

Gmr Infrastructure Ltd vs.associated Broadcasting Company Pvt Ltd & Ors

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SooperKanoon Citation : sooperkanoon.com/1212289

Court : Delhi

Decided On : Jan-29-2018

Appellant : Gmr Infrastructure Ltd

Respondent : Associated Broadcasting Company Pvt Ltd & Ors

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

22. d August, 2017 Decided on:

29. h January, 2018 IA43512016 (u/O XXXIX R12 CPC) in CS(OS) 165/2016 GMR INFRASTRUCTURE LTD Plaintiff Represented by: Mr. Abhinav Vasisht, Sr. Adv. with Mr. Abhinav Agnihotri, Ms. Priya Chauhan, Mr. Sourabh Gupta, Adv. versus ASSOCIATED BROADCASTING COMPANY PVT LTD & ORS Represented by: Mr. J.P. Sengh, Sr. Adv. with Defendants Mr. Buddy A Ranganadhan, Ms. Manisha Mehta, Adv. for D-1 to 9. Mr. Raunak Jain, Adv. for D-10. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA1 Through IA43512016, (under Order XXXIX Rule 1 & 2 CPC), GMR Infrastructure Ltd., hereafter referred to as plaintiff, seeks to restrain defendants, their representative, employees, agents, assignees, or any other person acting on their behalf or at their behest from re-broadcasting or uploading, in any manner, in any TV channel/Website owned, operated or controlled by the defendants, the story concerning the plaintiff, which was broadcast on the defendants channel TV9 on 30th March, 2016, hereafter referred to as Story. Plaintiff further seeks directions to defendants to

remove the said malicious and defamatory story from all electronic/online mediums including website www.youtube.com and all other CS(OS) 165/2016 Page 1 of 14 channels/websites. Plaintiff also seeks to restrain defendants, their representative, employees, agents, assignees, or any other person acting on their behalf or at their behest from re-broadcasting or uploading, in any manner, in any TV channel/Website owned, operated or controlled by the defendants the story concerning the plaintiff, in any manner, either through electronic medium or print in any TV channel/Website/newspaper etc., owned or controlled by the defendants without verifying the correctness of the facts from the plaintiff.

2. Plaintiff is a company incorporated under the Companies Act, 1956. Plaintiff pleads that it has established presence in developing various infrastructure projects, including energy, roads, and airports, both in India and abroad. Over the time plaintiff has cultivated a reputation of being a state-of-the-art company.

3. Defendant No.1, Associated Broadcasting Company Pvt. Ltd., is a company incorporated under the Companies Act, 1956 involved in broadcasting the TV channel TV9 with its office at 21, Natya Ballet Centre, 3rd Floor, Bhai Vir Singh Marg, Gole Market, New Delhi. TV9 is broadcasted throughout the country, including New Delhi. Defendants 2-10 are all working for gain at Defendant No.1 under various designations and capacities. According to the plaintiff, defendants No.2-10 are all involved in determining the contents broadcast on TV9.

4. Plaintiff together with five other companies joined a consortium named Delhi International Airport Pvt. Ltd., (in short DIAL). DIAL has been granted the exclusive right and authority for performing the functions of operating, maintaining, developing, designing, constructing, upgrading, modernizing, financing, and managing the Indira Gandhi International (IGI) CS(OS) 165/2016 Page 2 of 14 Airport. DIAL also possesses the exclusive right and authority to perform services and activities constituting Aeronautical Services and non- aeronautical services at the airport pursuant to an Operation, Management, and Development Agreement (in short OMDA), signed on 4th April, 2006 between DIAL and the Airports Authority of India (in short AAI).

5. It is the case of the plaintiff that pursuant to the OMDA, DIAL completed its work in modernizing IGI Airport, which deserves to be commended. DIALs work has fetched it inter alia over 30 national and international awards. IGI airport has been ranked the worlds best airport by Airport Council Internationals (ACI) on Airports Service Quality (ASQ) and today is talked about in case studies across the worlds leading business schools, including IIMs, ISB and Cambridge.

6. On 3rd March, 2016, defendant through its TV channel, TV9 broadcasted story regarding the functioning and operations of IGI Airport as modernized by DIAL. In its plaint, plaintiff contends that the imputations/statements made in the story are concocted, distorted, scandalous, figment of imagination, which have been intentionally incorporated in the story to harm the interests of the plaintiff and present distorted and incorrect facts to the reading public, broadcast with the intention of hurting the name, reputation, and goodwill of the plaintiff. Plaintiff has submitted a table of defamatory imputations/statements along with the purported factual position. Plaintiff has noted in its plaint a total of 29 different statements that it believes to be defamatory in nature. Submitted along with are the purported factual renderings of those statements according to the plaintiff. CS(OS) 165/2016 Page 3 of 14 7. As per the plaint after publication of the defamatory material, plaintiff has faced embarrassment while answering queries raised by people in business, government, creditors, employees, and others. Plaintiff submits that the said story has tarnished its credentials in the market and chipped at its goodwill and reputation. The story continues to be accessible to the public via www.youtube.com. Plaintiff has also placed a CD recording of the story on record. Plaintiff asserts that continued broadcast of video or accessibility of it by the public at large would gravely affect future business prospects.

8. Defendants No.2-10 have adopted the contents of Written Statement of defendant No.1. In written statement, defendants categorically deny averments made in Plaint. defendants assert that the present suit is not maintainable before this Court since no part of the cause of action has arisen under the local limits of its territorial jurisdiction and defendant No.1 has its registered office at Plot No.97, Road No.3, Banjara Hills, Hyderabad, Telangana. Learned counsel for the defendants contend that plaintiff claims jurisdiction of this Court to try the suit only

on the basis that defendant No.1 has an office in New Delhi. Defendant No.1 submits that it has 6 news channels in various languages in the name of TV9 and News9, and that apart from Hyderabad defendant No.1 has offices at 5 different places in India, including in Karnataka, Delhi, Mumbai, Ahmedabad, and Kochi. Defendant No.1 asserts that the office in New Delhi is a small branch office used only for liaison purposes, and that no production work or broadcasting is done from this office. Defendant No.1 further submits that the story was broadcasted from its studio located in Hyderabad and that none of the remaining defendants stay or work in New Delhi. For these reasons CS(OS) 165/2016 Page 4 of 14 defendants assert that this Court does not possess territorial jurisdiction to try the suit.

9. Defendants further submit that the present suit is not maintainable before this Court by virtue of Section 20(3) of the Cable Television Network (Regulation) Act, 1995 (in short the Act) read with Rule 6 of the Programme Code under the Cable Television Network Rules (in short the Rules). These provisions empower the Central Government to regulate or prohibit the transmission or re-transmission of programmes it believes to be not in conformity with the Advertising and Programme Code. Defendants contend that where there is a right created by an Act, a person seeking to enforce the right must take recourse under the mechanisms provided therein. Defendants contend that the Central Government is a necessary and proper party to the suit and since plaintiff did not implead it, the suit is not maintainable.

10. Defendants denying the averments in the plaint contend that the show reported the financial discrepancies that are taking place in IGI and Mumbai Airport managed by plaintiff and others and the present suit is an attempt to gag the freedom of the press.

11. Defendants submit that the Show was carried out based on information from reliable sources, including Comptroller and Auditor General (CAG) of India Reports, Public Accounts Committee (PAC) reports, letters of exchange between Civil Aviation Ministry and CAG and news that has been published and broadcasted by various other news media groups, etc. Defendants submit that the

Show was meant to expose the financial discrepancies mentioned in CAG report No.5/2012-13 and Public Accounts Committee (PAC) Report (94th Report) 2013-2014 dated 31st January, 2014. Defendants claim that there is no enmity with plaintiff. CS(OS) 165/2016 Page 5 of 14 Defendants further submit that defendants had emailed plaintiff prior to broadcast of Show with queries regarding allegations against plaintiff, but did not receive any response from plaintiff. Defendants contend that they even met the representatives of plaintiff but did not receive any response on the issues raised.

12. In its Replication, plaintiff objects to contentions of the defendants qua want of territorial jurisdiction of this Court to entertain the present suit. Plaintiff contends that defendant No.1 has office in New Delhi and thus carries on business and works for gain in New Delhi. Plaintiff further contends that the cause of action has arisen in New Delhi since the defendants channel TV9 is also broadcast in New Delhi. Finally, plaintiff contends that since the Story is uploaded on www.youtube.com, the public at large, including those in New Delhi, are able to view it. Thus as per the plaintiff this Court possesses territorial jurisdiction to try the suit.

13. Plaintiff responding to claims made by defendants regarding maintainability of the present suit under the Cable Television Network (Regulation) Act, 1995 contends that even though by Section 20(3) of the Act remedy is vested with the Central Government, the said statute does not in any way bar the right of a person aggrieved by broadcasts to seek relief in the Court. Plaintiff relies on an order from 27th March, 2015 passed by the Ministry of Information and Broadcasting under Section 20(2) of Cable Television Network (Regulation) Act, 1995 whereby the channel TV9 of defendants was warned by the Ministry for violating the Programme Code during the telecast of its programme Bullet News on 12th June, 2014 and directed to issue an apology for the same. CS(OS) 165/2016 Page 6 of 14 14. Plaintiff in its replication contends that it was not apprised of the purpose of the email in which defendants asked plaintiff to clarify issues. Plaintiff further denies having met the defendants. Plaintiff contends there is a prima facie case for defamation under Section 499,500,501,502, 34, and 120 B of the IPC.

15. Both plaintiff and defendant rely upon the decision reported as 2012 (132) DRJ370Nirmaljit Singh Narula v. Yashwant Singh & Ors.

16. The contentions of the defendant pleading want of territorial jurisdiction of this Court to try the suit are (1) that defendant has its registered office in Hyderabad, (2) that the complete functioning of the Telugu channel which broadcasted the Show is from Hyderabad, (3) that the office in New Delhi is small and only for liaison purposes, (4) that the impugned broadcast done from Hyderabad studio, and that (5) none of defendants stay or work in New Delhi. However, according to the plaintiff (1) the defendant has an office in New Delhi where they work for gain, (2) Channel TV9 broadcasts the shows all across the country, including New Delhi, (3) the cause of action arose in New Delhi when the Show was broadcast, and (4) the video was uploaded on the website www.youtube.com through which people residing in New Delhi were able to watch.

17. This Court in Indian Potash Ltd. v. Media Contents and Communication Services (India) Pvt. Ltd., 2009 IV AD (Delhi) 28 dealing with cause of action in a case of defamation held: 7. The above Section makes it abundantly clear that any suit for compensation for wrong done to a person can be filed either within the territorial limits of the jurisdiction where the CS(OS) 165/2016 Page 7 of 14 defendant resides or carrying on business or it may be instituted at the option of the plaintiff if the wrong done was within the local limits of the jurisdiction of the Court. In the event of publication of defamatory material, the wrong is done where the defamatory material is communicated and the moment the same is received by the persons, for whom it has been written. The publication of defamatory material against a person gives rise to a cause of action only when it is made known to the third party. The place of the third party and the place where it is known to a third party gains importance. The plaintiff may be living at any place. If publication of defamatory material against him is made at a place different from where the plaintiff lives or defendant lives, the Court at that place will have the jurisdiction to entertain the suit for compensation on the ground of defamation where the defamatory material is printed in books, newspaper is published, through electronic media on TV and the defamatory material directly hits the reputation demolishing the esteem and standing of the plaintiff. It is the choice of the plaintiff

to file the suit either at the place where publication has been made or the place where the defendant resides. Since in case of telecasting of a feature on TV by the channel which is for Indian audience and has all India viewers, the plaintiff has a choice to file the suit at those places where the plaintiff has been hit the most. In the present case, the plaintiff was supplying milk to many organizations and institutions and marketing companies in Delhi. The business of the plaintiff was allegedly hit by broadcasting of such publication in Delhi. Therefore, the suit of the plaintiff lies in Delhi and this Court has jurisdiction to entertain the suit. In T.N. Seshan, Chief Election Commissioner v. Dr. M. Karunanidhi, President of Dravida Munnetra Kazhagam Party. 1995 (3) ALT108 the Andhra Pradesh High Court had similar view and observed as under: of defamatory matter 23. Publication is communicated the moment the same is received by some person other than the person for whom it has been written. Publication of defamatory matter includes communication to third party. Defamatory CS(OS) 165/2016 Page 8 of 14 the that matter at matter printed in books and distribute for whatever purpose constitutes publication. All three defendants must have known that the aforesaid books and, particularly, the contents of chapters 9 and 10 may be read at least by the book sellers immediately on their receipt by them because of their curiosity. In the ordinary course of business the sending of books containing defamatory matter by post or otherwise from the place where it is published to book distributor of another place is publication of latter place, particularly/when it is read by them and/or others. Under it can be safely presumed that the importance of the aforesaid book containing chapters 9 and 10 would have aroused the curiosity of at least the book-seller to go through it immediately on its receipt and, therefore, this type of communication amounts to publication at Madras. these circumstances, 24. As noted above, the excerpts of chapters 9 and 10 of the aforesaid book in local newspapers is distinct publication. Much publicity was given for the sale of the book as is evident from the affidavits the defendants. Therefore, a presumption of regarding awareness of the concerned newspapers can be raised against all the defendants because out of these defendants only the concerned matter would have been passed on to the newspapers concerned and thus all of them, prima facie, appear to be responsible alike for the publication of the alleged defamatory news item in the local newspapers. the contents of 18. In the present case,

publication of the defamatory content occurred, among other places, in New Delhi. Thus the cause of action partly arising within the local limits of this Courts jurisdiction, this Court has territorial jurisdiction to try the suit. CS(OS) 165/2016 Page 9 of 14 19. Supreme Court in the decision reported as Patel Roadways Ltd. v. Prasad Trading Co., (1991) 4 SCC270 demystifying the explanation appended to Section 20 CPC noted the relevance of a subordinate office while determining territorial jurisdiction as under: 13. As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under clauses (a) to (c), the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself from such a situation by an exclusion clause as has been done in the present case. The clear intendment of the Explanation, however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an additional one. 20. By virtue of the fact that the cause of action in the present suit, i.e. the broadcast of the Show, among other places also took place in New Delhi, within the local limits of this Courts jurisdiction, this Court is thus vested of the territorial jurisdiction to try the present suit. CS(OS) 165/2016 Page 10 of 14 21. Learned counsel for defendants contends that the present suit is not maintainable under Section 20 (3) of the Act. Section 20 of the Act reads as under: 20. Power to prohibit operation of cable television network in public interest (1) Where the Central Government thinks it necessary or expedient so to do in public interest, it may prohibit the operation of any cable television network in such

areas as it may, by notification in the Official Gazette, specify in this behalf. (2) Where the Central Government thinks it necessary or expedient so to do in the interest of the- (i) sovereignty or integrity of India; or (ii) security of India; or (iii) friendly relations of India with any foreign State; or (iv) public order, decency or morality, it may, by order, regulate or prohibit the transmission or re- transmission of any channel or programme. (3) Where the Central Government considers that any programme of any channel is not in conformity with the prescribed programme code referred to in section 5 or the prescribed advertisement code referred to in section 6, it may by order, regulate or prohibit transmission or re- transmission of such programme. the 22. Rule 6 of the Rules provides: Programme Code. - (1) No programme should be carried in the cable service which:-

". (d) Contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths; CS(OS) 165/2016 Page 11 of 14 23. In Procter & Gamble Home Products Private Ltd. vs. Hindustan Unilever Ltd., (2017) 238 DLT585question arose before this Court regarding maintainability of a suit in which Hindustan Unilever Ltd. (in short HUL) alleged defamation in one of Procter & Gamble Home Products (in short P & G) advertisements. P&G contended that since HUL had first approached the Advertising Standards Council of India (ASCI) which had rejected HULs petition, the suit was not maintainable in the Civil Court. This Court rejecting P&Gs contention held that HUL was not barred from approaching the Civil Court. It was held: the equipment of any cable operator 15. The Cable Television Networks (Regulation) Act, 1995 (CTN Act) enacted to regulate the operation of cable television networks and for matters connected therewith, in Section 6 titled Advertisement Code prohibits transmitting or re-transmitting through a cable service of any advertisement unless such advertisement is in conformity with the prescribed Advertisement Code. Section 11 of the CTN Act provides for seizure of found violating inter alia Section 6 of the Act and Section 19 of the CTN Act empowers the Government to prohibit the cable operator from transmitting or re-transmitting any advertisement not in conformity with the prescribed Advertisement Code. Section 22 of the CTN Act empowers the Central Government to by notification in the Official Gazette make rules inter alia for the Advertisement Code. The Cable Television Networks Rules, 1994 (CTN Rules) framed in exercise of said power, under Rule 7 that advertisements carried

in cable service shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers, vide sub-rule (9) that no advertisement which violates The Code for self regulation in Advertising, as adopted by the ASCI from time to time for public exhibition in India, shall be carried in the cable service. thereof provides titled Advertising Code, while providing CS(OS) 165/2016 Page 12 of 14 16. However the aforesaid statutory flavour given to The Code would also in my view not bar the jurisdiction of the Civil Court to entertain CS(OS) No.463/2016 as filed by HUL, even after HUL approached ASCI and ASCI did not find any merit in the complaint of HUL. I say so because the remedy available before ASCI is distinct from that available before the Civil Court. ASCI, if finds any merit in the complaint with respect to any advertisement, can only make a recommendation for rectification thereof and if the recommendation remains un- complied, forward the same to the Authorised Officer under the CTN Act and which Officer is empowered to then prohibit the broadcast of the subject advertisement. The said route though may be also available will not bar a person aggrieved from the advertisement, from approaching the Civil Court and similarly the dismissal of complaint by ASCI, though may be a relevant fact in the proceeding before the Civil Court with respect to the same advertisement, but would not bar the Court from independently looking at the grievance. 24. Although the reason for questioning maintainability of suit was not the same, this Court did not require that the Central Government be impleaded in order to maintain the suit.

25. In view of the extensive factual corrections and counter-responses, this Court finds that there is a prima facie case of defamation in the Show. Thus this Court directs the defendants to remove the Story from all electronic/online mediums including website www.youtube.com and all other channels/websites. Defendants, their representative, employees, agents, assignees, or any other person acting on their behalf or at their behest are also restrained from re-broadcasting or uploading, in any manner, in any TV channel/Website owned, operated or controlled by the defendants the story concerning the plaintiff, in any manner, either through electronic medium or print in any TV channel/Website/newspaper etc., owned or CS(OS) 165/2016 Page 13 of 14 controlled by the defendants without verifying the correctness of the facts from the plaintiff pending disposal of

the suit.

26. IA43512016 is disposed of. JANUARY29 2018 ga (MUKTA GUPTA) JUDGE
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