Sarvodaya Industries AIR 1975 Bombay 197 has held that the phrase wrong done in Section 19 would clearly take in not only the initial action complained of but its result and effect also and Section 19 is wide enough to take in those places where the plaintiff actually suffered the loss because of the alleged wrongful act. It was further held that the court within whose local jurisdiction damage was caused or suffered or sustained, would clearly answer the requirements of Section 19 for the purposes of the suits mentioned therein. I respectfully concur with the said view and unless Section 19 of the CPC is so interpreted, the purpose thereof would be defeated. Similarly, State of Meghalaya & Ors v Jyotsna Das AIR

¹⁷ 2008 SCC OnLine Del 1049.



1991 Gauhati 96 also held that wrong done includes and covers the effect of the act. The counsel for the defendants has relied upon *Rashtriya Mahila Kosh v The Dale View* 2007 IV AD (Delhi) 593 to address the principle of *forum non conveniens*. With respect, if under the CPC the court has jurisdiction, I find it hard to hold that on the doctrine in international law of *forum non conveniens* the plaintiff can be non suited. I, therefore, decide issue No.1 in favour of the plaintiff and against the defendants.”

47. This Court, in the case of **Deepak Kumar v. Hindustan Media Ventrues Ltd.**¹⁸, held that it is settled law that defamation takes place because a defamatory statement or article or any other material is published i.e. it comes to the knowledge of the public and the appellant/plaintiff is brought down in the estimation of the right-thinking people of the society. It was further held that publication is a *sine qua non* with respect to defamatory articles because defamation is only caused when the general public learns about them.

48. Thus, it is crystal clear that publication is an essential requirement for the culmination of defamation. Furthermore, as per Article 75 of the Limitation Act, 1963, in order to maintain a suit of defamation, it should be brought within one year of publishing the defamatory content. Reliance is placed on Article 75 of the Limitation Act, 1963, which reads as under:-

“THE SCHEDULE
(PERIODS OF LIMITATION)
[See sections 2(j) and 3]
FIRST DIVISION—SUITS

PART VII.—SUITS RELATING TO TORT

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
75. For compensation for libel	One year.	When the libel is published.”

¹⁸ 2017 SCC OnLine Del 8970.



49. Considering the case in hand, the alleged defamatory article was first published on 27.05.2023 and admittedly, no suit was filed within one year of limitation. Thereafter, it is the contention of the plaintiff that since, on 07.10.2024, the concerned article was re-published by way of hyperlink, therefore, a fresh cause of action arises in the present case. In order to appreciate this controversy, it is pertinent to examine the aspect of re-publication in the context of defamation.

Chalking down the contours of re-publication in the context of defamation

50. In common law, an act of republication of defamatory content has been placed at the same pedestal as an act of original publication. A person responsible for the republication of defamatory content cannot take refuge on the pretext of an already existing publication. In the case of **Truth (N.Z.) Ltd. v. Philip North Holloway**¹⁹, it was held that every republication of a libel is a new libel and each publisher is answerable for his act to the same extent as if the calumny originates with him. It has been further held in **Stern v. Piper & Ors.**²⁰ that every republication of a libel is a new libel and each publisher is answerable for his act to the same extent as if the defamatory statement originated with him.

51. Reference can be made to the decision of **Harbhajan Singh v. State of Punjab**²¹, wherein the same principle of republication was reiterated. The Court observed that a publisher of a libel is strictly responsible, irrespective of the fact whether he is the originator of the libel or is merely repeating it. The relevant extracts of the said decision read as under:-

¹⁹ (1960) 1 W.L.R. 997.

²⁰ [1996] 3 All ER 385.



“48. Even if the speeches and the press-news had expressly referred to the complainant and even if they had used the identical language, which had been indulged in by the appellant, the previous publication of similar imputation would have given to the accused, no protection, The "accused cannot justify the defamatory statement on the ground that similar reports had appeared or by saying, that rumours to that effect were afloat, as stated in Halsbury's Laws of England (vide Vol. 24, para 84, page 47)-

If the defendant made a statement, whether in writing or by word of mouth, which is defamatory of the plaintiff, it is no justification, or no sufficient justification, that the statement purported to be made on the relation of another, and that it had, in fact, been related to the defendant by that other, even though the defendant disclosed the name of his informant at the time or subsequently at the earliest opportunity.

49. Every republication of a libel is a new libel, and each publisher is answerable for his act to the same extent as if the calumny originated with him. The publisher of a libel is strictly responsible, irrespective of the fact whether he is the originator of the libel or is merely repeating it. But as pointed out already, in this case, no question of repeating of a libel arises, because the defamatory statement has originated with the impugned statement of the accused.”

52. At this juncture, reference can be made to the decision of this Court in the case of **Khawar Butt v. Asif Nazir Mir & Ors.**²², wherein the Court was considering whether an act of leaving allegedly defamatory material on the internet/facebook page gives rise to a fresh cause of action every moment the said offending material is so left on the webpage – which can be viewed by others at any time, or whether the cause of action arises only when the offending material was first posted on the webpage/internet. While answering the said question, this Court held that if there is re-publication resorted to by the defendant - with a view to reach a different or larger section of the public in respect of the defamatory article or material, it

²¹ 1960 SCC OnLine Punj 258.

²² 2013 SCC OnLine Del 4474.



would give rise to a fresh cause of action. The relevant extracts of the said decision read as under:-

*“It is the policy of the law of limitation to bar the remedy beyond the prescribed period. That legislative policy would stand defeated if the mere continued residing of the defamatory material or article on the website were to give a continuous cause of action to the plaintiff to sue for defamation/libel. **Of course, if there is re-publication resorted to by the defendant - with a view to reach the different or larger section of the public in respect of the defamatory article or material, it would give rise to a fresh cause of action.**”*

39. The alleged libelous posting on Facebook, as averred in the plaint, was posted on around 26.10.2008, 27.10.2008 and even the booklet containing the allegedly defamatory material concerning the plaintiff is said to have been circulated around 25.12.2008. In view of the same, the limitation period for the suit expired on 25.12.2009.⁴⁰ Since the suit to claim damages for libel has not been filed within the period of limitation of one year from the date when the cause of action arose, i.e. when the libel was published, the said claim is barred by limitation.”

53. The High Court of Bombay, in the case of ***Indian Express Newspapers (Bombay) Pvt. Ltd. v. Dr. Jagmohan Mundhara***²³ and ***Serum Institute of India (P) Ltd. v. Yohan Tengra***²⁴ as well, held that every republication of a libel is a new libel, and each publisher is answerable for his act to the same extent as if the content was written by him.

54. Reference can also be made to the decision of the High Court at Calcutta in the case of ***Nandalal Rathi v. Kamalalaya Centre Shops & Office Owners Association***²⁵, wherein a similar question regarding the limitation and continuous effect of defamation in case of republication arose before the Court. The Court held that in case of a continuing tort, a fresh

²³ 1984 SCC OnLine Bom 256.

²⁴ 2023 SCC OnLine Bom 1093.

²⁵ 2014 SCC OnLine Cal 6092.



period of limitation begins to run at every moment of time during which the tort continues. The relevant extracts of the said decision read as under:-

“The expression “cause of action” refers to “every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court” (Cook v. Gill; 1873 LR CP 107).

A cause of action may be either single or continuing. When an Act is final and complete and becomes a cause of action for injury to the plaintiff, it is single, arises once and for all and the plaintiff is entitled to sue for compensation at one time. But if there is a repetition of a wrongful act or omission, it will comprise a continuing cause of action.

In Hole v. Chard Union reported in 1894 (1) Ch. 293 Lord Justice Lindley held :-

“What is a continuing cause of action? Speaking accurately, ‘there is no such thing; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought.”

What is emphasized is that there has to be repetition of acts or omissions in respect of repeated wrongs.

*The wrong of defamation consists in the publication of a false and defamatory statement respecting another person without lawful justification or excuse (Salmond, 15th Edition, Page 179). A “libel” is only a particular form of “defamation”. It is a defamatory statement in writing or otherwise recorded (e.g. by printing, typing etc.) in such a way as to be more or less permanent so that after one act of publication, it still retains its capacity of expressing the defamatory meaning by subsequent acts of publication. Slander is spoken defamation. **A statement is not actionable as a libel unless it is made and published. Publication would include a subsequent republication of the libellous matter and a suit will lie for every such publication. The starting point of limitation under Article 75 of the Limitation Act is the date on which the particular alleged libel is published. Every publication of a libel will give a cause of action.***

In order to ascertain when a defamatory statement would be regarded as a continuing breach or a continuing wrong thereby giving a fresh period of limitation, the test appears to be to see whether the wrongful act produces a state of affairs, and every



moment's continuance of which is a new wrong and is of such a nature as to render the doer of it responsible for the continuance. Section 22 of the Limitation Act provides that in case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the tort continues. If the defamatory statement causes an injury which is complete, there is no continuing tort even through the damage resulting from the act may continue. The continuance of the effect of a wrong is itself not a continuing wrong. (Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan; AIR 1959 SC 798). A definition of tort has been inserted in the present Limitation Act in Section 2(m) which means a civil wrong which is not exclusively the breach of contract or the breach of trust. The word tort has been included by replacing the word “wrong” occurring in Section 23 of the Repel Act of 1908. The word “tort” in Section 22 of the present Limitation Act to be understood in the light of the aforesaid definition. The words “continuing tort” have been substituted in the present Section for the word “continuing wrong the independent of Contract” occurring in Section 23 of the Repel Act and a definition of tort “has been inserted” in Section 2(m) as stated above.

However, at this stage on a reading of the plaint it does not appear to me that the cause of action is only confined to recovery of damages for libel.”

55. The Calcutta High Court in the said decision further held that a statement is not actionable as a libel unless it is made and published. Furthermore, the publication would include a subsequent republication of the libelous matter and a suit will lie for every such publication. The starting point of limitation under Article 75 of the Limitation Act would be the date on which the particular alleged libel is published and every fresh publication of a libel will give rise to a fresh cause of action.

56. This Court in the case of **Arvind Kejriwal v. State**,²⁶ was dealing with the question of whether the act of ‘re-tweeting’ amounts to ‘re-publication’.

²⁶ 2024 SCC OnLine Del 719.



While answering the said question in affirmative, the Court held that retweeting or reposting defamatory content, without any disclaimer as to whether the person so retweeting agrees or disagrees or has verified the content so posted or not, and as to whether he projected to the world at large, who care to follow him, that he believes the content to be true so shared, a person would be republishing the original defamatory content which has the potential of lowering the moral or intellectual character or credit of a person. The Court observed as under:-

“63. In case, the act of retweeting or reposting is allowed to be misused since it is still considered to be a vacant grey area of law where the sapling of jurisprudence as to whether retweeting defamatory content will be considered publication or not is yet to take place, it will encourage people with ill intentions to misuse this vacant field of law and therefore, despite retweeting the defamatory content, the accused can thereafter conveniently take a plea that he had merely retweeted a content.

64. In this background, this Court holds that retweeting or reposting defamatory content, without any disclaimer as to whether the person so retweeting agrees or disagrees or has verified the content so posted or not, and as to whether he projected to the world at large, who care to follow him, that he believes the content to be true so shared, a person would be republishing the original defamatory content which has the potential of lowering the moral or intellectual character or credit of a person.

65. A sense of responsibility has to be attached while retweeting content about which one does not have knowledge. Since in case reputational injury is caused by defaming a person, the person doing so by retweeting must attract penal, civil or tort action against him in absence of any disclaimer.

66. If we assume that the law exclusively attributes harm to the original author of a post in cases of defamation, a potential loophole emerges. Any case has to be adjudicated in its accompanying circumstances and the background of not only the facts but the actors of the act in question. When a vast majority follows a particular person on twitter, not all, may be aware of the nitty gritty of tweets or retweets. Most common persons who follow a person, who may be an influencer for a particular segment of



community will find it enough reason to believe a content just because the content is posted on account of a particular person.”

57. Reference can also be made to Section 22 of the Limitation Act which states that in the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

58. Thus, on the conspectus of the precedents cited above, it is crystal clear that as per Article 75 of the Limitation Act, the period of limitation is one year from the date of publication of the new libel. Moreover, each republication gives rise to a fresh cause of action, thereby resetting the clock. Therefore, the ticking of the clock stops and resets the moment the defamatory article is republished, thereby rendering a fresh cause of action and accordingly, a fresh period of limitation would commence again.

Application of Order II Rule 2 CPC in case of continuous cause of action

59. At this juncture, it is pertinent to address the contention of the defendant regarding the application of Order II Rule 2 CPC in the present case. The Order II Rule 2 of the CPC reads as under:-

“2. Suit to include the whole claim.—

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of



the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

60. Order II Rule 2 CPC is founded on the cardinal principle that a person should not be vexed twice for one and the same cause. The mischief which this provision seeks to cure is directed against two evils i.e., the splitting up of claims and the splitting up of remedies. The aim and objective of this Order is to avoid multiplicity of suits and it is based on the principle of fair-play. The fundamental requirement of Order II Rule 2 CPC is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. However, this must not be misunderstood to mean that every suit shall include every claim or every cause of action which the plaintiff may have against the defendant. Thus, where the causes of action are different in the two suits, Order II Rule 2 CPC would have no application.

61. The Privy Council in the case of **Mohammad Khalil Khan and Others v. Mahbub Ali Mian and Others**²⁷ discussed the principles governing the applicability of Order II Rule 2 CPC, which have stood the test of time. It held as under:-

“The principles laid down in the cases thus far discussed may be thus summarised:—

(1) The correct test in cases falling under Or. 2, r. 2, is “whether the claim in the new suit is, in fact, founded upon a cause of action distinct from that which was the foundation for the former suit.” [Moonshee Buzloor Ruheem v. Shumsoonnissa Begum [11 Moo IA 551, 605.]].

²⁷ 1948 SCC Online PC 44.



(2) *The cause of action means every fact which will be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment. [Read v. Brown ([L.R.] 22 Q.B. 128, 131)].*

(3) *If the evidence to support the two claims is different, then the causes of action are also different. [Brunsden v. Humphrey ([L.R.] 14 Q.B.D. 141)].*

(4) *The causes of action in the two suits may be considered to be the same if in substance they are identical. [Brunsden v. Humphrey ([L.R.] 14 Q.B.D. 141)].*

(5) *The cause of action has no relation whatever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers “to the media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour. [Muss. Chand Kour v. Partab Singh [(1887-88) 15 IA 156, 157]. This observation was made by Lord Watson in a case under s. 43 of the Act of 1882 (corresponding to Or. 2, r. 2), where plaintiff made various claims in the same suit.”*

62. Furthermore, reference can also be made to the recent decision of the Supreme Court in the case of **Cuddalore Powergen Corpn. Ltd. v. Chemplast Cuddalore Vinyls Ltd.**²⁸, wherein the Supreme Court noted that since the plea of Order II Rule 2 is a technical bar, it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning. Furthermore, the Supreme Court held that in order to seek shelter under Order II Rule 2(3), the defendant must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to

²⁸ 2025 SCC OnLine SC 82.



sue for the relief for which the second suit had been filed. The relevant extracts of the said decision read as under:-

“47. On a conspectus of the aforesaid discussion, what follows is that:

i. The object of Order II Rule 2 is to prevent the multiplicity of suits and the provision is founded on the principle that a person shall not be vexed twice for one and the same cause.

ii. The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. It must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit.

iii. Several definitions have been given to the phrase “cause of action” and it can safely be said to mean - “every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court”. Such a cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

iv. Similarly, several tests have been laid out to determine the applicability of Order II Rule 2 to a suit. While it is acknowledged that the same heavily depends on the particular facts and circumstances of each case, it can be said that a correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. Additionally, if the evidence required to support the claims is different, then the causes of action can also be considered to be different. Furthermore, it is necessary for the causes of action in the two suits to be identical in substance and not merely technically identical.

v. The defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had



been filed.

vi. The defendant must also have produced the earlier plaint in evidence in order to establish that there is an identity in the causes of action between both the suits and that there was a deliberate relinquishment of a larger relief on the part of the plaintiff.

vii. Since the plea is a technical bar, it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning.”

63. Coming to the moot question i.e., whether the bar under Order II Rule 2 CPC would be applicable in case of a continuing cause of action, it may be noted that the said question is no longer *res integra*. The Supreme Court in the case of **Bengal Waterproof Ltd.** has held that in cases of continuous causes of action or recurring causes of action, the bar of Order II Rule 2(3) cannot be invoked. In paragraph no. 10 of the said decision read as under:-

“10. As seen earlier, Order 2, Rule 2, sub-rule (3) requires that the cause of action in the earlier suit must be the same on which the subsequent suit is based and unless there is identity of causes of action in both the suits the bar of Order 2, Rule 2, sub-rule (3) will not get attracted. The illustration below the said Rule amply brings out this position. ...

But his only grievance was that whatever was the infringement or passing off alleged against the defendants in 1980 had, according to the plaintiff, continued uninterrupted and, therefore, in substance the cause of action in both the suits was identical. **It is difficult to agree. In cases of continuous causes of action or recurring causes of action bar of Order 2, Rule 2, sub-rule (3) cannot be invoked.** In this connection it is profitable to have a look at Section 22 of the Limitation Act, 1963. It lays down that “**in the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues**”. As act of passing off is an act of deceit and tort every time when such tortious act or deceit is committed by the defendant the plaintiff gets a fresh cause of action to come to the court by appropriate proceedings. Similarly infringement of a registered trade mark would also be a continuing wrong so long as



infringement continues. Therefore, whether the earlier infringement has continued or a new infringement has taken place cause of action for filing a fresh suit would obviously arise in favour of the plaintiff who is aggrieved by such fresh infringements of trade mark or fresh passing off actions alleged against the defendant. Consequently, in our view even on merits the learned trial Judge as well as the learned Single Judge were obviously in error in taking the view that the second suit of the plaintiff in the present case was barred by Order 2, Rule 2, sub-rule (3) CPC.”

64. Therefore, it is manifestly evident that the bar under Order II Rule 2 would not be applicable in case of continuous breach, where every breach gives rise to a fresh cause of action. Therefore, the argument of the defendant regarding the rejection of the plaint on the anvil of Order II Rule 2 falls flat.

65. After addressing the preliminary argument regarding the application of Order II Rule 2 CPC, this Court shall now analyze whether the hyperlinking in the context of cyber defamation amounts to republication or not.

The conundrum of Hyperlinking – Republication or not?

66. In order to effectively address this fundamental issue, which is rooted in the mysterious world of the internet, this Court has to travel beyond the realm of legal terrain to ascertain the true import and export of the word “hyperlinking” and the scope of hyperlinking in the case of online publication.

Meaning of hyperlinking

67. The Oxford English Dictionary (OED) defines hyperlink as "a link from a hypertext document to another location, activated by clicking on a highlighted word or image". Similarly, the Collins English Dictionary



describes it as "a word, phrase, picture, icon, etc., in a computer document on which a user may click to move to another part of the document or to another document." The Merriam-Webster Dictionary further elaborates, stating that a hyperlink is "an electronic link providing direct access from one distinctively marked place in a hypertext or hypermedia document to another in the same or a different document". Meanwhile, the Cambridge Dictionary emphasizes its functional aspect, defining it as "a connection that allows you to move easily between two computer documents or two pages on the internet".

68. Hyperlinking is a fundamental feature of the World Wide Web that allows users to navigate seamlessly between different pieces of information. It involves embedding clickable elements—such as words, phrases, or images—within a digital document, which, when activated, direct the user to another location within the same document or to an entirely different web resource. This mechanism not only facilitates efficient information retrieval but also enriches the user's experience by providing immediate access to related content.

69. After understanding the ambit of hyperlinking and in order to ascertain whether hyperlinking amounts to republication, this Court has travelled beyond the horizon of Indian legal discourse to effectively address this issue.

70. At this juncture, it is pertinent to refer to the decision of the Canadian Supreme Court in the case of *Crookes v. Newton*²⁹. In the said case, the defendant therein was the owner and operator of a website that published

²⁹ [2011] S.C.R. 269.



articles on various political issues, including freedom of speech and internet control. He published an article on his website which contained hyperlinks to material that allegedly defamed the claimant therein. The Trial Court therein analogized the hyperlinks to footnotes in an article, reasoning that footnotes do not constitute “publications,” but rather mere references. The Court of Appeal for British Columbia upheld the trial court’s ruling, also using the footnote analogy. Thereafter, the Supreme Court of Canada recognized the Internet’s “tremendous power” to harm reputation and that the right to freedom of free expression did not confer a license to ruin another’s reputation. In the context of hyperlinking, it was held that hyperlinks thus share the same relationship with the content to which they refer, as do references. Both communicate that something exists, but do not, by themselves, communicate its content and they both require some act on the part of a third party before he or she gains access to the content. The fact that access to that content is far easier with hyperlinks than with footnotes does not change the reality that a hyperlink, by itself, is content-neutral — it expresses no opinion, nor does it have any control over the content to which it refers. Furthermore, it was held that individuals may attract liability for hyperlinking if the manner in which they have referred to content conveys defamatory meaning; not because they have created a reference, but because, understood in context, they have actually *expressed* something defamatory. The relevant extracts of the said decision read as under:-

“[39] But I am not persuaded that exposing mere hyperlinks to the traditional publication rule ultimately protects reputation. A publication is defamatory if it both refers to the plaintiff and conveys a defamatory meaning: Grant, at para. 28. These inquiries



depend, respectively, on whether the words used or “the circumstances attending the publication are such as[] would lead reasonable persons to understand that it was the plaintiff to whom the defendant referred” (Brown, at para. 6.1), and whether the words would “ten[d] to lower a person in the estimation of right-thinking members of society” (Botiuk v. Toronto Free Press Publications Ltd., [1995] 3 S.C.R. 3, at para. 62). Defamatory meaning in the words may be discerned from “all the circumstances of the case, including any reasonable implications the words may bear, the context in which the words are used, the audience to whom they were published and the manner in which they were presented” (Botiuk, at para. 62, citing Brown (2nd ed. 1994), at p. 1-15). (See Brown, at paras. 5.2, 5.4(1)(a) and 6.1; Knupffer v. London Express Newspaper, Ltd., [1944] A.C. 116 (H.L.); Butler v. Southam Inc., 2001 NSCA 121, 197 N.S.R. (2d) 97; Bou Malhab v. Diffusion Métromédia CMR inc., 2011 SCC 9, [2011] 1 S.C.R. 214, at paras. 63 and 112.)

[40] *Where a defendant uses a reference in a manner that in itself conveys defamatory meaning about the plaintiff, the plaintiff’s ability to vindicate his or her reputation depends on having access to a remedy against that defendant. In this way, individuals may attract liability for hyperlinking if the manner in which they have referred to content conveys defamatory meaning; not because they have created a reference, but because, understood in context, they have actually expressed something defamatory (Collins, at paras. 7.06 to 7.08 and 8.20 to 8.21). This might be found to occur, for example, where a person places a reference in a text that repeats defamatory content from a secondary source (Carter, at para. 12).*

[41] *Preventing plaintiffs from suing those who have merely referred their readers to other sources that may contain defamatory content and not expressed defamatory meaning about the plaintiffs will not leave them unable to vindicate their reputations. As previously noted, when a hyperlinker creates a link, he or she gains no control over the content linked to. If a plaintiff wishes to prevent further publications of the defamatory content, his or her most effective remedy lies with the person who actually created and controls the content.*

[42] *Making reference to the existence and/or location of content by hyperlink or otherwise, without more, is not publication of that content. Only when a hyperlinker presents content from the hyperlinked material in a way that actually repeats the defamatory content, should that content be considered to be “published” by the*



hyperlinker. Such an approach promotes expression and respects the realities of the Internet, while creating little or no limitations to a plaintiff's ability to vindicate his or her reputation. While a mere reference to another source should not fall under the wide breadth of the traditional publication rule, the rule itself and the limits of the one writer/any act/one reader paradigm may deserve further scrutiny in the future."

71. Reference can also be made to the decision of the European Court of Human Rights in the case of **Magyar Jeti ZRT v. Hungary**³⁰, wherein the applicant therein was an operator of the news portal that published an article, which hyperlinked another alleged defamatory article. In the said case, the European Court of Human Rights held that imposition of liability for the mere posting of the hyperlink was a violation of Article 10 of the European Court of Human Rights. The Court noted the distinguishing feature between hyperlinking and republication and held that the hyperlinks, as a technique of reporting, are essentially different from traditional acts of publication in that, as a general rule, they merely direct users to content available elsewhere on the Internet. The Court held as under:-

"73. Furthermore, bearing in mind the role of the Internet in enhancing the public's access to news and information, the Court points out that the very purpose of hyperlinks is, by directing to other pages and web resources, to allow Internet users to navigate to and from material in a network characterised by the availability of an immense amount of information. Hyperlinks contribute to the smooth operation of the Internet by making information accessible through linking it to each other.

74. Hyperlinks, as a technique of reporting, are essentially different from traditional acts of publication in that, as a general rule, they merely direct users to content available elsewhere on the Internet. They do not present the linked statements to the audience or communicate its content, but only serve to call readers' attention to the existence of material on another website.

³⁰ (2019) 69 E.H.R.R. 3.



75. A further distinguishing feature of hyperlinks, compared to acts of dissemination of information, is that the person referring to information through a hyperlink does not exercise control over the content of the website to which a hyperlink enables access, and which might be changed after the creation of the link – a natural exception being if the hyperlink points to content controlled by the same person. Additionally, the content behind the hyperlink has already been made available by the initial publisher on the website to which it leads, providing unrestricted access to the public.

76. Consequently, given the particularities of hyperlinks, the Court cannot agree with the domestic courts' approach equating the mere posting of a hyperlink with the dissemination of defamatory information, automatically entailing liability for the content itself. Instead, it considers that the issue of whether the posting of a hyperlink may justifiably, from the perspective of Article 10, give rise to such liability requires an individual assessment in each case, regard being had to a number of elements.

77. The Court identifies in particular the following aspects as relevant for its analysis of the liability of the applicant company as publisher of a hyperlink: (i) did the journalist endorse the impugned content; (ii) did the journalist repeat the impugned content (without endorsing it); (iii) did the journalist merely include a hyperlink to the impugned content (without endorsing or repeating it); (iv) did the journalist know or could he or she reasonably have known that the impugned content was defamatory or otherwise unlawful; (v) did the journalist act in good faith, respect the ethics of journalism and perform the due diligence expected in responsible journalism?"

Whether every hyperlinking will amount to republication?

72. As quoted earlier, in the world of the internet, hyperlinks are, in essence, references, and by clicking on the link, readers are directed to other sources. It shares the same relationship with the content to which they refer as do references. Both communicate that something exists, but do not, by themselves, communicate its content and they both require some act on the part of a third party before he or she gains access to the content. The fact



that access to that content is far easier with hyperlinks than with footnotes does not change the reality that a hyperlink, by itself, is content-neutral — it expresses no opinion, nor does it have any control over the content to which it refers.

73. Hyperlinks are the gateway to the information on the internet. They are the synapses connecting different parts of the world wide web. Hyperlinks, in particular, are an indispensable part of its operation. As Matthew Collins explains, at para. 5.42:

“Hyperlinks are the synapses connecting different parts of the world wide web. Without hyperlinks, the web would be like a library without a catalogue: full of information, but with no sure means of finding it.”

74. At this juncture, reference can be made to the decision of this Court in the case of **Prem Peyara v. Kamla Sinha**³¹ wherein it was held that mere reference does not amount to republication. The Court held as under:-

“As far as the proposition of law as referred by the defendants is concerned, there is no dispute that every republication of a libel is a new libel and each publisher is answerable for his act to the same extent as if calumny originated from him. The publisher of a libel is clearly responsible irrespective of the fact whether he is the originator of the libel.

I do not agree with the contention of the plaintiff that a fresh cause of action has arisen when defendant No.1 in the cross-examination of the plaintiff during the trial proceedings referred the said imputations or confronted the same when DW Mukesh Kumar was examined in chief by defendant No.1. A mere reference of said imputations in the proceeding for the purpose of evidence or reference in order to prove the case by the party does not amount to republishing the same and no advantage of limitation to file the suit libel under the said circumstance can be given to the party, otherwise there would be no end of period of limitation.”

³¹ 2012 SCC OnLine Del 5374.



75. Thus, a delicate balance is sought to be struck between the ability of the plaintiff to vindicate his right of reputation and the freedom of expression which lies at the core of human existence. On one hand, putting every hyperlink under the umbrella of republication would amount to having a chilling effect on the efficiency and fluidity implicit in the nature of the internet, while on the other hand, equating every hyperlink as a mere reference and thus, putting it outside the ambit of republication, would give a blanket cheque in the realm of the digital world to disseminate the defamatory content. A hyperlinker may or may not be liable as a republisher and the determination would eventually depend upon the context in which the previous publication has been hyperlinked, the content and manner in which hyperlink occurs in the publication, any subtle implication or endorsement or repetition having the potential effect of targeting the reputation of a person etc. will be the predominant factors to be considered. Therefore, the real question in such cases would be, ***Is it just a hyperlink/reference or something more?***

76. Thus, in order to balance the competing interests of the freedom of speech and expression and the laws of defamation in the digital world, this Court holds that if the hyperlinking of the defamatory article is done enabling the reach of the defamatory article or publication which has the potentiality of hampering the reputation of the defendant then it would amount to republication. Furthermore, if the hyperlinking does not merely make a reference to the earlier article, rather, it essentially repeats, redefines, explains, paraphrases or endorses the content of the earlier article, thereby giving a fresh impression and refreshing the memory or otherwise emphasizing to the reader about the defamatory content of the earlier article,



thereby having the potentiality to hamper the reputation of the defendant, then it does not amount to a mere reference, rather it amounts to republication.

77. If the hyperlinking of a publication is done in a manner in which it refers to the content that conveys defamatory meaning, not because a reference was created, but because, if understood in context, it actually expressed something defamatory, then it would amount to republication. The mode, manner and context of hyperlinking must reveal an element of independent *expression*, even if subtle, in addition to the mere act of hyperlinking, for it to constitute republication. However, there can be no straight jacket formula to determine whether the hyperlink is just a reference or it is a republication. The same would have to be seen bearing in mind the facts and context of each case. In light of this exposition of law, this Court shall now examine whether in the present case, hyperlinking amounts to republication or not.

Analysis of the hyperlinks in the article dated 07.10.2024

78. A careful perusal of the article dated 07.10.2024, which was held to be *prima facie* defamatory by this Court in CS(OS) 825/2024 *vide* order dated 15.10.2024, would indicate that the impugned article in the present case was hyperlinked in the earlier injuncted article in this manner:-

*“However, our reporting has revealed several cracks in OfBusiness’s story. We have written about the company’s **harsh work culture, unusual business model** and how the firm may be **inflating its revenue**. While its valuation is like that of a tech company, our reporting has found that most of its business is not generated by its technology, and that it may be double counting its sales by allegedly selling material back and forth between its declared subsidiaries and companies run by its employees. The present allegations of assault, then, only add to the growing list of challenges the company is facing.*



Now, our earlier reporting has detailed multiple examples where OfBusiness employees were held responsible for payments from clients that didn't come through. In those cases, the company would allegedly withhold the employees' full and final settlement when they tried to leave, saying they couldn't settle until the due payments were cleared.

*Read: **The work culture that OfBusiness doesn't like to talk about***

79. A meticulous dissection of the article dated 07.10.2024, particularly in the context of the hyperlinks embedded therein, unequivocally establishes that these hyperlinks are not employed as mere references, but rather, they serve as integral components of the alleged defamatory construct woven by the defendant. The first hyperlink, titled "*harsh work culture, unusual business model*", is not an incidental citation; rather, it is strategically positioned within the article in a manner that imputes prior adverse reportage by the defendant concerning the plaintiff company. When this hyperlink is read in juxtaposition with the paragraph in which it is embedded, it becomes evident that the article conveys to the reader an impression that the defendant has already undertaken investigative reporting on the alleged harsh work culture and unconventional business model of the plaintiff. By such placement, the defendant not only reinforces its alleged defamatory assertions but also seeks to lend credibility to its allegations by anchoring them to its past reportage, thereby fostering insidious and cumulative reputational harm upon the plaintiff.

80. The second hyperlink, titled "*The work culture that OfBusiness doesn't like to talk about*", is similarly not a neutral or incidental reference. Rather, its placement is accompanied by the word "*Read*", which



constitutes an explicit inducement, if not an outright directive, for the reader to engage with the defendant's prior publication, which is the impugned article herein. Furthermore, the placement of this hyperlink is preceded by a passage asserting that *"the company would allegedly withhold the employees' full and final settlement when they tried to leave, saying they couldn't settle until the due payments were cleared."* This assertion, which substantially reproduces the alleged defamatory allegations contained in the impugned article itself, is immediately followed by the hyperlink, thereby operating as a rhetorical device to heighten the reader's perception of wrongdoing and to stimulate their curiosity, virtually compelling them to access the referenced publication. Such a structuring of the article is neither fortuitous nor benign but is manifestly a deliberate and calculated attempt to perpetuate and amplify the alleged defamatory insinuations against the plaintiff.

81. In the instant case, the manner in which the defendant has embedded these hyperlinks, their strategic positioning within the article, and the linguistic cues employed to direct the reader's attention towards them, all point to a concerted effort to sustain and propagate an alleged defamatory narrative against the plaintiff. The manner and context in which hyperlinks appear in the publication amount to independent expression, not even subtle, and not merely an act of referencing. Such deliberate structuring of the article, when viewed holistically, demonstrates that the defendant has actively sought to bolster its allegations by interweaving past publications within the article dated 07.10.2024, ensuring a sustained and continuous alleged defamatory impact upon the reputation of the plaintiff. Moreover, one cannot lose sight of the fact that the publications being referred to in the



hyperlinks are the publications of the defendants only and therefore, the defamatory content of the hyperlinked publications was well known to the publisher/hyperlinker, thereby *prima facie* ruling out the possibility of good faith.

82. Therefore, on the conspectus of the settled position of law, it is crystal clear that in the present case, the publication of article dated 07.10.2024, which hyperlinked the impugned article dated 17.05.2023, amounted to republication of the alleged defamatory article and thus, gave rise to a fresh cause of action. Furthermore, the act of publishing an article dated 07.10.2024 would ultimately reset the clock of limitation and thus the fresh limitation would start from the date of the publication of the article dated 07.10.2024. Thus, since the suit for defamation is instituted within one year of the publication of the article dated 07.10.2024, therefore the suit is not barred by limitation.

83. Accordingly, the application bearing no. I.A. 2506/2025 stands rejected.

**ANALYSIS OF APPLICATION UNDER ORDER XXXIX RULE 1 AND
2 OF CPC**

84. Prior to adjudicating this application on merits, it is incumbent upon the Court to delineate the law relating to the grant of interlocutory or interim injunctions in civil suits and the specific implication of the same in cases of defamation.

85. Order XXXIX of CPC gives the power to Courts to safeguard the interest of the plaintiff by granting temporary injunctions restraining the defendant's actions that may cause irreparable harm or prejudice to the subject matter of the dispute, thereby ensuring that, pending the final



adjudication of the *lis, status quo* with respect to the subject matter is maintained. Rules 1 and 2 of the aforementioned Order stipulate the framework under which temporary injunctions and interlocutory orders can be granted by the Court. Rule 1, specifically, provides that a temporary injunction can be granted when it is demonstrated through affidavit or other means that the property in dispute is at risk of being wasted, damaged, alienated, or wrongfully sold in the execution of a decree, or that the defendant intends to remove or dispose of the property to defraud creditors. Additionally, the Court may grant a temporary injunction to restrain the defendant from dispossessing the plaintiff or causing any injury in relation to the disputed property, until the disposal of the suit or until further orders. On the other hand, Rule 2 allows for the issuance of an injunction to prevent the defendant from repeating or continuing a breach of contract or other injury. The Rule also stipulates that the plaintiff may apply for a temporary injunction at any stage of the suit, whether before or after judgment, to restrain the defendant from committing the breach or injury complained of, or any similar breach or injury arising out of the same contract or related to the same property or right.

86. The Supreme Court in the case of ***Hazrat Surat Shah Urdu Education Society v. Abdul Saheb***³² established a three-part test while granting an interim injunction, requiring the plaintiffs to demonstrate that there is a *prima facie* case in their favour; the balance of convenience lies in their favour; and irreparable injury would be caused if the injunction is not granted. The relevant extract of the aforesaid decision reads as under:-

³² JT 1988 (4) SC 232.



“No doubt the District Judge held that there was no prima facie case in the respondent's favour but he further recorded a positive finding that even if the plaintiff respondent had prima facie case there was no balance of convenience in his favour and if any injury was caused to him on account of the breach of contract of service he could be compensated by way of damages in terms of money therefore he was not entitled to any injunction. The High court failed to notice that even if a prima facie case was made out, the balance of convenience and their irreparable injury were necessary to exist. The question whether the plaintiff could be compensated by way of damages in terms of money for the injury which may be caused to him on account of the breach of contract of service was not considered by the High court. No temporary injunction should be issued unless the three essential ingredients are made out, namely:

*prima facie case,
balance of convenience
irreparable injury which could not be compensated in terms of money.*

If a party fails to make out any of the three ingredients he would not be entitled to the injunction and the court will be justified in deciding to issue injunction. In the instance case the respondent plaintiff was claiming to enforce the contract of service against the management of the institution. The refusal of injunction could not cause any irreparable injury to him as he could be compensated by way of damages in terms of money in the event of his success in the suit. The Respondent was therefore not entitled to any injunction order. The District Judge in our opinion rightly set aside the order of the Trial Court granting injunction in favour of the plaintiff respondent. The High court committed error in interfering with that order.”

87. The Supreme Court in ***Dalpat Kumar v. Prahlad Singh***³³ while dealing with the provisions of Order XXXIX of CPC, has opined as under:-

“4. Order 39 Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order

³³ (1992) 1 SCC 719.



grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing ... or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission clause (c) was brought on statute by Section 86(i)(b) of the Amending Act 104 of 1976 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under Section 151 CPC to grant ad interim injunction against dispossession. Rule 1 primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it."

88. Recently, this Court while applying the principles laid down by the Supreme Court in the aforementioned cases, in **Dr. Rashmi Saluja V. Religare Enterprises**³⁴ has reiterated the well-settled legal principle that no injunction can be granted unless the three essential conditions are satisfied, namely, the existence of a *prima facie* case, the balance of convenience in

³⁴ 2025: DHC: 701.



favour of the applicant, and the likelihood of irreparable injury that cannot be compensated in monetary terms.

89. *Albeit*, the principles of irreparable harm, *prima facie* case, and balance of convenience have an application in all cases where the Court exercises such power; in defamation suits, Courts have often also relied upon the principles developed under the common law.

90. In English jurisprudence, the jurisdiction to grant interim injunctions to restrain the publication of defamatory statements is considered to be “of a delicate nature” insinuating that the same must only be exercised in the clearest of cases. In the landmark decision of ***Coulson v Coulson***³⁵, the Court emphasized the delicate nature of the power to grant an injunction in suits for defamation, underscoring the importance of free speech and the common practice that damages may often be an adequate remedy. It was opined that the Courts should keep in mind the following factors while granting an interim injunction in cases where an allegedly defamatory post is sought to be injuncted: -

- i) The statement is unarguably defamatory;
- ii) There are no grounds to conclude that the statement may be true;
- iii) There is no other defence that might succeed;
- iv) There is evidence of an intention to repeat or publish the defamatory statement.

91. Furthermore, the Court in ***Church of Scientology v. Readers Digest***³⁶, has succinctly encapsulated the legal position for the grant of injunction

³⁵ 93 E.R. 1074.

³⁶ 1980] 1 NSWLR 344.



against defamatory content, asserting that the power to grant such injunctions must be exercised with great caution and only in rare cases. A plaintiff must demonstrate that a subsequent finding of non-defamation would be implausible, that there are no valid defences (such as justification, privilege, or comment), and that more than nominal damages are likely to be recovered. It was also held that questions of privilege and malice are not typically suitable for interlocutory determination, and injunctions that restrain public discussion on matters of public concern should not be generally granted.

92. When considering the nature of a statement and whether it is defamatory or not, it is insufficient for the claimant to merely establish that the words are capable of being defamatory. Instead, the Court must be satisfied that they are, or will be, defamatory. Post the Defamation Act 2013, enacted by the legislature of the United Kingdom, a claimant must show that the threatened publication would cause serious harm to their reputation, leading to crippling consequences.

93. Generally, in cases of defamation, the claimant is not required to prove the falsity of the allegations to establish a *prima facie* cause of action, the law presumes it. However, if the defendant asserts the truth of the defamatory statement and intends to plead and prove it, the Courts have refrained from granting an interim injunction unless it is exceptionally clear that such a defence cannot succeed.

94. In **Bonnard**, another landmark English case, the House of Lords highlighted the public interest implicit in free speech and observed that unless the alleged libel is proven untrue, no wrong is committed. Thus, until the falsity of the alleged libel is established, no right is deemed to have been



infringed. It was held that a mere assertion of an intention to justify the allegations in order to successfully resist an interlocutory injunction to restrain the publication of a libel was sufficient to caution the Court in not granting injunctions. The aforesaid has come to be known as the '*Bonnard*' principle.

95. The application of the *Bonnard* principle also finds relevance in the decision of ***Bloomberg***, relied upon by the defendants, wherein the Supreme Court has held that interim injunctions against the publication of material can be granted only after a full-fledged trial is conducted except in exceptional cases. Relevant extracts from the aforementioned decision are reproduced below:

“9. In essence, the grant of a pre-trial injunction against the publication of an article may have severe ramifications on the right to freedom of speech of the author and the public's right to know. An injunction, particularly ex-parte, should not be granted without establishing that the content sought to be restricted is ‘malicious’ or ‘palpably false’. Granting interim injunctions, before the trial commences, in a cavalier manner results in the stifling of public debate. In other words, courts should not grant ex-parte injunctions except in exceptional cases where the defence advanced by the Plaintiff 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 Plaintiff is given a chance to make their submissions...”

96. In ***Tata Sons Limited***, this Court while refusing an injunction against an online game titled “Turtle v. Tata,” reaffirmed the well-established principle laid down in ***Bonnard*** to hold that an interim injunction restraining publication in defamation proceedings shall not be granted unless it is unequivocally demonstrated that the defence of justification is bound to fail at trial. This Court also reiterated the articulation of law in ***Fraser v.***



Evans³⁷ and subsequent authorities to the effect that the Courts will not interfere with the publication of allegedly defamatory material where the defendant asserts an intention to justify the statement or rely on fair comment on a matter of public interest, as it is not within the purview of the judiciary, at an interlocutory stage, to usurp the constitutional role of the jury in adjudicating such defences. The relevant paragraphs is extracted herein as under:-

“29. From the above reasoning it follows that the Court will invariably not grant an interim injunction to restrain the publication of defamatory material as it would be unreasonable to fetter the freedom of speech before the full trial takes place, where each of the parties can argue in detail with the help of additional evidence. Similarly in this matter, it is incumbent upon this Court to decide whether it would be reasonable to fetter the reasonable criticism, comment, and parody directed at the plaintiff, which to a large extent is protected by the Constitutional guarantee to free speech, to all the citizens of India...”

97. Similarly, in **Lodha Developers Ltd. v. Krishnaraj Rao**³⁸, the Bombay High Court highlighted the plurality of voices on digital platforms and stressed the importance of tolerating opposing opinions rather than suppressing them merely because they are published online. The relevant extract of the aforesaid decision is reproduced as under: -

“26. With this, let me to turn very briefly to what it is that the law mandates and what it requires of a plaintiff to succeed in such an action. Our starting point must be the early decision of BJ Wadia J in Mitha Rustomji Murzban v Nusserwanji Nowroji Engineer.¹ That was a decision at the trial of the suit. The allegation was that certain female students attending a class would have their future ruined because of one person. Wadia J held that no action lies against a defendant who can prove that the words complained of are a fair and bona fide comment on a matter of public interest. The defendant must show that the subject on which he commented is a

³⁷ [1968] EWCA Civ J1003-2.

³⁸ 2019 SCC OnLine Bom 13120.



matter of public interest, that the statements of fact that he makes are true, and that his comment is fair and bona fide. His criticism must be expressed fairly. Wadia J quoted Lord Esher ME in a very early decision of 1887 as saying that fair comment is that which, in the opinion of jury, is not beyond what any reasonable or fair person, however prejudiced, might say.² Every latitude must be given to opinion and to prejudice, and then we must see whether a fair or reasonable person would make such a comment. That the comment is independent, bold or exaggerated — or even grossly exaggerated — does not make it unfair”

98. On the conspectus of the aforesaid legal position, it is clear that caution must be exercised by the Courts in granting an interim injunction against ostensibly defamatory content. The Courts while granting an injunction in such cases may bear in mind the following principles:-

- (a) An injunction should not be granted if the defendant has pleaded truth as a defence unless it is unequivocally evident that the defendant is bound to fail at trial. In other words, when the defendant asserts veracity as a defence to a defamation claim, the threshold for granting an injunction is heightened. The Court must be satisfied, beyond reasonable doubt, that the defence of truth is patently without merit and will undoubtedly be unsuccessful at trial. The Court must aim to prevent premature stifling of potentially valid defences rooted in facts.
- (b) Furthermore, the content alleged to be defamatory must be proved to be *prima facie* defamatory. The defamatory nature of the statements in question must be apparent on the face of the content itself, without the need for extrinsic evidence or interpretation. The Court must ascertain that the publication, ostensibly, is of such a character that it is inherently injurious to the claimant's reputation. This ensures that the



Court does not entertain defamation claims where the defamatory nature of the content is not immediately discernible.

(c) Consideration must also be given to the balancing of two conflicting fundamental rights, i.e., the freedom of speech and expression, and the right to privacy, dignity or protection against reputational harm. The Courts must weigh the interests in safeguarding free expression against the necessity to protect individuals from unwarranted invasion of privacy and unjustified defamation. This delicate equilibrium requires a nuanced and context-sensitive approach, recognizing that both rights hold significant constitutional value.

(d) Once the defamatory nature of the content is established to the satisfaction of the Court, it is incumbent upon the judiciary to ascertain whether the most efficacious remedy to mitigate the harm so caused, is the issuance of an injunction against the defamatory content. In such instances, the Court must determine whether monetary damages alone would be inadequate to redress the harm caused. This may involve evaluating the extent and severity of the reputational damage that the defamatory statements may inflict upon the claimant. Where the Court concludes that monetary compensation would suffice to remedy the harm, it should exercise restraint and refrain from granting an injunction. Therefore, an injunction should be a measure of last resort, to be utilized only when the nature of the injury necessitates a remedy beyond pecuniary compensation.

99. Coming to the facts of the instant case, it is a matter of record that the impugned article has been hyperlinked in a subsequent article dated 07.10.2024 titled “*OFB co-founders and management allegedly assaulted*



an employee, says FIR". The Court, *vide* judgment dated 15.10.2024, observed that the article dated 07.10.2024, reports an incident concerning an FIR registered against the co-founders and management of OFB for alleged assault on an employee. However, upon perusal of the entire article, the Court came to a conclusion that it was evident that while the article initially focused on the FIR and the allegations therein, it subsequently digresses into unrelated matters. It was further observed that the article introduces extraneous claims regarding OFB's business operations, funding sources, upcoming IPO plans, and alleged financial manipulations. The Court held that these assertions, unrelated to the FIR, appear to be aimed at damaging the reputation of the plaintiff company.

100. This Court also noted that the concluding remarks of the article dated 07.10.2024 suggested that OFB would suffer reputational damage if it does not write off a recoverable amount of Rs. 22 crores, reiterating that the publication serves as a conduit for grievances of certain disgruntled employees rather than objective journalism.

101. The Court further noted that while the article purports to be a fair report of the FIR, it *prima facie* appears to be an attempt to vilify OFB, a corporate entity that was not even named as an accused in the FIR.

102. Moreover, the reliance by the defendants on the defences of truth, fair comment, and privilege was found to be untenable. The Court particularly pointed out that the article contained the allegations concerning 'sales inflation' and 'clandestine cash handling,' as these serious imputations were made without disclosure of sources, with the article asserting source anonymity instead. While journalistic privilege and source protection are recognized in cases involving matters of public interest, such privilege is not



absolute, observed the Court *vide* Order dated 15.10.2024. Accordingly, the Court concluded that the article dated 07.10.2024, while reporting on the FIR, goes beyond its scope and makes unsubstantiated allegations against OFB. Given the potential impact on OFB's business reputation, the Court found that the publication *prima facie* appears to be defamatory and not protected under journalistic privilege.

103. On the other hand, a perusal of the impugned article herein indicates that the defendants have reported on the work culture of OFB stating therein that former employees are facing significant challenges during their resignation process and have alleged that the company often delays acceptance of resignation letters, sometimes extending beyond the stipulated notice periods of 60 or 90 days. It is also stated in the article that some employees have also claimed that the delay in accepting the resignation by the founders/top-level management is frequently accompanied by coercive tactics aimed at retaining employees.

104. According to the impugned article, multiple former employees of OFB have alleged significant delays and outright denials in receiving their full and final settlements and relieving letters. One such former employee, namely Rahul Saha, who resigned nearly a year ago, claims that despite repeated follow-ups via emails and messages, his dues remain unpaid. When he initially sought approval from co-founders for his settlement, he received evasive responses. As per the impugned article, following months of follow-ups and public outreach through a LinkedIn post, he escalated the matter to the Hyderabad Labour Commissioner. In his complaint, as stated in the impugned article, he asserted that company leadership obstructed his resignation and, at one point, threatened to sabotage his career if he insisted



on leaving. The impugned article further reports that despite finally obtaining approval for his resignation, he alleges that his financial entitlements and employment documentation continue to be withheld, with management outright refusing to release them.

105. Furthermore, the impugned article states that multiple former employees have corroborated a pattern wherein settlements are withheld, particularly when operational failures or financial setbacks are attributed to departing employees. Additionally, several former employees state that resignations are actively discouraged, with claims that OFB management has interfered with their future job prospects by leveraging its network in the startup ecosystem. The impugned article also states that some individuals have refrained from updating their LinkedIn profiles out of fear of retaliation, and others have resorted to fabricating personal hardship stories to secure their final settlements. The article also describes an unwritten rule among employees that one must not disclose a new job offer, as there have been instances where management has allegedly sabotaged their joining process.

106. In response, the impugned article states that the founders contend that these cases, as reported in the article, represent a minor fraction of total exits and are largely associated with integrity violations, including allegations of fraud, financial mismanagement, and data breaches. The impugned article includes a statement from company representatives who claim that certain settlements have been withheld because employees either failed to serve their notice period, absconded, or joined competing firms with the intent to harm the company.



107. At this juncture, an elaborate comparison of the alleged defamatory content of the impugned article and the defamatory content concerning the article dated 07.10.2024, as adjudicated by this Court on 15.10.2024, is essential. A table exhibiting the differences in content between the two articles is given below:-

PURPORTEDLY DEFAMATORY CONTENT OF THE IMPUGNED ARTICLE (IMPUGNED ARTICLE)	DEFAMATORY CONTENT OF THE ARTICLE DATED 07.10.2024 (AS HELD VIDE ORDER DT. 15.10.2024) (SECOND ARTICLE)
<i>“Things get worse when OFB employees try to leave. In several instances, the company hasn't accepted resignation letters for weeks and months despite frequent reminders and requests. Employees we spoke with allege that they are repeatedly asked to stay and are told that the company is capable of "ruining careers if we go against their wishes". They are often reminded that they are dealing with influential bosses who wield a lot of power in the Indian startup and venture capital world. And those who still leave have a different set of problems to deal with.”</i>	<i>“However, our reporting has revealed several cracks in OFB's story. We have written about the company's harsh work culture, unusual business model and how the firm may be inflating its revenue. While its valuation is like that of a tech company, our reporting has found that most of its business is not generated by its technology, and that it may be double counting its sales by allegedly selling material back and forth between its declared subsidiaries and companies run by its employees. The present allegations of assault, then, only add to the growing list of challenges the company is facing.”</i> xxx xxx xxx <i>“According to this person, things soured between Jain and his employer in early August, after some of these buyers for whom Jain was the relationship manager were unable to pay their dues for purchases of sugar they had conducted on the platform, using credit lines they had received from OFB. These OFB buyers—who are traders—were unable to sell the</i>



	supply they had received from OFB to their own buyers and thus had fallen behind on payments, says this person, adding that Jain's father, too, was one of the buyers in debt. Jain's employers, claims this person, held him responsible for the full amount all the buyers owed OFB, with penalties and interest, and demanded that he make the company whole.
<i>"The threats are real"</i>	<i>"While the management do not have their own offices, which is what they mean when they say they have an open-plan, the headquarters is across two floors, and has multiple meeting rooms which have frosted glass and you can't see what is going on inside."</i> claims this person, requesting anonymity. <i>"There is a closed room where the finance guys sit, and they handle large amounts of cash in this room. No one can see inside this room, and cash is brought in and out of the room without others in the office getting to know."</i>
<i>"The playbook starts with the resignation. "If you don't hear back, you know it is going to be a tough exit," says a second former employee"</i>	<i>At the OFB office at Vipul Agora mall, meanwhile, "there are meeting rooms that are at a different place from the rest of the office, which are completely hidden away from public view. It is separated from the main part of the mall. You</i> <i>108. have to go through a hallway that has washrooms and a pantry to get to these meeting rooms," says this person"</i>
<i>"For now, OFB is on its way to expansion and an IPO. In the process, the company is expected to make a lot of money for its investors."</i>	<i>However, what Jain's FIR suggests—how OFB allegedly went about collecting its debt from his father and sought to hold him responsible for the debts of his other clients—is far</i>



	<i>removed from any such legal process. The question is: can an employee be held responsible for a client's failure to pay?</i>
<i>"The Morning Context spoke with nearly a dozen former employees of OFB to understand the extent of these practices. There are stories of pending or delayed final settlements and relieving letters, arbitrary conditions assigned to resignations, public humiliation and vindictive behaviour over mistakes. One employee has now gone to his state's labour commissioner after a year of asking for his dues from the company."</i>	<i>Now, our earlier reporting has detailed multiple examples where OFB employees were held responsible for payments from clients that didn't come through. In those cases, the company would allegedly withhold the employees' full and final settlement when they tried to leave, saying they couldn't settle until the due payments were cleared. None of this looks good for a company that is headed for an IPO next year. With its 2023-24 revenue at Rs 19,528 crore, the Rs 22 crore that it may have to write off from these failures to pay may hurt it a lot less than the fallout of these allegations. Investors will be keenly watching how things unfold in the coming days."</i>

109. After carefully examining the contents of both articles, it is seen that the defendants have correctly pointed out that the underlying theme and content of the two articles are significantly different. The impugned article focuses on the issue of an alleged toxic and harsh workplace environment, and in contrast, the second article is concerned with reporting an incident covered in an FIR. It is also seen that, unlike the second article, the impugned article discloses the basis of its imputations and incorporates supporting evidence in the form of WhatsApp chats, LinkedIn posts, and other such documents.



110. Additionally, the impugned article substantiates the claims regarding the delay in the acceptance of resignation by citing the employment agreements of OFB, which explicitly state that the company has the discretion to accept or reject a resignation, and also the relevant quotations from the sources. The impugned article confines its imputations strictly to the matter of the harsh and toxic work culture and does not extend to other aspects, whereas the second article, even by way of the hyperlinking, goes beyond the ostensible aim of reporting on the alleged FIR against the founders of OFB. Moreover, another significant difference is that the impugned article has extracts from the purported responses by some of the plaintiffs on the allegations made therein by employees, indicating prior knowledge of the contents of the article.

111. After establishing that the article injuncted on 15.10.2024 is significantly different from the impugned article, the pertinent question that arises for consideration is whether the impugned article warrants an injunction at this stage. The defences so pleaded by the defendants against the purportedly defamatory content are given in a tabular form in the reply filed by the defendants, the same is reproduced herein:-

EXTRACTS FROM THE IMPUGNED ARTICLE ALLEGED TO BE DEFAMATORY BY THE PLAINTIFFS	DEFENCE TAKEN BY THE DEFENDANT
<i>"People tend to abscond from OFB."</i> <i>Abscond is a strong word.</i> <i>"It is true, Some of them have just left. They write an email, leave the laptop and</i>	The defendants have cited their sources, specifically former employees of Plaintiff No. 4's company, verbatim.



don't show up again. There was a case where the person switched off his phone too, didn't want any calls." "He had no choice, he absconded." "There are no exit processes as such in OFB. If you want to leave, they'll just not let you." .	
For several former employees we spoke with, OFB has a reputation of being a workplace where verbal abuse and intimidation are routine. "There is no chain of communication, nothing formal. Things work according to the whims of the managers. It's a lala setup. You can't and shouldn't call it a professional company," says the person quoted above	The defendants assert that the statements regarding delays in the acceptance of resignations are substantiated by the employment agreements of OFB, which explicitly state, "It shall, however, be open to the company to accept or reject your resignation"
The playbook starts with the resignation. "If you don't hear back, you know it is going to be a tough exit," says a second former employee. "They don't communicate for weeks. If there is a follow-up, they keep pushing the discussion to the next day or next week. Even though the notice periods in both OFB and Oxyzo are clearly defined, the way it all takes place is very vague." "There have been cases where the entire notice period of 60 or 90 days passed and the resignation was never accepted," says this person.	It is contended that the statements are true and constitute fair comment, published without malice, and cannot be considered defamatory
After months of follow-ups and a LinkedIn post, he has now filed a complaint with the labour commissioner of Hyderabad. From the complaint: "My mother has a history of serious illness and that got worse in 2022. Leadership didn't allow me to quit and stalled the acceptance of my resignation. On top of this, Mr Nitin Jain & Mr Asish Mohapatra threatened to destroy my career if I didn't	Specifically, it is contended that the LinkedIn post hyperlinked within the Impugned Article was published by a former employee of OFB where he publicly shared his negative experiences with the company. The LinkedIn post still remains on the social platform. The complaint with the Labour Commissioner, Hyderabad, the Defendants have annexed a copy of a



stay back. Finally, after a lot of struggle, they approved.

"It has been almost a year since my resignation, my full and final settlement & experience letter is still pending and the management is outright denying it."

complaint dated April 19, 2023, filed by a former employee with the Labour Commissioner in Hyderabad, along with a letter dated May 5, 2023, issued by the Labour Department of Telangana to Plaintiff No. 4.

112. Upon examining the facts and contents of the impugned article within the context of the established legal position, it is evident that the defendants have reported on the work culture of OFB by citing specific instances and testimonies, thus invoking the defences of truth and fair comment. Conversely, the plaintiffs have repudiated the veracity of the defendants' assertions, contending that the statements in question have inflicted significant harm upon their reputation. They maintain that the impugned content, far from being truthful, constitutes defamatory material that has adversely affected their standing and goodwill in the public domain.

113. As a consequence, it is imperative that the veracity of the impugned content and its defamatory nature be meticulously scrutinized during the trial to ascertain the validity of the defences presented. At this preliminary stage, the issuance of an injunction would be prejudicial to the rights of the parties involved, who must be afforded an adequate opportunity to substantiate their respective claims within the framework of a comprehensive trial. Further, injunctive relief at this stage would amount to taking away the right of the defendants to prove that the content published by it is justified and based on truth. The defences of truth and fair comment are based on reason and supporting material, and the content published in the impugned article could not be termed as patently false at this stage so as to entirely rule out the possibility of truthfulness and fair comment.



114. Moreover, from a journalistic point of view, the article does not appear to fall in the category of reckless reporting and is claimed to be source-based, context-specific reporting. To injunct a publication of this nature would disturb the equilibrium that this Court must strike between the freedom of speech and the right to reputation, and would unjustifiably tilt the scale in favour of the latter, at the cost of the former. This Court in ***Khushwant Singh and Another v. Maneka Gandhi***³⁹ reiterated that the fundamental right to publish and the freedom of the press is guaranteed under Article 19(1)(a) of the Constitution of India, emphasizing that this right is inviolable except within the reasonable restrictions permitted under Article 19(2). The Court further observed that public figures, by virtue of their status, are subject to heightened civic scrutiny, and their private lives may become subjects of public debate. The Court emphasized that freedom of speech extends not only to reasonable individuals but also to those who may hold unconventional or extreme opinions. Furthermore, it was held that Courts may not pre-emptively restrain the publication of an article merely on the ground that it is defamatory, provided the publisher asserts its intention to justify the statements as true or to make a fair comment on a matter of public interest. It was further observed that if a publication has already been widely discussed and reported, and if the publisher is prepared to substantiate its claims, an injunction against publication would not be appropriate.

115. This Court further acknowledged the competing legal interests at stake, i.e., the author's right to publish versus an individual's right to privacy

³⁹ 2001 SCC OnLine Del 1030.



and protection from defamation. Highlighting the importance of counterpoising the rival interests, the Court held that any claim for defamation should be adjudicated at the stage of assessing damages rather than through a pre-emptive injunction against the publication.

116. Therefore, it may be observed that the freedom of the press is a cornerstone of a democratic society, and it necessitates a degree of latitude for journalists to exercise their professional judgment without fear of excessive legal reprisal. In defamation proceedings, the doctrine of substantial truth takes precedence against minor factual inconsistencies that do not render a publication defamatory so long as the gist or sting of the publication is claimed to be based on truth and facts pleaded to be materially accurate. A journalistic expression, in the absence of *prima facie* evidence demonstrating malice, reckless disregard for the truth, or gross negligence in reportage, cannot be subjected to an exacting standard of mathematical precision.

117. More importantly, as previously noted, for the article to be deemed defamatory, the assertions made therein regarding the work culture at OFB and the alleged delays in resignation and settlement processes must be *prima facie* damaging to the plaintiff's reputation. In this context, the plaintiffs have contended that the continued presence of the article in the public domain has resulted in the loss of critical investments and significant financial losses. However, the conduct of the plaintiff contradicts this claim, as they only approached the Court after over a year of the publication of the article on 17.05.2023. The lack of promptness on the part of the plaintiff



undermines the urgency they purport to warrant seeking an injunction the removal of the article.

118. In ***Rashmi Saluja***, the Court observed that at a belated stage, any intervention by the Court would cause undue inconvenience to all parties involved. The Court emphasized that it is a well-settled principle of law that any party seeking an injunction must approach the Court at the earliest opportunity, as any delay or laches on the part of the applicant would be detrimental to the application. Furthermore, the Court has the discretion to refuse relief to an individual who has been complacent in asserting their rights. The failure of plaintiffs to assail the impugned article with due promptitude constitutes a clear manifestation of acquiescence and a tacit acceptance of any purported ramifications it may have had on the plaintiff's business and reputation. The inordinate delay in seeking redressal, despite the plaintiff's constructive knowledge of the alleged defamatory nature of the impugned publication and its subsequent republication via hyperlinking, indicates an exercise of volition in electing to impugn solely the article dated 07.10.2024.

119. Therefore, the instant application is bound to fail as the conduct of the plaintiffs is contrary to submissions of urgency and irreparable loss made by the learned counsel of the plaintiffs. Apart from the lack of promptitude, the grant of an injunction in the present matter is further precluded by the cumulative and conjoint application of the legal principles articulated hereinabove. These principles encompass, *inter alia*, the defence predicated on the plea of truth, the quantification and adequacy of compensatory damages, and other pertinent considerations as elaborated within the legal framework governing such relief. Needless to state, while considering a



prayer to injunct any allegedly defamatory publication, it is not only sufficient to demonstrate the possibility of reputational loss, but also it is incumbent to be shown that the publication is rooted in falsity and cannot be termed as truthful, especially when truthfulness and fair comment are pleaded as defences.

120. Accordingly, the application bearing no. I.A. 46557/2024 stands rejected.

121. The observations made hereinabove are limited to the adjudication of the interim application and shall in no way have any bearing on the trial.

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122. List this matter before the concerned Joint Registrar on 07.05.2025 for the completion of pleadings in accordance with extant rules and regulations. The date already fixed before the Court i.e., 08.04.2025 stands cancelled.

123. List before the Court on the date to be assigned by the concerned Joint Registrar.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

MARCH 24, 2025
Nc/@m/mjo