

Essel Infraprojects Limited Vs. Devendra Prakash Mishra and Others

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Court : Mumbai

Decided On : Dec-01-2014

Judge : R.D. Dhanuka

Appeal No. : Notice of Motion No. 1086 of 2014 In Suit No. 645 of 2014

Appellant : Essel Infraprojects Limited

Respondent : Devendra Prakash Mishra and Others

Advocate for Def. : Mr. Chinoy

Advocate for Pet/Ap. : Mr. Godbole

Judgement :

1. By this notice of motion plaintiffs seek temporary injunction restraining the defendants and their servants and agents from further uttering/repeating/writing/publishing/telecasting any programme or news item thereby making defamatory allegations against the plaintiffs or tending to defame or harm the plaintiffs' business and its reputation in any manner whatsoever and also seeks a mandatory order and injunction against defendant no.1 and 2 to remove the Press Release or any other information/messages/articles relating to the plaintiffs and its Non-executive chairman/directors or any other officers of their website or any other Website or media of defendant no.1 and 2 and seeks injunction from displaying the Press release or any defamatory information/message/articles relating to the plaintiffs and their non-executive

chairman/directors or any other officers in their website. Some of the relevant facts for the purpose of deciding this notice of motion are as under:

2. The plaintiffs have filed the suit for damages in the sum of Rs.200 Crores with interest against all the defendants and seeks permanent order and injunction from writing/publishing/telecasting/airing any program of news items thereby making defamatory allegations against the plaintiffs or tending to defend or harm the plaintiffs' business and its reputation.

3. It is the case of the plaintiffs that defendant no. 1 is an RTI activist. Defendant no.2 is an organization formed and run by defendant no. 1. Defendant no. 3 is engaged in the business of broadcasting news channel in Hindi and regional languages who has alleged to have produced the programme Azab MP Gazab Ghotala telecasted on its 'Focus News Channel'. Defendant no. 4 is the Chairman and Managing Director and defendant no. 5 and 6 are the directors of the defendant no. 3. Defendant no. 7 and 8 are Group Editor in Chief of 'Focus News channel' and a reporter of the said channel respectively. It is the case of the plaintiffs that the plaintiffs have undertaken large number of road development projects, power projects, urban infrastructure projects. The net worth of the plaintiffs for the year 2014-2015 was Rs.3251.62 crores. The turn over of the plaintiffs for the said period is Rs.192.40 crores. The plaintiffs have work force of about 8000 employees. It is the case of the plaintiffs that Essel Group is in diversified business which include media/technology /entertainment packaging/infrastructure /education etc and has pioneered in number of businesses. It is the case of the plaintiffs that defendant no. 1 in connivance of defendant no. 2 to 9 hatched a criminal conspiracy and in furtherance thereof the defendant no. 1 was called to New Delhi to make false imputations against the plaintiffs, its officials and promoters by holding a Press Conference which was arranged by active involvement of defendant no.2 to 9 on 9th May 2014 at Press Club of India, New Delhi.

4. It is averred by the plaintiffs that on 9th May, 2014 before the scheduled Press Conference, a Press Release which was already typed in English was released by defendant no. 1 in connivance and collusion with defendant nos. 2 to 9 with an

information that the defendant no.1 would address the press conference on 9th May, 2014 at 3.30 pm. It is averred by the plaintiffs that defendant no. 1 does not know English and can only speak and write in Hindi. It is averred that the defendant no. 3 to 8 appears to have drafted the Press Release and were the persons behind organizing the press conference. It is averred by the plaintiffs that in the said Press Release, defendant no. 1 and 2 made very false imputations and defamatory allegations which are mentioned in paragraph 18 of the plaint. The said press conference was attended by journalists of various Print and Electronic Media including the correspondents of Zee News and Zee Business (Essel Group Entities).

5. It is averred by the plaintiffs that in connivance and in collusion with defendant no.1 defendant no. 3 to 9 with a criminal intent and in order to achieve their illegal motive, on 13th May, 2014 telecasted a programme Azab MP Gazab Ghotala on Focus TV channel which contained false, baseless and highly defamatory contents to defame and cause injury to the reputation and goodwill of the plaintiffs, its officials and its promoters. It is the case of the plaintiffs that the allegations made in the said program were similar to defamatory allegations made in the press release and press conference held on 9th May, 2014 at Press Club of India New Delhi. It is the case of the plaintiffs that during the conclusion of the press conference held by the defendant no. 1, the plaintiffs and its officials started receiving calls from other media and public at large enquiring as to why the plaintiffs were engaged in such kind of illegal activities and making unwarranted gains at the cost of the public. The staffs and officials of the plaintiffs were embarrassed. The morale and confidence of the employees of the group companies including that of the plaintiffs were diminished.

6. It is the case of the plaintiffs that during the period between 9th May, 2014 and 13th May, 2014 the said Focus TV Channel time and again telecasted the clippings of the press conference which was held by defendant no. 1 and projected the plaintiffs company as well as its promoters to be land grabbers and scammers which caused immense damage about the image or reputation of the plaintiffs, its promoters and non executive chairman Dr. Subhash Chandra in the eyes of the public at large.

7. Some time in the year 2014 plaintiffs filed a Criminal Complaint bearing No. 176/01 of 2014 against the defendants in the court of the Chief Metropolitan Magistrate, Patiala House, New Delhi for the offence alleged to have been committed under section 420, 499, 500 read with section 120(B) and 34 of the Indian Penal Code. The said complaint is pending for hearing and final disposal.

8. On 18th July, 2014 the plaintiffs filed the suit. The plaintiffs have annexed a copy of the Press Release dated 9th May, 2014 to the plaint. In para 25 of the plaint the plaintiffs have tabulated the allegations made in the Press Release and the factual position according to the plaintiffs which are alleged to be false and defamatory allegations leveled against them. Plaintiffs have also annexed copy of the CD which according to the plaintiffs contains the recording of the press conference dated 9th May, 2014 and also annexed copies of the transcript of the press conference in Hindi along with English translations. Plaintiffs have also annexed copy of the CD which according to the plaintiffs is CD of the programme telecast on Focus TV Channel along with transcript of the said programme in Hindi and its English translation.

9. Along with the summary of the allegations and the alleged correct factual position referred in paragraph 25 of the plaint the plaintiffs have also annexed some of the photographs of the building in support of the alleged factual position that the building on the plot which was not a school but a training centre belonging to the developer was in a dilapidated condition and the same was renovated by the plaintiffs. The plaintiffs have also annexed photographs showing the alleged present situation of the Kerwa Road in support of the plea that the same was very much in operation and still used by public even today.

10. Mr. Godbole learned counsel for the plaintiffs invited my attention to various allegations made in the press release and from the transcript of the programme in Hindi and English translations telecast on Focus TV Channel and would submit that the Focus TV News Channel has violated the established norms and also various provisions of the Cable Televisions Network Regulations Act 1995 as prescribed by the Ministry of Information and Broadcasting, Government of India as a part of broadcast permission granted to the channel under

uplinking/downlinking guidelines. Learned counsel placed reliance on sub clause (d) which provides that no programme should be carried on the channel which contains any thing obscene, defamatory, deliberate, false and suggestive innuendos and half truths. It is submitted that such Press Release and telecast on the Focus TV News was in connivance, collusion and conspiracy between defendant no.1 and 2 and defendant no. 3 to 8 with an intention to cause harm, damages and injury to the reputation and goodwill of the business of plaintiffs and its officials. It is submitted that the said publication and telecast was without verifying the correctness of the allegations and knowing fully well that the same were false and were ex facie defamatory and illegal.

11. It is submitted by the learned counsel that each of the allegations made by the defendants were totally baseless and without proof. The learned counsel invited my attention to various clarifications averred in the plaint on each of the allegations made by the defendants and would submit that the same were false and defamatory. Learned counsel submits that the M.P. High Court has already fined the first defendant to the tune of Rs.5 lacs by order dated 28th Nov. 2013 in WP No. 1967 of 2006 in the writ petition filed by him against the State of MP and Ors in view of his habit of raising false accusations on corporate houses.

12. Learned counsel invited my attention to the material on the website of defendant no. 2 under heading Lands Scam by Government in Corporate House. One of the item mentioned therein is about 'Assem Infra Project'. It is submitted that defendant no. 2 has downloaded the photographs of the board of directors of the plaintiffs and the profile of the plaintiffs' company from their website and along with such defamatory material has placed the same on the website of defendant no. 2. It is submitted that if the website of defendant no. 2 is opened, it reflects the defamatory allegations made by defendant nos. 1 and 2 on the said website against the plaintiffs and their board of directors. Defendant no. 2 has also downloaded two pages from the Website of Ministry of Corporate Affairs giving the Master details of the plaintiffs' company. It is submitted by the learned counsel that Plaintiffs have sufficiently described the defamatory allegations in the plaint. The documents which contain such defamatory allegations are already on record and forms part of the plaint which are not disputed by the defendants. Since the

telecast has taken place all over India, even this court has territorial jurisdiction to entertain and try the suit. It is submitted that there is no delay in filing the suit.

13. Learned counsel submits that the defendant nos. 3 to 9 have not denied the telecast of programme on the Focus News Channel, though those defendants have only denied that the telecast was with an intention to defame the plaintiffs. Defendants nos. 3 to 8 have confirmed the allegations of the defendant no.1 and 2 as correct. It is submitted that though the reporters of the plaintiffs were also questioned, that part was not telecasted by defendant nos. 3 to 8. It is submitted that various allegations are made against the present Chief Minister of Madhya Pradesh who was not even the Minister when the land was allotted to the plaintiffs. He became Chief Minister only in the month of November 2005. It is submitted that there was no proof of any favour shown to the plaintiffs by the government. The government had as a matter of fact rejected the allotment granted in favour of the plaintiffs. The committee appointed by the government after considering all the aspects in the matter had thereafter approved the said allotment.

14. In so far as various documents referred to and relied upon by defendant nos. 3 to 8 in their affidavit in reply is concerned, it is submitted that it was not the case of the defendants that those documents were obtained by them and scrutinized before telecasting the defamatory material on Focus News Channel. It is submitted that the material brought on record is ex-facie defamatory. The publisher has to make proper enquiry before publishing any material against a party. Defendant nos. 3 to 8 have not disclosed any source or income in the affidavit in reply as to when such information was received and from whom. It is submitted by the learned counsel that the telecast by the defendant nos. 3 to 8 and publication of the press release by the defendant nos. 1 and 2 was not bonafide and was without care and caution. The defendant no.1 had already had in his possession the alleged information before publication and ought to have taken care and ought to have been cautious to find out whether such alleged information was prima facie correct before publication and/or telecast.

15. Learned counsel placed reliance on the judgment of this court in case of **Shree Maheshwar Hydel Power Corporation Ltd. vs. Chitroopa Palit and Anr. (2004)**

2 BCR 137 and in particular paragraph 49, 50, 55 and 56 in support of the submission that the court has power to grant injunction in case of a defamatory material published by any party against the party seeking injunction. Paragraphs 49, 50, 55 and 56 read thus:-

49. After having heard the learned Counsel for both the parties at length and after perusal of the impugned judgment and order and also the various judgments cited by both the parties, it is clear that in any event, the principles of law in England and in India with regard to grant of interlocutory reliefs in a "civil action for Libel are different. In England, the principle of law is that in case of an action for defamation, once the defendants raise the plea of justification at the interim stage, the plaintiff will not be entitled to an interlocutory injunction. To put in other words, in England, a mere plea of justification by the defendant would be sufficient to deny the plaintiff any interim relief. As far as India is concerned, as has been clearly held by this Court in the judgments referred to hereinabove, specially the judgment of this Court in the case of Dr. Yashwant Trivedi v. Indian Express Newspapers (Bombay) Private Ltd. dated 21st March, 1989 and the judgment of appellate Bench dated 29th June, 1989 with regard to the same matter in appeal, the judgment of this Court in Purshottam Odhnvji Solanki v. Sheela Bhatta dated 3rd December, 1990, judgment of this Court in the case of Mrs. Betty Kapadia v. Magna Publishing Co. Ltd. dated 22nd July, 1991, and the judgment in the case of Indian Express Newspapers (Bombay) Ltd. v. M/s. Magna Publishing Co. Ltd., dated 21st July, 1995, it is clear that in India, a mere plea of justification would not be sufficient for denial of interim relief. The defendants, apart from taking a plea of justification will have to show that the statements were made bona fide and were in public interest, and that the defendants had taken reasonable precaution to ascertain the truth, and that the statements were based on sufficient material which could be tested for its veracity. Therefore, in India, the Court is very much entitled to scrutinise the material tendered by the defendants so as to test its veracity and to find out whether the said statements were made bona fide and that whether they were in public interest. Therefore, in India, even at the interlocutory stage, the Court is very much entitled to look into the material produced by the defendants for the plea of justification, so as to test its veracity with regard to the allegations, alleged to be defamatory.

50. In the instant case, as has been pointed out by the learned Counsel for the Appellant Company, the Defendants have used five highly defamatory expressions in their Press-Note viz. connivance, conspiracy, loot of public money, syphoning off funds and unleashing senseless terror etc. The above expressions would totally damage the credibility and reputation of the Appellant Company and in fact would jeopardise the entire Maheshwar Hydro-Electric Project and would in fact prevent the financial institutions from further advancing any loan or even granting any facility to the Appellant Company, whereby if the said project does not take off, the same will be very much against public interests, affecting the people of Madhya Pradesh, who are in the dire need of power. Because of such defamatory statements of the Defendants, not only the Appellant Company but also the very project which has been conceived for the benefit of the people of the Madhya Pradesh would get completely affected. The material sought to be relied upon by Mr. Desai (the learned Counsel for the Respondents) would, at the most, indicate that the Appellant Company has committed certain defaults in repayment of loans in time and/or there is delay on the part of the Appellant Company in recovering certain amounts given to other parties, but that cannot justify the use of defamatory statements.

55. As pointed out hereinabove, the learned Judge of the Bombay City Civil Court has ignored the settled principle of law in India, mis-applied the principle of law in the sense, merely on the basis of a plea of justification taken by the Defendants, the Plaintiffs ought to be denied the interim injunction. The position of law as per the above principle is prevalent in England. However, in India, the settled principle of law is that a mere plea of justification by itself would not be adequate, but it should be supported by sufficient material subject to scrutiny by the Court for its veracity, and that the statement made should be bona fide and should be made in the larger public interest and that the Defendants had taken reasonable precaution of ascertaining the truth.

56. In fact, the learned Judge of the Bombay City Civil Court, while declining the interim relief has observed that the Defendants have prima facie shown justification though not of each colourable term in their publication. The learned Judge has also observed that the facts of their publication may smack of distaste

and prejudice, which it would do well for an organisation of repute to refrain from. That is to say the learned Judge has held that the Defendants have made a statement which cannot be fully justified and they ought to have refrained from making such a statement. If that be so, the learned Judge of the Bombay City Civil Court ought to have granted injunction in favour of the Appellant Company, and by not granting the said injunction, after the above conclusions, the learned Judge of the Bombay City Civil Court has acted rather arbitrarily and capriciously.

16. Mr.Chinoy learned senior counsel for defendant nos. 3 to 8 invited my attention to various paragraphs of the plaint and in particular paragraphs 1 to 25 of the plaint and submits that except alleging the defamatory material in the tabular statement prepared in paragraph 25 of the plaint, plaintiffs have not averred and/or disclosed which part of the telecast or statement was defamatory. It is submitted that a party who files a suit for defamation has to give details and particulars of such defamatory articles and which part and in what manner the same would be defamatory to the plaintiffs. It is submitted that the plaintiffs have made their allegations under different topics in the tabulated form but not particularized any of the defamatory allegations.

17. Learned senior counsel submits that though this issue is specifically raised by defendant nos. 3 to 8 in the affidavit in reply, the plaintiffs have not chosen to seek amendment to the plaint and to give details and particulars of the defamatory allegations. It is submitted by the learned senior counsel that even otherwise each and every allegations tabulated in paragraph 25 of the plaint are false. It is submitted that since no details and particulars are furnished in the suit for defamation, suit does not disclose any cause of action. No reliefs of any nature whatsoever can be granted by this court at this stage.

18. Learned senior counsel placed reliance on the judgment of Supreme Court in case of **M.J.ZakhariaSait vs. T.M.Mohammed and others (1990) 3 SCC 396** and in particular paragraphs 30 and 31 and also paragraph 172 of the Halsbury's Laws of England, Vol. 28 which read thus:-

30. In W. Hay and Ors. v. Aswini Kumar Samanta MANU/WB/0067/1958 : AIR1958 Cal269 a Division Bench of the Calcutta High Court held that it is well-

settled that in a "libel action" the ordinary defamatory words must be set out in the plaint. Where the words are per se or prima facie defamatory only the words need be set out. Wherever the defamatory sense is not apparent on the face of the words, the defamatory meaning or as it is technically known in law, the innuendo must also be set out and stated in clear and specific terms. Where again the offending words would be defamatory only in the particular context in which they were used, uttered or published, it is necessary also to set out except where as in England, the law is or has been made expressly otherwise, the offending context (colloquium) in the plaint, and to state or ever further that this context or the circumstances constituting the same, were known to the persons to whom the words were published, or, at least, that they understood the words in the defamatory sense. In the absence of these necessary averments, the plaint would be liable to be rejected on the ground that it does not disclose any cause of action.

31. What exactly should be pleaded in an action for defamation has been stated also in Halsbury's Laws of England [Vol. 28 - 4th ed.], In paragraphs 174, 175, 176, 177 and 178 of the said Volume, we have discussion with regard to natural and ordinary meaning of the words complained of, and about the innuendo and the facts and matters supporting innuendo which should be pleaded and proved. It is stated there that in drafting a statement of claim in libel or slander, it is necessary to distinguish between cases in which the words complained of are alleged to be defamatory in their natural and ordinary meaning, whether the literal or the inferential meaning, and those in which the defamatory meaning is a secondary meaning derived from extrinsic or special facts or matters, so that a legal or true innuendo must be pleaded. If it is claimed that the words are defamatory in their natural and ordinary meaning and the words bear only one literal meaning, which is clear and explicit, it is not necessary to plead the meaning in the statement of claim. However, if the words are reasonably capable of bearing more than one literal meaning or if the defamatory meaning relied on is inferential (a "false or popular" innuendo), it is desirable and may even be necessary to plead the defamatory meaning or meanings. Where the plaintiff wishes to claim that the words complained of were understood to be defamatory in a secondary or extended meaning by those persons having knowledge of some special facts or matters, such a meaning constitutes a separate cause of action and the same

should be pleaded expressly in a separate paragraph in the statement of claim (emphasis supplied).

Particulars must be given of the facts and matters on which the plaintiff relies in support of any secondary or extended defamatory meaning which it is decided to plead. These special facts or matters may be extrinsic to the words used or there may be some special meaning of the words themselves. The plaintiff should plead that particular words bore the innuendo meaning.

Paragraph 172 of the Halsbury's Laws of England, Vol-28. Paragraph 172 is extracted as under:-

172. Pleading and proof of words - In an action for defamation, the actual words complained of, and not merely their substance, must be set out verbatim in the statement of claim. A libel action cannot be brought in respect of a document the contents of which the plaintiff is unaware; but in a slander action interrogatories may, in an exceptional case, be permitted, prior to the statement of claim, to ascertain the precise words spoken. It is no longer necessary to prove at trial the precise words pleaded; it will suffice to prove words substantially the same and the jury should be invited to consider whether the words are defamatory in the version it has accepted. Where the plaintiff complains of a book or long article, he must specify the passages which he alleges to be defamatory rather than merely plead the whole book or article.

19. Learned senior counsel also placed reliance on the judgment of Calcutta high Court in case of **W.Hayand others vs. Aswini Kumar Samanta AIR 1958 Calcutta 269** and in particular paragraphs 11 and submits that since no details and particulars of the alleged defamatory material is furnished by the plaintiffs in the plaint, it does not disclose any cause of action and thus plaint itself is liable to be rejected. Paragraphs 11 of the said judgment read thus:-

11. It is well settled that, in a libel action, the defamatory words must be set out" in the plaint. Where the words are per se or prima facie defamatory only the words need be set out. Where, however, the defamatory sense is not apparent on the face of the words, the defamatory meaning, or as it is technically known in law, the

"innuendo" must also be set out and set out in clear and specific terms. These are universally accepted propositions. Where again the offending words would be defamatory only in the particular context, in which they were used, uttered or published, it seems to us that it is necessary also to set out, except where, as in England, the law is or has been made expressly otherwise, the offending context (Colloquium) in the plaint and to state or aver further that this context or the circumstances, constituting the same, were known to the persons, to whom the words were published, or, at least, that they understood the words in the defamatory sense. In the absence of these necessary averments, the plaint would be liable to be rejected on the ground that it does not disclose any cause of action.

20. Mr.Chinoy learned senior counsel also placed reliance on a paragraph from the Halsbury on 'Libel and Slander' and in particular paragraph 172 in support of the submission that if the plaintiffs have alleged that the defendants have published and/or telecasted any defamatory article, it is duty of the plaintiffs to be very specific in his allegations to enable the defendants to give response to such allegations which would be in compliance with principles of natural justice. It is submitted that material germane to the issue has to be considered. If the material is totally irrelevant, it can be ignored. The detailed investigation and scrutiny of such material can be carried out at the stage of trial. It is submitted that the topics tabulated in paragraph 25 of the plaint are not such defamatory statements which would disclose any cause of action against the defendants. It is submitted that if there is any justification available on record to decide prima facie that the articles and/or telecast was justified, no injunction can be granted against the defendants. It is submitted that there cannot be any trial at the interim stage.

21. Mr.Chinoy learned senior counsel submits that the material on record produced by the defendants even otherwise would indicate that in so far as allotment of land at Bhopal is concerned, the said allotment was made to the plaintiffs at thrown away price. The said allotment was cancelled and was surprisingly restored subsequently with waiver of interest. Though under the terms of allotment, the plaintiffs were supposed to complete the work within two years from 29th September, 2008, the work has not been started at all. My attention is invited to the averments made at page 11 of the plaint which discloses that the

said project is closed due to financial reasons.

22. Learned senior counsel submits that the defendant nos. 3 to 8 have verified and scrutinized the material from the website of defendant nos. 1 and 2. None of the documents placed on the website of defendant nos. 1 and 2 have been disputed by the plaintiffs.

23. Learned senior counsel invited my attention to e-mail dated 2nd May 2014 from defendant no.3 to the plaintiffs summarizing the allegations made by the residents of Madhya Pradesh against the plaintiffs and required the version of the plaintiffs over those allegations made by the residents of the Madhya Pradesh. The defendant no.3 requested the plaintiffs to give them time for television interview over those allegations as early as it could be. It is submitted that there was no denial to the contents of the said e-mail. The plaintiffs also did not come forward to give their version over the allegations made by the residents of the Madhya Pradesh and though invited to spare some time for television interview over those allegations, plaintiffs did not bother to reply to the said e-mail or to agree for television interview for expressing their version over the allegations made by the residents of Madhya Pradesh.

24. It is submitted by the learned senior counsel that the defendants nos. 3 to 8 have not only denied the allegations of the plaintiffs that the telecast on Focuss News Channel by defendants nos. 3 to 8 against the plaintiffs were defamatory in any manner whatsoever but have justified the same which justification is shown more than prima facie and the material produced is more than adequate.

25. In so far as the loan applied by the plaintiffs on the plot of land allotted to the plaintiffs at the thrown away price is concerned, it is submitted that whether such loan was ultimately received or not by the plaintiffs is not relevant. The plaintiffs have not denied that the plot of land which was obtained by the plaintiffs from the government for the sum of Rs.3.49 crores, on that plot of land, the plaintiffs have applied for loan of Rs.17 crores. It is submitted that the plaintiffs have not explained in rejoinder as to why the plaintiffs did not avail of the opportunity to offer their version over the allegations made by the residents of Madhya Pradesh though defendant no.3 had called upon the plaintiffs to do so.

26. Mr.Chinoy learned senior counsel distinguished the judgment of the Learned Single Judge of this court in case of **Shree Maheshwar Hydrel Power Corporation Ltd. (supra)** and submits that the judgment of Division Bench of this court in case of **Dr.YashwantTrivedi (supra)** was though referred in the said judgment of the Learned Single Judge, the views taken by the Learned Single Judge are contrary to the views taken by the Division Bench. The said judgment of the Division Bench is not binding on this court. Paragraph (2) of the said judgment reads thus:-

At page 1950 of the judgment in the case of Harakas and others vs. Baltic Mercantile and Shipping Exchange Ltd. and Another reported in 1982 (1) weekly Law Reports, page 958 Lord Denning M.R. has observed thus:

This case raises a matter of principle which must be observed. This court never grants an injunction in respect of libel when it is said by the defendant that the words are true and that he is going to justify them. So also when an occasion is protected by qualified privilege this court never grants an injunction to restrain a slander or libel to prevent a person from exercising that privilege unless it is shown that what the defendant proposes to say is known by him to be untrue so that it is clearly malicious. So long as he proposes to say what he honestly believes to be true, no injunction should be granted against him. That was made clear in Quartz Hill Consolidated Gold Mining Co. vs. Beall (1882) 20 Ch.D.501.

27. It is submitted by the learned senior counsel that once the defendants have justified or seek to justify the allegations made by them against the plaintiffs which according to the plaintiffs are defamatory, this court cannot grant injunction unless court comes to the conclusion that the allegations are per se defamatory and are required to be stopped from further publication.

28. Mr.Hakani learned counsel for the defendant nos.1 and 2 submits that the defendant nos. 1 and 2 had obtained copies of various documents from various departments of the government under the provisions of Right to Information Act and scrutinized and verified the same. The press release was based on the facts verified from the documents obtained under the provisions of the Right to Information Act. Mr.Hakani learned counsel adopted the submission made by

Mr.Chinoy, learned senior counsel appearing for defendant nos. 3 to 8. It is submitted that no part of the press release published by the defendant nos. 1 to 2 or no part of the material on the website of defendants no.2 is defamatory as alleged by the plaintiffs. No injunction thus shall be granted by this court against those defendants.

29. Mr.Hakani, learned counsel placed reliance on judgment of this court in case **Abdul Waheb Galahdri vs. Indian Express Newspaper (Bombay) Limited (1994) BCR 1(41)** and submits that in view of the justification sought to be given by the defendants, no injunction can be granted by this court. It is submitted that the earlier Bench of the division bench in case of **Dr.YashwantTrivedi (supra)** has been relied upon and followed by the Single Judge in the case of **Abdul Waheb Galahdri (supra)**. Reliance is placed on paragraphs 23 and 24 of the said judgment which read thus:-

23. The above referred judicial pronouncements and the passage from treatises of Gately very clearly set the legal position and the principle underlined therein in the matter of such nature needing no further elaborations.

24. In the circumstances I do not find any merits in the application herein. Notice of Motion is dismissed. Plaintiff to pay costs to the defendants of this application. The application is made on behalf of the plaintiff for the stay of this order. However, it needs to be clarified that the Court as such has not granted any ad-interim relief, but certain statement was made on behalf of the defendants themselves before the Court that they will not publish any articles concerning the plaintiff in their newspaper. However today the learned counsel for the defendants is totally unwilling and in opposition in making such statement. In view of this, there is no question of granting any stay to the order hereinabove. At the request of plaintiff's advocate issuance of certified copy is expedited.

30. Mr.Godbole, learned counsel for the plaintiffs in rejoinder submits that the defendants nos. 1 and 2 have admitted that a press conference was held on 9th May 2014. Defendant no.3 has not denied that there was telecast of program on Focus News Channel as its own programme. The defendant no.3 has not produced the correct CD for perusal of this court. It is submitted that it was not the

case of the defendant no.3 that prior to the 3rd August, 2014, defendant no.2 had provided any information to the defendants no.3 nor has stated that such information and/or documents were downloaded from the website of defendant no.2.

31. It is submitted by the learned counsel that what has been pleaded in the plaint is more than sufficient. Reliance is placed on Order 7 rule 14 of the Code of Civil Procedure, order 6 rules 2, 4 and 10 and it is submitted that after 2002 amendment in the Civil Procedure Code, 1908, there was drastic amendment in the provisions for filing documents and pleadings. Plaintiffs are required to file all the documents. It is submitted that the entire press report and transcript with CD has been annexed. The pleadings clearly indicate that the contents of the press release and the telecast by defendant no.3 was per se defamatory which can be made out from the plain reading of the document itself. The defendants were not taken by surprise nor any such element of alleged surprise has been taken as a defence. It is submitted that each and every argument of the defendants is hyper technical and not the argument of substance. On the issue as to what should be nature of leadings in this type of suits, learned counsel placed reliance on the judgment of Supreme Court in case of **M/s.Ganesh Trading Co. vs. Moji Ram (1978) 2 SCC 91** (paragraphs 2, 5 and 10) and in case of **VirendraKashinath Ravat and another vs. Vinayak N.Joshi and others (1999) 1 SCC 47** (paragraphs 15 to 19). It is submitted that the plaint filled by the plaintiffs contents concise facts.

32. Learned counsel also placed reliance on the judgment of Supreme court in case of **Ram Sarup Gupta vs. Bishun Narain Inter College and others (1987) 2 SCC 555** (paragraph 6) and would submit that the defendants knew the case of the plaintiffs and allowed the publication of the press release. The defendant nos. 1 and 2 has access to the website of the plaintiffs and had copied the profile, history from the website of plaintiffs as part of the website of defendant no.2

33. Learned counsel placed reliance on the judgment of Supreme Court in case of **Kumara Nand vs. Brijmohan Lal Sharma, AIR 1967 SCC 808** (paragraphs 12, 13, 15 to 18). Learned counsel also placed reliance on the judgment of Supreme

Court in case of **M.J.ZakhariaSait vs. T.M.Mohammed and others (1990) 3 SCC 396** (paragraphs 5, 6 11 to 15, 18 to 21, 23, 25, 26 and 30 to 33) in support of the submission that if the full text of the article is annexed to the plaint, it is not necessary to furnish particulars of each and every defamatory allegations out of the said full text in the plaint. It is submitted that in this case there was a direct defamation on the part of the defendants and there was no innuendo. It is submitted that the allegations of defamation made against the plaintiffs, directors of the plaintiffs are part of the transcript annexed to the plaint to the knowledge of the defendants and which are pleaded and highlighted.

34. In so far as justification sought to be given by the defendant nos.3 to 8 relying upon e-mail dated 2nd May, 2014 is concerned, it is submitted that the defendant nos. 3 to 8 have failed to show that they had any material in hand against the plaintiffs when the said e-mail was sent. It is submitted that the judgment of the learned single Judge in case of **Shree Maheshwar Hydrel Power Corporation Ltd. (supra)** is not contrary to the judgment of the Division Bench in case of **Dr.YashwantTrivedi vs. Indian Express Newspapers (Bombay) Pvt. Ltd. and Ors.**

35. Mr.Chinoy learned senior counsel submits that since the action initiated by the plaintiffs is in tort, allegations of defamation has to be specified. My attention is invited to paragraphs 30 to 32 of the plaint.

REASONS AND CONCLUSIONS:-

36. The Supreme Court in the case of **M.J. Zakharia Sait (supra)** has approved the judgment of the division bench of the Calcutta High Court in the case of **W. Hay and Ors. Vs. Aswini Kumar Samanta**, reported in **AIR 1958 Calcutta 269** and has also quoted the Halsbury's Laws of England, Vol-28, 4th edition with approval on the topic of an action for defamation.

37. Mr.Godbole, learned counsel for the plaintiffs placed reliance on paragraphs 6, 11, 13, 15, 18, 21 and 25 of the said judgment and submits that the said judgment of the Supreme Court would assist the case of the plaintiffs and not the defendants. A perusal of the judgment of the Supreme Court in the

aforementioned judgment indicates that the Supreme Court has considered an appeal arising out of an order passed by the High Court of Kerala in an Election Petition. The Supreme Court also considered the mandatory provisions of Section 83(1) of the Representation of the People Act, 1951. The Supreme Court has also adverted to various earlier judgments of the Supreme Court in the said judgment.

38. In Halsbury's Laws of England, emphasis is laid that in an action for defamation, the actual words complained of and not merely their substance, must be set out verbatim in the statement of claim. Where the plaintiffs complain of a book or a long article, he must specify the passages which he alleges to be defamatory rather than merely pleading the whole book or article. Calcutta High Court in the case of **W. Hay and Ors. (supra)** has held that in a libel action, the defamatory words must be set out in the plaint. Where the words are per se or prima facie defamatory, only the words need to be set out. Where, however, the defamatory sense was not apparent on the face of the words, the defamatory meaning, or the innuendo must also be set out in clear and specific terms.

39. A question that arises for consideration of this Court at this stage is whether the press release published by defendant nos.1 and 2 and a telecast by the defendant nos.3 to 8 on the 'Focus News Channel' were per se or prima facie defamatory and if so, whether in the plaint, the plaintiffs have set out such defamatory words or not. A question also arises for consideration of this Court is whether the Court may grant an injunction in favour of the plaintiffs or may restrain further publication in libel, though at the interlocutory stage, the defendants raise a plea of justification and has relied upon the evidence by which they might substantiate their case.

40. It is the case of the plaintiffs that the press release published by defendant nos.1 and 2 was false and defamatory and was published without verifying the truth and correctness of such allegations by the defendant nos.1 and 2 before publication. The allegations against defendant nos.3 to 8 are that those defendants also did not bother to verify the truth and correctness of such allegations before its telecast on the 'Focus News Channel.'

41. According to the plaintiffs, in paragraph 18, the plaintiffs have summarized the imputations and the allegations made in the press release by defendant nos.1 and 2 which are defamatory allegations. The allegations are summarized in paragraphs (A) to (M) in the plaint.

42. In paragraph 23 of the plaint, the plaintiffs have summarized allegations against defendant nos.3 to 8. In paragraph 25 of the plaint, the plaintiffs have tabulated the nature of allegations made by the defendants which were defamatory according to the plaintiffs and also summarized the factual position as against each of the allegations in the said table.

43. Supreme Court in case of **M.J.ZakhariaSait (supra)** has referred to the treatise of Halsbury's Laws of England on the topic 'Libel and Slander' and has held that if it is claimed that the words are defamatory in their natural and ordinary meaning and the words bear only one literal meaning which is clear and explicit, it is not necessary to plead the meaning in the statement of claim. However, if the words are reasonably capable of bearing more than one literal meaning or if the defamatory meaning relied on is inferential, it is desirable and may even be necessary to plead the defamatory meaning or meanings. Where the plaintiffs wish to claim that the words complained of were understood to be defamatory in a secondary or extended meaning by those persons having knowledge of some special facts or matters, such a meaning constitutes a separate cause of action and the same should be pleaded expressly in a separate paragraph in the statement of claim. Particulars must be given of the facts and matters on which the plaintiffs rely in support of any secondary or extended defamatory meaning which is decided to plead.

44. Supreme court in the said judgment has also referred to the judgment of Division Bench of Calcutta High Court in case of **W.Hayvs. Aswini Kumar Samanta (supra)**. The Calcutta High Court in the said judgment held that in a libel action, the ordinary defamatory words must be setout in a plaint. Where the words are per se prima facie defamatory only the words need be setout.

45. Division Bench of this court in case of **Dr.YashwantTrivedi (supra)** has held that the position of law on the law of injunction in support of libel is not different in

India then what is prevailing in England. It is held that in the matter of granting or refusing temporary injunction it is not material that in India the judge has to decide both questions of law and fact unlike in England where question of law were left to the jury. It is held that the crux of the matter is that when in a liable action at the interlocutory stage, the defendants raises a plea of justification and mentions evidence by which he might substantiate his case, the court is unlikely to grant an interlocutory injunction in favour of the plaintiffs to restrain further publication of the alleged libel.

46. This Court in case of **Abdul Waheb Galahdri vs. Indian Express Newspaper (Bombay) Limited (1994) 1 BCR 41** has followed the judgment of Division Bench in case of **Dr.YashwantTrivedi (supra)** and has refused to grant injunction from further publication of any article concerning the plaintiffs in the newspaper of the defendants in that case.

47. In so far as judgment of learned single Judge in case of **Shree Maheshwar Hydel Power Corporation Ltd. (supra)** relied upon by Mr.Godbole, learned counsel for the plaintiffs is concerned, the learned single Judge of this court in the said judgment has though referred to the judgment of the Division Bench in case of **Dr.YashwantTrivedi (supra)** has held that in India a mere plea of justification would not be sufficient for denial of interim relief. The defendants apart from taking a plea of justification will have to show that the statements were made bonafide and were in public interest and that the statements were based on sufficient material which can be tested from its veracity. The court is entitled to scrutinize the material tendered by the defendants so as to test its veracity and to find out whether the said statements were made bonafide and that they were in public interest. Even at the interlocutory stage the court is entitled to look into the material produced by the defendants for the plea of justification so as to test its veracity with regard to the allegations alleged to be defamatory.

48. Keeping in mind the aforesaid statement of law declared by the Supreme Court and this court, I will now consider whether in the facts of this case how far both the parties have satisfied the criteria laid down by the Supreme Court and this court on the requirement of pleading in a suit based on tort and the effect on

justification with material sought to be pleaded by the defendants in opposition to the grant of relief for injunction.

49. A perusal of the averments made in the plaint indicates that the plaintiffs have not particularized the alleged defamatory portion from the press release and also the telecast. The plaintiffs have generalized the allegations of defamation in the plaint and has basically relied upon the entire press report and the telecast on the news channel. In my view in the case of the suit for libel which is in tort, plaintiffs have to specify the defamatory words from the entire article and/or press release and telecast with details and as to how such words from the material published/telecast, the plaintiffs were defamed. The plaintiffs cannot make any vague plea without particularizing and specifying the defamatory words out of the entire publication unless the words are per se or prima facie defamatory. In my view the plaintiffs have not been able to satisfy from the averments made in the plaint that any of the topics tabularized in the plaint would be per se or prima facie defamatory. A perusal of paragraph 25 of the plaint in which the plaintiffs have tabulated some of such topics do not even refer to any specific allegations against the defendant nos. 3 to 8.

50. A perusal of the affidavit in reply filed by the defendant nos. 3 to 8 indicates that those defendants have raised a specific plea that alleged defamatory words/sentences were required to be setout verbatim in the plaint failing which the plaint is liable to be rejected as not disclosing a cause of action. A perusal of the rejoinder and in particular paragraph 4 indicates that the only answer of the plaintiffs is that the suit discloses the cause of action and that the plaintiffs have setout the grounds of defamation and the defamatory sensity. The plaintiffs have not bothered to apply for amendment of the plaint to setout verbatim the alleged defamatory words in the plaint though such opportunity the plaintiffs had before proceeding with hearing of this notice of motion.

51. A perusal of the affidavit in reply filed by the defendant no.1 and also the press release published by the defendant nos. 1 and 2 indicates that in the said press release the defendant nos. 1 and 2 have relied upon various documents obtained by the defendant nos. 1 and 2 under the provisions of Right to Information Act in

support of what is published against the plaintiffs and their office bearers. At the bottom of the said press release a note is provided by the defendant nos. 1 and 2 stating that 'all documents received under RTI on the above expose can be accessed on www.janadhikarmunch.com.' It is also mentioned that the 'White Paper on the serial breaches had been attached with media release'. Even in the 'white paper' it is specifically provided that all the supporting documents could be accessed on the website of the defendant no.2. It is also mentioned that the request for additional information could be made to the defendant no.1 at his office address mentioned therein and at mobile number or office number including e-mail at the e-mail ID mentioned therein.

52. It is the case of the defendant nos. 1 and 2 in the affidavit in reply that each and every statement made in the press release is based on their honest belief and on the facts verified from the documents which they had received under the provisions of Right to Information Act. The defendant no.1 had approached various government bodies and agencies and prima facie violations were emerging on the basis of the findings from documents procured under RTI. It is also the case of the defendant no.1 that there were about 8 journalist from different channel of Zee Media present in the said press conference to counter and embarrass the defendant no.1 and has repeatedly made attempts not to allow other media persons to ask him questions. The officials of the plaintiffs were also present at the press conference venue and distributed their statement to the attending journalists from various media houses. A perusal of the rejoinder on this issue indicates that except bare denial, the plaintiffs have not raised any specific plea. The defendant no.1 also has averred that copy of the website at Ex.F is the copy of the introduction of the plaintiffs from its website and copies of other documents at page 130 and 131 are the copies of the website of Ministry of Corporate Affairs which information is in public domain and cannot be defamatory. It is also the case of the defendant no.1 that he had approached the media house including Zee TV prior to holding press conference in respect of the said issue amongst other issues. Reporter of the plaintiffs also was present and participated.

53. A perusal of the text of the news telecast on the Focus News Channel by the defendant no. 3 which is annexed by the plaintiffs to the plaint itself indicates that

various professionals were interviewed by defendant no. 3 on 13.5.2014 such as Mr. Buch, an Environment Expert, Mr. Ajay Dubey, Activist/Lawyer, Mr. Babulal Gaur Ex Chief Minister of Madhya Pradesh, Mr. Manak Agarwal, Vice President, Madhya Pradesh Congress. A perusal of the email annexed to the affidavit in reply of defendant no. 3 indicates that defendant no. 3 had brought to the knowledge of the plaintiffs about the allegations made by residents of Madhya Pradesh alleging violation of basic land allotment norms/rules against the plaintiffs company and more particularly Essel Infraaproject. It was also brought to the notice of the plaintiffs that the allegation of the residents was that the land allotment to the plaintiffs company in different areas of Madhya Pradesh was major threat to wild life and water resources of country and those who were raising voice against the plaintiffs regarding their upcoming projects, were being threatened by the officials of Zee and Essel. By the said email the defendant no. 3 informed the plaintiffs that as a responsible news network Focus TV required the version of the plaintiffs over allegations made by the residents of Madhya Pradesh and requested the plaintiffs to give them time for television interview over those allegations as early as the plaintiffs could. The plaintiffs however, did not come for television interview nor made any comments over those allegations. A perusal of the rejoinder on this issue indicates that except bare denial, there is no positive explanation of the plaintiffs on this issue.

54. In the affidavit in reply, defendant no. 3 to 8 and in particular in paragraph 15, the defendant no. 3 has contended that the allegations made in column 2 of the tabular statement in para 25 of the plaint, does not record any words/statements made in the telecast or programme, the plaintiffs have not placed the facts in their correct perspective and have suppressed material facts and documents. A perusal of the said paragraph indicates that defendant no.3 has relied upon several documents which are annexed as Exh. 2 to Exh. 26A and has highlighted the documents which are mentioned as RTI documents and has contended that on the bare perusal of the said documents, it was clear that it was the duty of defendant no. 3 to report the news in the public interest with the object/intent of informing the general public at large about the process of land allotment and also to create a public opinion for adoption of a fair and transparent process in allotment of land by the Government and was protected by qualified privilege. Defendant no. 3

summarized the main features of the programme telecasted in the said paragraph. It is also the case of the defendant no. 3 that they made several attempts to obtain the response of the plaintiffs with regard to the subject matter of news report so as to ensure objectivity but plaintiffs did not respond to the request of defendant no. 3. The defendant no. 3 also included the contents of the response of the plaintiffs while broadcasting the news report/programme which was distributed/circulated by the plaintiffs at the press conference. It is submitted by the defendant no. 3 that in the said TV news programme the facts stated were accurate and true and were clearly borne out by the documents and facts set out therein. It is contended that the comments made in the said TV programme were fair comments on the matter of public interest.

55. It is submitted by the defendant no. 3 that the news report was in the form of questionnaire/opinion and was based inter alia on the press release of defendant no. 1 and 2 which was substantially verified by the documents annexed to the affidavit in reply, opinions, and interviews of eminent persons and also by independent research carried out by defendant no. 3. The defendant no.3 had taken steps to verify the authenticity of the facts stated in the news report and only thereafter had telecasted the same on the Focus News Channel.

56. A perusal of the rejoinder filed by plaintiffs in reply to the defendant no. 3 to 8, clearly indicates that the plaintiffs have not disputed any of the documents which were obtained by the defendant no. 1 and 2 under the provisions of Right to Information Act. Those documents were comprising of correspondence exchanged between the plaintiffs and various Government departments, the allotments made in favour of the plaintiffs etc. In the rejoinder, the plaintiffs have also not denied the allotment of various plots to the plaintiffs by the Government, except vaguely denying the allegations made by the defendant no. 3. Based on such documents, the plaintiffs have not made any positive statements or have not tendered any explanation in respect of such documents. Mr. Chinoy learned senior counsel appearing for the defendant no. 3 to 8 submits that the defendant no. 3 can even at this stage prima facie prove the correctness of the contents of the news telecast on the basis of the documents annexed to the affidavit in reply which were verified by the defendant no. 3 before telecast. At this stage the court can consider the

substance in those allegations based on one of the ex facie case of favour alleged to have been shown by the Madhya Pradesh Government to the plaintiffs. In support of this submission, learned senior counsel invited my attention to some of the documents annexed to the affidavit in reply filed by defendant no. 3 which documents are not disputed by the plaintiffs highlighted hereinafter.

57. Some time in the year 2005, M/s. PAN India Paryatan Limited (Original name of the plaintiff) had approached the Chief Minister of the Madhya Pradesh and had sought allotment of 60 acres of Government land for establishment of a water park/amusement park. At a meeting of the Reservation Committee held on 16th June, 2005, it was decided to reserve 58.23 lake front land registered in the name of State Dairy Veterinary Department. It was provided that the reservation order would be issued on payment of 10% of the value of the land to the Collector. The said meeting was held on 16th June, 2005. On 6th September, 2005, the Chairman of the Essel Group had a meeting with the Chief Minister of Madhya Pradesh regarding the allotment and sought a 90 years lease at 50% of the market value. In the month of October, 2005, the Madhya Pradesh Government issued a reservation/allotment order for the said land and provided that the work shall be started within one year of getting possession of the land.

58. On 11th November, 2005, the Collector informed the Principal Secretary that the Director, Veterinary Services had objected to the allotment on the ground that if the land was taken away, then there would be a shortage of suitable land for the production of dry green fodder and would have an adverse impact on the health of animals. It was mentioned that the premium/value of the land at the rate of 112 per sq. ft. was at Rs.24.73 Crores and annual rent @ 7.5% would be Rs.1.86 Crores. It was also mentioned that at the minimum rent of Rs.60/- per sq. ft., the value of the land would be at Rs.13.25 Crores and the annual rent at the rate of 7.5% thereof would be at Rs.99.38 lacs. If the value was taken as 3.89 Crores, the annual rent at 7.5% would be Rs.29.24 lacs.

59. On 28th March, 2006, the said land was allotted at Rs.3.89 Crores with the annual rental at 7.5% of Rs.29.24 lacs to the plaintiffs. The plaintiffs were required to deposit the premium amount and annual lease rent within six months. On 7th

September, 2007, the plaintiffs deposited Rs.40 lacs only and did not deposit the balance amount. The Revenue department of the Madhya Pradesh Government informed the Collector that as the amount had not been deposited as required, the allocation order dated 28th March, 2006 stood automatically cancelled. On 26th October, 2007, the plaintiffs forwarded cheque for Rs.3,49,85,870/- towards the balance premium amount to the Government. The said cheque however, was returned by the Government to the plaintiffs on 26th November, 2007. In the meeting of the Project Clearance and Implementation Board under the Chairmanship of Chief Secretary on 14th December, 2007, it was decided to continue/re-allot the said land to the plaintiffs and to accept the balance premium amount of Rs.3,49,85,780/-. On 3rd January, 2008 the Madhya Pradesh Government decided to extend time for deposit of amount till 31st January, 2008 and directed that interest at the rate of 15% should not be charged to the plaintiffs.

60. On 29th September, 2008, the agreement for transfer of the land at the premium of Rs.3.90 Crores and annual lease rental of Rs.29.25 lacs. for 30 years, with a right of renewal for a further period of 30 years was executed between plaintiffs and MP Government. In the said agreement it was provided that plaintiffs shall start the work within six months and shall complete the same within two years. It is the case of defendant no. 3 that till today no work has commenced on the said plot which allegations are not disputed by the plaintiffs. It is the case of the plaintiffs that on 8th July, 2009 the plaintiffs had created an equitable mortgage with the State Bank of India by deposit of title deeds of the said land allotted to the plaintiffs by the MP Government bearing Khasra Nos. 8, 11 to 19, 22, 23 and 33, area 50.70 acres as a security of grant of loan of Rs.17.34 Crores. The plaintiffs also executed a declaration to that effect. On 12th December, 2013 the plaintiffs had applied to the Collector, Bhopal for permission to take loan against mortgage of the said land allotted by the Government.

61. A perusal of the rejoinder filed by the plaintiffs in so far as allotment of the land and the mortgage alleged to have been created in respect of the said land by the plaintiffs for obtaining loan of Rs.17.34 Crores is concerned, the plaintiffs have annexed a copy of the letter addressed by State Bank of India dated 8th July, 2014 in support of their submission that no loan was disbursed to the plaintiffs. A

perusal of the record prima facie indicates that (i) the plaintiffs have not denied about the contents of all these documents showing the application for allotment of land by the plaintiffs, (ii) objection raised by the Director, Veterinary Services to the allotment of land to the plaintiffs, (iii) though the valuation of the plot was at much higher amount determined by the officers of the Government, allotment of the land to the plaintiffs at a cheaper rate, (iv) non payment of the premium within time, (v) cancellation of allotment by the Government, re-allotment of the land without charging any interest, (vi) application made by the plaintiffs for mortgaging the said property allotted at the rate of Rs.3.90 Crores for loan amount of Rs.17.34 Crores and sanction of loan for Rs.17.34 crores (vii) though work required to be commenced within one year of the date of the allotment which was in the year 2006-07, work had not even commenced till today.

62. A perusal of the letter dated 8th July, 2014 which is annexed by the plaintiffs to rejoinder dated 16th October, 2014 itself indicates that the plaintiffs were sanctioned term loan of Rs.17.34 Crores as far back as on 27th February, 2009 for setting up a family recreation center on the said plot of land. The said term loan however, was not disbursed as NOC from Collector of Bhopal to mortgage of the lease land was not obtained by the plaintiffs company. No charge on the land was created by way of mortgage. In the meanwhile the sanction lapsed and the charge created with ROC was satisfied on 4th October, 2011. A perusal of the said letter indicates that the said letter is now obtained in the month of July, 2014 after publication of the Press release and telecast of the alleged defamatory material on the news channel against the plaintiffs. It is thus not in dispute that the land which is allotted to the plaintiffs at the premium of Rs.3.90 Crores in the year 2008-09, the plaintiffs had been sanctioned loan of Rs.17.34 Crores as far back as on 27th February, 2009 against equitable mortgage. The plaintiffs have not denied all these documents or the contents thereof.

63. Defendant no. 3 has also placed reliance on MOU dated 22nd December, 2012 between the MP Trade and Investment Facilitation Corporation and the plaintiffs for allotment of 5000 acres of land at Morena Gwalior District for setting up a Knowledge based Industry (Knowledge City). Based on the above referred documents, which are not disputed by the plaintiffs, learned senior counsel

submits that even if this court takes these documents into consideration at this stage, defendant no. 3 has made out a prima facie case that the defendant no. 3 had verified these facts before telecast of interview/news on Focus News Channel. It is submitted that he defendant no. 3 has justified the correctness of their publication with the documents in hand.

64. This court in case of **Indian Express Newspapers and another Vs. M/s. Magna Publishing Company Limited and Ors.** in **Notice of Motion No. 1995 of 1995 in suit no. 2525 of 1995** delivered on 21st July, 1995 has held that the defamatory article can be justified provided it is in the public interest and defendant has taken reasonable precaution of ascertaining the truth. The defendants must therefore, show on material available that a reasonable person could come to the conclusion that the comments were not mala fide. After considering the aforesaid judgment of this court in case of **Indian Express Newspapers and another (supra)** the learned single Judge of this court in case of **Shree Maheshwar Hydel Power Corporation Limited** has held that the defendants apart from taking a plea of justification will have to show that the statements were made bonafide and were in public interest and that the defendants had taken reasonable precaution to ascertain the truth and that the statements were based on sufficient material which could be tested for its veracity. In India the court is entitled to scrutinize the material tendered by the defendants so as to test its veracity and to find out whether the said statements were made bona fide and that whether they were in public interest.

65. The Division Bench of this court in the case of **Dr. Jaswant Trivedi (supra)**, has held that in a libel action at the interlocutory stage if the defendant raises a plea of justification and mentions evidence by which he might substantiate his case, the court is unlikely to grant any interlocutory injunction in favour of the plaintiffs to restrain further publication of the alleged libel. The said judgment of the Division Bench of this court is binding on this court and is squarely applicable to the facts of this case. On the basis of documents produced on record which are not disputed by the plaintiffs, in my prima facie view, the submissions of the defendants that the publication and telecast respectively was issued after verifying the documents and that the same was bona fide and in public interest cannot be

brushed aside and deserves acceptance.

66. In so far as reliance on the judgment of the Supreme Court in case of **M.J. Zakharaia Sait (supra)** by Mr. Godbole learned counsel for the plaintiffs is concerned, the same would assist the defendants and not the plaintiffs. In so far as judgments relied upon by Mr. Godbole on the issue of pleadings under the provision of Code of Civil Procedure, 1908 are concerned, even those judgments would not assist the plaintiffs. Though the plaintiffs had an opportunity to seek amendment to the plaint and to particularize the defamatory words, if any, from the press release and from the telecast, plaintiffs did not choose to seek amendment to the plaint.

67. Perusal of the record indicates that though the plaintiffs were given an opportunity by the defendants to express their views and/or fix time for interview, the plaintiffs did not avail of that opportunity. Whatever objections/views of the plaintiffs were placed during the time of press release, the same were prima facie considered by the defendant nos. 3 to 8 at the time of telecast on the Focus News Channel. In so far as submission of Godbole, learned counsel for plaintiffs that defendant nos.1 and 2 are in habit of making false allegations, or filing false proceedings and as a result thereof were directed to pay cost of Rs. 5 lacs by the MP High Court is concerned, it is the case of the defendant nos. 1 and 2 that they have already explained in the affidavit in reply as to why the said cost was imposed upon the defendant no. 1 by the MP High Court. Be that as it may, merely on the basis of the said order passed by MP High Court in the said public interest litigation filed by the defendant no. 1, it cannot be concluded in this proceedings that the press release issued by defendant nos. 1 and 2 cannot be considered to have been issued bona fide or that the same was not in public interest.

68. In my view the Notice of Motion is devoid of merits and is accordingly dismissed. No order as to costs.

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