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

% ***Judgment reserved on: March 07, 2024***
Judgment pronounced on: March 14, 2024

\+ FAO 79/2024, CM APPL. 14346/2024 (stay)

BLOOMBERG TELEVISION PRODUCTION SERVICES INDIA PRIVATE LIMITED & ORS. ..... Appellants

Through: Mr. Rajiv Nayar and Mr. Jayant Mehta, Sr. Advs. with Mr. Shiv Sapra, Mr. Samiron Borkataky, Mr. Rajat Gava, Mr. Ikshvaaku Marwah and Ms. Sanskriti Shrimali, Advs.

versus

ZEE ENTERTAINMENT ENTERPRISES LIMITED ..... Respondent

Through: Mr. Vijay Aggarwal, Sr. Adv with Mr. Naman Joshi, Mr. Tarun Singla, Mr. Sidhu, Mr. Aayushi Bansal, Mr. Raddharaman Rajoria, Advs.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present appeal under Order XLIII Rule 1(r) read with Section 151 of the Code of Civil Procedure, 1908 has been preferred against the order 01.03.2024 passed by the Learned Additional District Judge-05, South District, Saket Courts, New Delhi (hereinafter referred to as "ADJ") in CS DJ 137/2024 titled as "Zee Entertainment Enterprises Ltd. Vs Bloomberg Television Production Services India Pvt. Ltd. & Ors." whereby an *ex-parte ad-interim* injunction in an application filed by the

respondent under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure was granted, resultantly directing appellants herein to take down from their website an Article dated 21.02.2024 within one week of the receipt of the impugned order.

Factual Matrix

2. The appellants' contend that appellant nos.1 & 2 are companies incorporated under the Companies Act, 1956 and operate and function as a media publication under the name of "Bloomberg". The appellant company enjoys an untarnished and unblemished reputation and goodwill in the eyes of public at large owing to their high standards of ethics, integrity and diligence in reporting. The appellant no.3 is the Editor, South Asia and Middle East, of the appellant no.1 company and the appellants' no.4 & 5 are journalists of the appellant no.1 company. The respondent is a company incorporated under the Companies Act and is engaged *inter alia* in the business of media and entertainment.

3. Insofar as the relevant facts pertaining to the present appeal are concerned, on 21.02.2024, an Article titled as "India Regulator Uncovers $241 Million Accounting Issue at Zee" was published on the website of the appellants' no.1 & 2. It is contended by appellants that Article was based on proper research and after confirmation of the contents thereunder from reliable resources. The appellants further contend that they had also approached the respondent seeking quotes on the subject to which the respondent had replied and the communication exchanged has been filed by the respondent in the Suit, which is a testament to the fact that the appellants had approached the respondent to maintain the

standards of integrity and fair speech. Further, it is contended that the contents of the Article are not a matter of the opinion of the appellants and reflects the higher standards of ethics, journalism and professional etiquettes employed by the appellants in preparing and / or publishing the Article in question. According to the appellants, they have displayed honest journalism as their endeavour had been to publish factually correct Articles, which may be an irritant for some. The said Article talks about the status of the Zee-Sony merger as well as an ongoing investigation carried out by the the Securities and Exchange Board of India (hereinafter referred to as "SEBI") *qua* the Respondent.

4. However, aggrieved by the Article, the respondent filed a suit for declaration and mandatory injunction bearing CS DJ 137/2024 before the Court of learned ADJ and sought the following relief:

> *"A. decree of declaration that the contents of the Defamatory Article [as defined hereinabove] authored by Defendant Nos. 3-5 and published by Defendant Nos. 1 and 2 as stated in the present Suit are defamatory to the Plaintiff;*
> *B. A decree of permanent injunction against the Defendants to remove the Defamatory Article [as defined hereinabove] from their Website [as defined hereinabove];*
> *C. A decree of permanent injunction restraining the Defendants and / or their associates, affiliates, servants, agents, directors, partners, employees, representatives, and all other persons acting for and on their behalf from uploading/ distributing/ sharing and/ or circulating the Defamatory Articles in any manner whatsoever;*
> *D. A decree of permanent injunction restraining the Defendant Nos. 1 to 5 from making any further unverified, unsubstantiated, and ex facie defamatory statements in any form, i.e., an article, video, tweet or otherwise, concerning the Plaintiff or repeating and republishing the Defamatory Article;*

> *E. A decree for mandatory injunction directing the Defendant Nos. 1 to 5 to publish a written unconditional apology on their website as this Hon'ble Court may deem fit and proper;"*

5. Along with the suit, the respondent also preferred an application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, and on the first day of hearing of suit, respondent pressed for *ex-parte ad-interim* injunction against the appellants, praying for the following reliefs:

> *"I. Pass an ex-parte ad-interim injunction restraining the Defendants and / or their associates, affiliates, servants, agents, directors, partners, employees, representatives, and all other persons acting for and on their behalf from uploading / distributing and / or circulating the Defamatory Article [as defined in the Suit] in any manner whatsoever; and*
> *II. Pass an ex-parte ad-interim injunction restraining the Defendants from making any further unverified, unsubstantiated, and defamatory statements concerning the Plaintiff or repeating and republishing the Defamatory Article [as defined in the Suit];*
> *III. Pass an ex-parte ad-interim injunction directing the Defendant Nos. 1-2 to remove the Defamatory Article [as defined in the Suit] authored by the Defendant Nos. 3-5 from the Website;"*

6. After hearing the respondent, the learned ADJ vide the impugned order dated 01.03.2024 granted the *ex-parte ad-interim* injunction in favour of the respondent and against the appellants and has *inter-alia* recorded the following conclusions:-

> *"4. The grievance that has led to the filing of the present suit is that the said article is defamatory qua the plaintiff and has been published in order to malign and defame the plaintiff, with a pre-meditated and mala fide intention.*
> *5. That the contents of the article directly pertain to corporate governance and business operations of the plaintiff and*

speculates the contents as truth. Consequent to the publishing of the article, the company and its investors have suffered economically, inasmuch as, the stock price of the company fell by almost 15% because of the circulation of the defamatory material. The defendant no.3 to defendant no.5 have earlier also published several articles against the plaintiff, but the present article has gone to the extent of alleging illegal fund diversion without any basis.

6. It is claimed that under an interim order dated 12.06.2023 and confirmatory order dated 14.08.2023 issued by SEBI against one individual promoter and one KMP of the plaintiff were directed to relieve themselves from holding any key managerial position in any listed companies or their subsidiaries. Plaintiff, however, was not issued any notice by the SEBI in the said proceedings and the article has been published seeking to link the order with the plaintiff. It is further alleged that the said orders were appealed before the Securities Appellate Tribunal by the said KMP and individual promoter and the KMP has been awarded interim relief on 30.10.2023. It is claimed that the article makes several unsubstantiated claims and also makes a claim that SEBI had unearthed large financial bungling, when no such finding has been disclosed by the SEBI. At the same time, the article itself claim that the information has been received from the people familiar with the matter who did not want to be identified as the information is not public yet.

8. I have noticed that in Dr. Abhishek Manu Singhvi (Supra), Chandra Kochar (Supra), Swami Ramdev (Supra), exparte ad interim injunction was passed, considering that the contents of the material in question was per se defamatory."

7. It is further observed that:

"9. In my view, the plaintiff has made out a prima facie case for passing ad interim ex-parte orders of injunction, balance of convenience is also in favor of plaintiff and against the defendant and irreparable loss and injury may be caused to the plaintiff, if the injunction as prayed for is not granted. In view thereof, defendant no.1 and defendant no.2 are directed to take down the article dated21.02.2024 (page 84 to 86 of the plaintiff 's document)from online platform within one week of

> *receipt of this order. The defendants are further restrained from posting, circulating or publishing the aforesaid article in respect of the plaintiff on any online or offline platform till the next date of hearing.*
> *10. Compliance of Order 39 Rule 3 of CPC be made within 48 hours."*

8. Apart from the aforesaid directions, the learned ADJ also issued summons on the suit and notice on the injunction application by all modes, dasti as well, on filing of PF/Speed Post/AD etc., returnable for 26.03.2024.

9. As would be manifest from a reading of the aforesaid findings, the learned ADJ had essentially found the "Triple Test" which is necessary for grant of 'injunctions' in favor of the respondent and thus passed *ex-parte ad-interim* injunction against the appellants. However, the appellants have found gross irregularities with the impugned order submitting that impugned order grants an unqualified and absolute injunction thereby by decreeing the suit of the respondent without going through trial. The appellants on the aforesaid basis have proceeded to assail the impugned order by way of the present appeal.

Submissions of the Appellants:

10. Mr. Rajiv Nayar, learned Senior Counsel, seriously questioned the correctness of the recitals appearing in the impugned order and more particularly in paragraph 9 of the order. According to Mr. Nayar, once all the reliefs prayed for in the injunction application were allowed, there would be no ground to issue notice on the same. Once the Article in question was directed to be taken down, there remains nothing further to

be adjudicated. An interim injunction, as per Mr. Nayar should not be awarded unless a defence of jurisdiction by the defendant was certain to fail at the trial level. Reliance is placed on "**Tata Sons vs. Greenpeace Ors."**(2011) SCC OnLine Del 466.

11. It is submitted that the learned ADJ has not afforded an opportunity to the appellants to rebut the contentions of the respondents and has adjudicated the matter at its threshold.

12. The appellants submit that the present suit is an example of a "slapp suit" intending to intimidate and silence the appellants by burdening them with the cost of litigation until the appellants abandon their right to free and fair speech. The Learned ADJ did not give the appellants an opportunity to place before it several other Articles published prior in time to show that the appellants were not the only voice in the matter and appellants were denied a right to establish that the Article was backed by material which forms a part of Articles previously published by other media companies. Reliance is placed on **"Ms Crop Care Federation of India vs. Rajasthan Patrika (Pvt) Ltd. & Ors"** CS (OS) 531 of 2005 date of Decision: 27.11.2009. Therefore, the impugned order defies that any publication based on public records becomes unobjectionable. Reliance is placed on the judgment in the matter of **"R. Rajagopal vs. State of TN"**1994 6 SCC 632.

13. The learned Senior Counsel further submits that a perusal of the Article in question would reveal that the contents are a matter of fact and not opinion. Further, it is stated that the said Article cannot be taken

down as the entity that controls the uploading of the Articles is based in New York and is not a party to the present suit.

14. The appellants at the outset contend that they have approached this Court under the provisions of Order XLIII Rule 1, as the learned ADJ has passed cryptic order without assigning any reason for forming the basis of a *prima-facie* case, however, it has merely reproduced the submissions of respondent while affirming its power to pass an *ex-parte ad-interim* injunction. Judicial discipline demands that an *ex-parte* order of the given nature must be accompanied by justifiable reasons. The Learned ADJ has not recorded his reason(s), let alone satisfaction, warranting the passing of an *ex-parte* restraint. Reliance is placed on the judgment of "**B.L. And Co. And Others vs. Pfizer Products Incl"** (2001) SCC OnLine Del 637 and **"Shyam Sel & Power Limited & Anr. vs. Shyam Steel Industries Limited"** 2023 (1) SCC 634.

15. Moreso, the impugned order does not contain any judicial thought as to how the Article is false and / or negligent and / or lowers the reputation of the respondent. Reliance is placed on **"Pushp Sharma vs Db Corp Limited & Ors"** (2018) SCC OnLine Del 11537.

16. Mr. Nayar further submits that the impugned order is not compliant with the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure. The general rule is that an interlocutory injunction should be granted only after hearing both the parties, but if it appears to the Court that the object of granting injunction would be defeated by the delay, the Court is empowered to pass an *ex-parte* injunction. However, the pre-requisite is that the Court shall record the reasons for its opinion

that the object of granting the injunction would be defeated by the delay. It was submitted that Order XLIII Rule 1 of the Code of Civil Procedure specifically provides for appeals against orders passed under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure and the availability of recourse under Order XXXIX Rule 4 of the Code of Civil Procedure does not bar the appellants from moving before this Court. Under Order XLIII Rule 1 of the Code of Civil Procedure, it is the choice of the party to select either Forum. Reliance is placed on **"A Venkatasubbiah Naidu vs S Chellapan"** (2000) 7 SCC 695 and **"Pushp Sharma vs Db Corp Limited & Ors"** (Supra)**.** Thus, the impugned order be set aside and the present appeal be allowed. No better purpose will be served by taking recourse under Order XXXIX Rule 4 of the Code of Civil Procedure.

Submissions of the Respondent:

17. Negating the submission addressed on behalf of appellants, Mr. Vijay Aggarwal, learned Senior Counsel submitted that the contention of the appellants that the impugned order suffers from lack of reason and application of judicial mind is incorrect. The learned ADJ has specifically stated in paragraph 7 of the impugned order that he has 'gone through the record as available on date'. Therefore, it cannot be said that the impugned orders suffers from lack of reason and application of judicial mind as the learned ADJ had found the Article per se defamatory. Reliance is placed on **"Acharya Arjun Dev vs State & Anr"** 2005 (2) JCC 897, **"Kanti Bhadra Shah And Another Vs State of W.B"** (2000) 1 SCC 722. Further, the defense of "fair comment" and

"truth" taken up by the appellants is impermissible as material supporting these contentions could have been placed before the learned ADJ.

18. Learned Senior Counsel submits that the Article in question is not only *ex-facie* defamatory but also suffers from inherent contradictions. The headline of the said Article is deceptive which in no manner is in consonance with the contents mentioned in the body of the Article. The headline is an eyecatcher and the Article is against the spirit of journalistic conduct. SEBI has not released any so called finding, which bear any connection to the purported $ 241 million diversion of funds. The Article has not only implicated the respondents as being guilty of the diversion of illegal funds but has also taken the liberty to fix the quantum of such a fictitious amount. It was submitted that a malicious story has been cooked to intentionally tarnish the reputation & public image of the respondent and there is 15% drop in the share price of the respondent.

19. Further, the law in relation to the scope and nature of appeals as well as the limitations of the powers of the appellate court to substitute their own discretion in an appeal preferred against an interlocutory order is well settled. Strong reliance is placed on the case of **"Wander Ltd & Anr vs Antox India Pvt. Ltd."** 1990 Supp SCC 727 and it was submitted that position of law has been settled by the Hon'ble Supreme Court stating that the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion except where the discretion has shown to have been exercised arbitrarily and the court had ignored the settled principle of law regulating the grant or refusal of interlocutory injunction. The said

principle has been followed in various subsequent judgments. Reliance is placed on **"Shyam Sel & Power Limited & Anr vs Shyam Steel Industries Limited"** 2023 (1) SCC 634 and "**Kapil Sharma & Ors vs Piyush Sharma"** 2021 SCC OnLine Del 1963.

20. It was vociferously submitted by placing reliance on "**Babu Ram Dharam Prakash vs Izuk Chemical Works"** 2008 SCC Online Del 1734 that it would be detestable to interfere with an interlocutory order while exercising appellate jurisdiction

21. It is submitted that no harm would be caused to the appellants if the present appeal is dismissed and that the appellants may pursue their statutory remedies before the Learned ADJ, including filing of a reply to the interim application or filing an application under Order XXXIX Rule 4 of the Code of Civil Procedure. In this regard, reliance is placed on **"HT Media Limited vs Kairaviview (OPC) Pvt. Ltd. & Ors"** in FAO (OS) 89 of 2022, and **"Devendra Nath vs Prem Nath Motors Ltd. & Ors"** in FAO(OS) 175/98.

22. The respondent further places reliance on the judgment in "**Swami Ramdev vs. Juggernaut Books"** in CM(M) 556/2018 dated 29.09.2018 as well as the order dated 10.05.2018. The order in the Special Leave Appeal dated 23.07.2018 and 30.11.2018 have been perused as well. Reliance is also placed on "**HT Media Limited vs Kairaviview (OPC) Pvt. Ltd. & Ors"** (supra), **"Sahara India Real Estate Corpn Ltd. Vs SEBI"** (2012) 10 SCC 603, **"Naveen Jindal vs M/s Zee Media Corporation Ltd. Anr"** (2015) 29 DLT, **"Sidhartha Vashisht vs State (NCT of Delhi)"** (2010) 6 SCC 1**, "Vinai Kumar Saxena vs Aam**

Aadmi Party & Ors" in CS(OS) 593/2022**, "Smriti Zubin Irani Vs Pawan Khera & Ors"** in CS(OS) 436/2022, **"Praful Patel vs Indian Express"** in CS No. 803/19, "**Ishrat Masroor Qudussi Vs. Foundation for Independent Journalism"** in CS no.184/18**, "Rana Kapoor Vs. Penguin Random House India Pvt Ltd. & Ors"** in CS 581/2021, **"Dr. Abhishek Manu Singhvi v/s Sarosh Zaiwalla & ors"** in CS No.191/2020, the order dated 16.05.2020 in **"Jindal Steel & Power Ltd. & Anr. Vs. Arun Kumar Jagatramka & Ors"**, the order dated 08.04.2019 in **"Super Cassettes Private Limited Vs Felix Arvid Ulf Kjellberg & Ors"**, the order dated 27.08.2015 in **"Tata Sky Ltd Vs Youtube LLC & Ors"** and "**Pepsico India Holdings Pvt. Ltd. Vs Facebook, Inc. and Others"** 2018 SCC OnLine Del 13455.

Analysis and conclusion

23. Before proceedings to the rival contentions advanced at the Bar, reference is made to Order XLIII Rule 1(r) of the Code of Civil Procedure which reads as under:

> *"Order 43 Rule 1, An appeal shall lie from the following orders under the provisions of Section 104 namely;*
> *(r) An order under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order 39.*

24. It is also necessary to mention Order XXXIX Rule 1 Code of Civil Procedure, which provides:

> *1. Where in any suit it is proved by affidavit or otherwise -*
> *(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree or (b) that the defendant threatens, or intends to remove or dispose of his property with a*

> *view to defrauding his creditors, (c) 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 grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or disposition 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."*

25. This appeal is directed against the order dated 01.03.2024 in the terms of which a suit seeking declaration that the contents of Article titled "India Regulator Covers $241 Million accounting issue at Zee" published in www.bloomberg.com authored by appellant nos. 3 to 5 and published by appellant nos. 1 & 2 are defamatory and that permanent injunction against the appellants amongst other remedies to remove the said article from the website may be granted.

26. The action was based on the assertion of the respondent / plaintiff that the Article published by the appellants / defendant nos. 1 & 2 are defamatory, wildly speculated, and have an over sensationalised narrative of the business operation and ongoing investigation against the respondent / plaintiff. The appellants' pre-meditated and malafide intention to disparage the respondent's reputation is evident from the fact that appellant no. 3 especially (with or without the support of appellants no. 4 & 5) has continuously been running a smear campaign against the respondent by publishing numerous reports against it, which reportedly purport to be based upon unverified information provided by people privy to such internal matters, which are not in public domain yet.

27. It was also asserted by the respondent that SEBI is conducting an investigation in its position as a market regulator and has not released any so called findings whatsoever, which bear any connection or to the purported $ 241 million diversion of funds by the respondent. The allegation of defamation was based upon the assertion that under an interim order dated 12.06.2023 and confirmatory order dated 14.06.2023 issued by SEBI against one individual promoter and one KMP of the respondent company. The said KMP and individual promoter were directed to relieve themselves from holding any key managerial position in any listed companies or their subsidiaries. However, the appellants no. 3 to 5 have intentionally omitted to mention that respondent / plaintiff is not even a noticee to the SEBI order. Further the KMP, an individual promoter appealed the SEBI order before the Securities Appellate Tribunal (hereinafter referred to as "SAT") where interim relief was granted to KMP on 30.10.2023. Further, SEBI has not issued any final order in the aforementioned matter yet. It is contended that the Article intentionally and insubstantially seeks to link the SEBI order with the respondent with sole intention of tarnishing the reputation and public image and create a false narrative about the respondent.

28. The learned ADJ upon noticing the submissions addressed on behalf of the respondent passed an *ex-parte ad-interim* injunction on 01.03.2024.

29. The position of law is well settled with respect to the scope of interference by an appellate Court in an interlocutory injunction granted by the Court of first instance while exercising its discretion and

substituting its own discretion. The Hon'ble Supreme Court in the case of **"Wander Ltd & Anr vs Antox India Pvt. Ltd." (supra)** held as under:

> *"13. On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.*
> *14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)*
> *"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."*
> *The appellate judgment does not seem to defer to this principle.*

30. It is further to be noted that in the case of ***Babu Ram Dharam Prakash vs Izuk Chemical Works*** (Supra), the Apex Court referred to the judgment in ***Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel,*** **(2006) 8 SCC 726** and emphasised on the principles to be followed by the Appellate Court while considering the injunction order passed by Court in the first instance. The observations are as follows:

> "*5. As has been mentioned above, the Appeal is against an interlocutory Order granting the Prayers contained in an Application under Order XXXIX Rules 1 and 2 of the CPC. The approach which must be adhered to by the Appellate Court in such matters is perspicuously enunciated in the decision of the Supreme Court in Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel, (2006) 8 SCC 726 : AIR 2006 SC 3304, paragraphs 128 and 129 of which are topical:—*
>
> > *128. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this court time and time again. (See for example Wander Ltd. v. Antox India P. Ltd., 1990 Supp SCC 727, Lakshmikant V. Patel v. Chetanbhai Shah, (2002) 3 SCC 65 and Seema Arshad Zaheer v. MC of Greater Mumbai, (2006) 5 SCC 282 : (2006) 5 Scale 263).*
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> > *129. The appellate court may not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that it had considered the matter at the trial stage it would have come to a contrary conclusion.*
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> *6. Learned counsel for the Appellant had laid great emphasis on the fact that even prior to the grant of the injunction the submission of*

learned counsel for the Plaintiff had been noted to the effect that the complaint of the Plaintiff against the label and packaging of the Defendant does not survive. That, however, was in respect of the use of the alphabet æRæ in a circle which is impermissible by the statute. It had to be removed even without the Plaintiffs objection. The challenge and complaint to the plagiarisation of the Plaintiffæs trademark æMoon Staræ by the Defendantæs adoption of the trademark æSuper Staræ together with a star along with the alphabet remained alive.

7. We are of the view that the Plaintiff had made out a prima facie case for the grant of an injunction against the Defendant for the use of the trademark æSuper Staræ. It has been contended that the word æstaræ has been freely used in the market. The precise inquiry would have to be whether the use of the word æstaræ has been adopted in respect of the products manufactured and marketed by the Plaintiff, that is, Hair Dye. It is of no relevance or advantage to the Defendant that the product in question is Herbal Heena. This product is widely used as a Hair Dye, although it may also have ameliorative effect on hair. The use of the pictorial device of a æstaræ compounds and demonstrates the intention of the Defendant to deceive a customer into buying its product, believing it to be that of the Plaintiff. The views and findings expressed by us herein should not affect or influence the passing of the final judgment of the case. However, based on Ramdev, even if we were of a different opinion, we would be loath to interfere in this Appeal since the view taken by the learned Single Judge is a plausible one and is not perverse or illegal."

31. The appellants being aggrieved with the *ex-parte ad-interim* injunction have submitted that the learned ADJ accepted the averments of the respondent as gospel truth without affording the appellants an opportunity to rebut the same and in doing so, the appellants have been found guilty and thence, the learned ADJ adjudicated the subject matter at the very threshold. In view of the above, it was submitted that the impugned order being without merit, be set aside.

32. Thus, it is relevant to note of the contents of impugned order. The learned ADJ, after considering the judgments in **Dr. Abhishek Manu**

Singhvi v/s Sarosh Zaiwalla & ors (Supra), ***Chandra Kochar*** (Supra), ***Swami Ramdev*** (Supra) observed that an *ex-parte ad*-interim injunction was passed considering that contents of the material in question was per se defamatory. The learned ADJ has also considered the contentions of the respondent and perused the available record before passing the impugned order.

33. It is trite, the order has to read as a whole, so as to ascertain the basis on which it rests. While reading the order in its entirety, it conveys that the learned ADJ has considered the grievance of the respondent that the Article in question is defamatory and has been published in order to malign and defame it with a pre-meditated and mala fide intention. The learned ADJ further considered the submission that Article impacted the economy of the respondent. The contention has been further considered that it directly pertains to the corporate governance and business operations of respondent and speculates the contents as true and that the Article makes unsubstantiated claims and the claim that SEBI had unearthed large financial bungling, when in fact SEBI itself has not passed any order yet. Thus, the learned ADJ found that the Triple Test for grant of *ex-parte ad-interim* injunction was satisfied.

34. It is settled law that unless there is a grave urgency shown as to entertain an appeal against an *ex-parte ad-interim* order, an appeal is not maintainable either under Order XLI Rule 1 of the Code of Civil Procedure or under Section 10 of the Delhi High Court Act against an *ex-parte ad-interim* order. Order XXXIX Rule 3 read with Order XLIII Rule 1 of the Code of Civil Procedure shows that in fact no appeal lies

against an order passed under Order XXXIX Rule 3 of the Code of Civil Procedure. It is also settled law as laid down by the Hon'ble Supreme Court in the case of ***Wander Ltd & Anr vs Antox India Pvt. Ltd.*** (Supra) that it will not be appropriate for the Appellate Court to substitute its own discretion differently from the discretion exercised by the Court of first jurisdiction.

35. Though, the learned Senior Counsel for the appellants has heavily relied upon the judgment of the learned Division Bench in the case of **Pushp Sharma vs Db Corp Limited & Ors** (Supra), it is seen that this judgment is distinguishable for the reason that in that case, the plaintiff was seeking pre-publication injunction which is not the scenario here. Similarly, in the case of **B.L. And Co. And Others vs. Pfizer Products Incl** (Supra) and **Tata Sons vs. Greenpeace Ors.** (Supra), the reasons for interference by the Appellate Court were on the facts specific to those in the aforementioned cases.

36. As would be evident from the impugned order, the learned ADJ has clearly taken into consideration relevant factors for the purpose of grant of *ex-parte ad-interim* injunction. Further, there is no final adjudication on the subject matter of the suit which is at the very threshold. The learned ADJ is yet to hear the Appellants and dispose of the interim application.

37. Insofar as the other submissions of the Appellants on their defence and the documents placed with their written submissions are concerned, these issues were not placed before the learned ADJ. The appellants have rushed to this Court without exploring the option of filing their

reply to the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure and/ or application under Order XXXIX Rule 4 of the Code of Civil Procedure for modification of the *ex-parte ad-interim* order.

38. In this respect, it is pertinent to refer to the case of ***Venkatasubbiah Naidu vs S Chellapan*** (Supra), which is as follows:

> 2. When a plaintiff rushed to the civil court for an ex parte interim order of injunction against some of the defendants and obtained it, those defendants rushed to the High Court to get that order quashed. Both parties succeeded in their respective endeavor and now both of them accuse each other for the course adopted by the other. This appeal is by special leave at the instance of the plaintiff.
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> xxxxxxxx
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> 5. On 29-6-1999 the Assistant Judge of the City Civil Court, Chennai passed the following ex parte order on the said application:
>
> "Heard. Documents perused. Rental Receipt Documents 11 to 47 proves that the petitioner is the statutory tenant and prima facie in possession of the suit property. Though the property was leased out by Respondent 6 on the basis of Mortgage Document 3, the petitioner is now in continuous possession of the property as tenant. Hence the balance of convenience is in favor of the petitioner. In the interest of justice, it appears that Respondents 1 to 5 are restrained from evicting the petitioner from the suit property, except under due process of law. Notice by 25-8-1999. Ad interim injunction till then. Order 39 Rule 3 to be complied with."
>
> xxxxxxxx
>
> 19. The aforesaid Rule casts a three-pronged protection to the party against whom the ex parte injunction order was passed. First is the legal obligation that the court shall make an endeavor to finally dispose of the application of injunction within the period of thirty days. Second is, the legal obligation that if for any valid reasons the court could not finally dispose of the application within the aforesaid time the court has to record the reasons thereof in writing.
>
> 20. What would happen if a court does not do either of the courses? We have to bear in mind that in such a case the court would have

> bypassed the three protective humps which the legislature has provided for the safety of the person against whom the order was passed without affording him an opportunity to have a say in the matter. First is that the court is obliged to give him notice before passing the order. It is only by way of a very exceptional contingency that the court is empowered to bypass the said protective measure. Second is the statutory obligation cast on the court to pass final orders on the application within the period of thirty days. Here also it is only in very exceptional cases that the court can bypass such a rule in which cases the legislature mandates on the court to have adequate reasons for such bypassing and to record those reasons in writing. If that hump is also bypassed by the court it is difficult to hold that the party affected by the order should necessarily be the sole sufferer.
>
> 21. It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2-A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party which does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So, we are of the view that in a case where the mandate of Order 39 Rule 3-A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3-A. In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule.

39. A reading of the impugned order suggests that the learned ADJ applied his mind to the facts of this case and satisfied himself that *prima*

facie there was enough material to come to the conclusion for the purpose of granting an *ex-parte ad-interim* injunction, otherwise the entire purpose of filing the application would have been rendered infructuous. Being conscious of the provisions of Order XXXIX Rule 3A of the Code of Civil Procedure, the learned ADJ has fixed the next date of hearing as 26.03.2024 for deciding the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure. I, thus, do not find any ground to interfere with the order impugned herein. Consequently, the appeal along with pending applications, stands dismissed.

40. However, in case of any kind of urgency, the parties are at liberty to approach the Court of learned ADJ for an early hearing. It is clarified that the appellants to comply with the directions of learned ADJ vide order dated 01.03.2024 within three days from today.

41. It is further clarified that this Court has not expressed any opinion on the merits of the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, which the learned ADJ is yet to decide. All the rights and contentions of both the parties are left intact on the merits of the case.

SHALINDER KAUR, J.

MARCH 14, 2024/ss/f