

Sh. Sanjiv Jain
Commercial Court-03 District Judge
New Delhi
Patiala House Courts, N. Delhi

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CS No.191/2020

Dr. Abhishek Manu Singhvi v/s Sarosh Zaiwalla & ors

13.04.2020

Fresh suit filed. It be checked and registered as per rules.

Present: Plaintiff in person with counsels Sh. Vijay Aggarwal,
Mr.Naman Joshi and Mr. Naveen Kapila.

Additional documents filed.

1. The present suit for permanent and mandatory injunction and declaration has been filed by the plaintiff to vindicate his right in his reputation and to ensure that the defamatory statements, imputations and innuendo contained in the book "*Honour Bound: Adventures of an Indian Lawyer in English Courts*" and the Article "*I learnt from Bofors never to act in a case involving internal Indian politics, says Sarosh Zaiwalla*" do not cause further injury to him. Plaintiff also seeks redress for the injury already caused, except for damages for which he has sought leave under Order 2 Rule 2 to sue separately. The suit also seeks declaratory relief against false statements made in the book.

2. Along with the suit, the plaintiff has filed an application under Order 39 Rule 1 and 2, CPC who besides seeking the other reliefs has sought an ex-parte and ad interim temporary injunction *interalia* (A) restraining defendant no.1 from making any further unverified, unsubstantiated, and ex facie defamatory statements concerning the plaintiff and his family or repeating and republishing



the statements made in the Article and reproduced in the plaint at Paragraph 18 during the pendency of the present suit;

(C) restraining the defendant no.2, 4-5, and 6 or their associates, agents, representatives, wholesalers, and/or distributors from marketing, selling, or supplying, the book titled "Honor Bound: Adventures of an Indian Lawyer in English Court" to individuals or book vendors/sellers for reading or further resale during the pendency of the present suit.

3. The case of the plaintiff in brief is that the plaintiff is a reputed and respected member of the society. He is an internationally renowned lawyer. He is an eminent jurist, parliamentarian, media personality, newspaper and periodical columnist, author and commentator. He was designated as senior Advocate by the High Court of Delhi on 31.07.1993. He was appointed as an Additional Solicitor General of India at the age of 37 years. He was the Vice President of Supreme Court Bar Association from 1998-99. He is known as one of the top most Senior Advocates in India. He has received various honors and commendations during his distinguished career. He is a former member of the governing councils of National Law University, Jodhpur and National Law University, Delhi etc. He was also a member of Kumar Mangalam Birla Committee set up by SEBI in 1999 to recommend a new legal frame work to deal with insider trading. He is also the author of various books.



4. It is stated that the plaintiff is thriving in a profession in which reputation and goodwill are critical. He is highly respected by both members of the Bar and the Bench. He regularly undertakes academic engagements at prestigious institutions. He adheres to high moral standards and codes.

5. It is stated that father of the plaintiff, late Dr. L.M Singhvi was an eminent jurist and Senior Advocate, a leading constitutional expert, an acclaimed diplomat, an expert in public and private international law, a distinguished parliamentarian, a highly respected intellectual, a prominent exponent of human rights, doyen of the Indian Bar, a citizen statesman, an author, a poet, a linguist and a litterateur. He was gold medalist from the University of Allahabad. He did his LLB and M.A from the University of Rajasthan. He was the Rajasthan's first Rotary scholar to Harvard University, United States of America for his LLM. He got his J.S.D from Cornell University, U.S.A. He also became an Assistant Professor at the University of California, Berkeley. At the age of 30 years, he was elected to the Lok Sabha. He was appointed as Advocate General of the State of Rajasthan from 1972-77. In 1991, he was appointed as the High Commissioner to the United Kingdom of Great Britain and Northern Ireland: a position he remained in till 1997. He also headed the Indian delegations to the United Nations Conference in Vienna. He was the member of Permanent Court of Arbitration at Hague. Upon return to India, he was elected to the Rajya Sabha and was

conferred with the Padam Bhushan Award.

6. It is stated that through his years of professionalism and excellence, Late Dr. L.M Singhvi gathered an immense amount of goodwill and reputation. He was described as *Saraswati putra* by Late Prime Minister Sh. Atal Bihari Vajpayee. He earned name, fame and high reputation in public at large during his lifetime and passed on a glowing legacy to the plaintiff.

7. It is stated that the plaintiff scrupulously followed the path of his father and ethics epoused by him. He has been working with complete honesty and has earned name, fame and reputation in public at large through his sheer hardwork. His father was his role model.

8. It is alleged that the defendant no.1 namely Sarosh Zaiwalla is a solicitor based in London and a partner of Zaiwalla & company. He is the author of a book titled "*Honour Bound: Adventures of an Indian Lawyer in English Courts*". It was alleged that the book is extremely defamatory qua the plaintiff as well as his deceased father apart from being hurtful to the sentiments of the Singhvi family. Defendant no.2 namely, Harper Collins Publishers India Pvt. Ltd is the publisher of the book in India which is circulating the same for profit in India, directly or indirectly, online as well as offline. It is alleged that defendant no.2 failed to act as a responsible publishing house and chose to publish ex facie defamatory statements and



content spewed by defendant no.1 without any efforts to check the same independently or by reaching out to the plaintiff. It is alleged that defendant no.3 is a leading media house with a wide presence in print and online publications, including The Times of India, having wide circulation across India. It is alleged that defendant no.3 ought to have been more responsible, cautious and vigilant before publishing *ex facie* defamatory material against plaintiff and his deceased father. Instead, it published the article titled "*I learnt from Bofors never to act in a case involving internal Indian politics, says Sarosh Zaiwalla*" written by Ms. Neelam Raj in The Times of India Print as well as online edition. It is alleged that defendant no.4 Amazon Seller Services Pvt Ltd and defendant no.5 Flipkart Internet Private Ltd are the known online sellers of the book. It is alleged that it were they who provided the defendant no.1 platform to defame the plaintiff. It is alleged that defendant no. 6 Ashok Kumar, A.K.A John Doe is the representative of any other persons connected with the defamatory book such as various websites and book stores on or at which the defamatory book can be purchased etc.

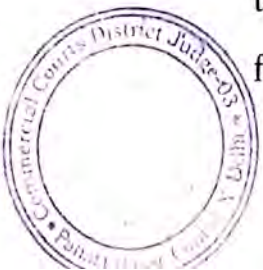
9. It is stated that on 23.02.2020, the defendant no.1 gave an interview to The Times of India with the intention to tarnish image and reputation of the plaintiff, independently and on account of his connection with his deceased father being his son, heir and successor at bar. He, like his father, is a prominent and well known face in public life in India. The said article was published in The Times of



India print as well as on online edition containing defamatory statements/imputations interalia as under:

"...I had very close and friendly relations with all Indian High Commissioners. Even though Kuldeep Nayyar sacked my firm because I did not accept his request to stop representing the Bachchans, it did not affect his personal cordial relationship with me. Unfortunately, Dr. L.M Singhvi acted unfairly towards my firm for a possible personal reason. I was a member of an international arbitration tribunal in a multimillion dollar claim against the Indian government. His son, Abhishek Manu Singhvi, then a very junior counsel, was appearing before us. My co-arbitrator knew Dr. Singhvi well and was clearly under pressure. He gave a dissenting award in favour of the Indian government. I joined the majority award given by the Chairman of the Tribunal Lord McKenzie Stuart, which was against the Indian government. Mine was a judicial decision on merits. This apparently provoked Dr. Singhvi to recommend blacklisting my firm despite the successful service we had provided the High Commission over the years."

10. It is stated that the purport of the Article was also to clearly hurt the feelings and the sentiments of the Singhvi's family. It is alleged that the aforesaid statement is widely incorrect and evident from the fact that first the defendant no.1 claims that Late Sh. Kuldeep Nayyar



sacked his firm and then, in the very same breath claims that the plaintiff's deceased father was the one who blacklisted the defendant no.1's firm and this was for a personal reason. Further, the insinuation that the plaintiff's deceased father unduly influenced a noted Arbitrator and Jurist Late Chief Justice R.S Pathak (Retd.) into passing an award in favour of the Republic of India in a matter in which plaintiff was appearing as a counsel is *ex facie* defamatory to the plaintiff in as much as it unequivocally accuses his father of a criminal offence and insinuates that plaintiff himself was complicit in it. It is alleged that by the above statement, the defendant no.1 unequivocally stated and alleged that the plaintiff was so upset with the loss in an international arbitration that he would have expressed his feelings to and prevailed upon his father to blacklist the defendant no.1's law firm in the United Kingdom of Great Britain as retribution. He disparagingly told the plaintiff as a very junior counsel. Though at that time, he was a Ph.D in Law and had a noted name in arbitration. It is alleged that the simple google search of "*honour bound sarosh zaiwalla*" yields multiple results wherein the defamation of the plaintiff is writ large. The alleged defamatory statements and imputations are quoted herein below:

"the Bofors saga had also entangled me in a political uproar in India, with my name bandied about in Parliament. Rene Felber, the Swiss foreign Minister, leaked a memo to a journalist that had been handed to him by his



Indian counterpart, Madhavsinh Solanki. This note recommended to the Swiss government that it close its inquiry into the Bofors kickbacks. When this news reached India, Solanki admitted in Parliament that he was given a sealed envelope to give to Felber but said he was unaware it contained a Bofors memo. Solanki further elaborated he was in his seat on the plane when 'a well-respected Indian lawyer in London' gave him the envelope and requested him to give it to the Swiss foreign Minister.

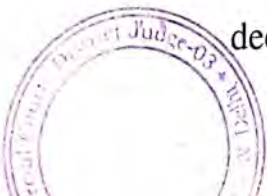
There was a presumption in the Indian press that this lawyer was me. Naturally, the Indian Parliament raised questions about the propriety of it is foreign minister carrying a sealed envelope, without knowing its contents. I knew nothing about it. There was no way I would have got security clearance to board a plane on which I was not travelling, let alone deliver anything to anyone in it. Vir Singhvi later told me the person who handed the envelope over might have been the Indian High Commissioner in the UK, Dr. L.M Singhvi, who was also a senior lawyer. Because of his diplomatic status, he would have had access and authority to meet the minister on the plane. To find my name baselessly flung around in the Indian parliament and press was stressful and it was the kind of publicity I could do without..."



11. It is alleged that wild speculation coupled with the word “might” shows the sheer speculative and hearsay nature of defendant no.1's book. Further, the name of Mr. Vir Sanghvi has been added to perhaps provide some credibility. However, Mr. Vir Singhvi first in a telephonic conversation with the plaintiff and then by a signed letter dated 09.03.2020 addressed to the plaintiff denied ever having told defendant no. 1 as claimed above. This shows that the defendant no.1 is paddling his lies over and above even the realm of hearsay with blatant impunity and with complete disconnect from the truth. It is stated that on 09.03.2020, Mr. Vir Sanghvi addressed a letter to the plaintiff stating that the following passage of the defamatory book was completely a figment of the defendant no.1's imagination and bore no link with the truth:

“...Vir Sanghvi later told me the person who handed the envelope over might have been the Indian High Commissioner in the U.K, Dr. L.M Singhvi, who was also a senior lawyer. Because of his diplomatic status, he would have had access and authority to meet the minister on the plane...”

12. It is stated that in view of the clear denial by Mr. Vir Singhvi, who the defendant no.1 claims is the source of his information for the defamatory contents of the book, the plaintiff is entitled to a declaration of falsity qua the defamatory contents of the book. It is



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alleged that defendant no.1 never raised the issue at the relevant time when the alleged statement was made by Mr. Vir Singhvi to the defendant no.1. He is now seeking to rake up this issue almost three decades later, to the detriment of the plaintiff, linking the name of the plaintiff to the Bofors issue on the back of his father's name.

13. It is alleged that towards the end of February, 2020, plaintiff was confronted by a colleague at the bar about the allegations contained in the Article as well as the book which fact he also came to know through his contacts in bar which was detrimental to his reputation.

14. It is stated that the plaintiff through his Advocate sent a legal notice to defendant no.1 through e-mail as well as international Speed Post to cease and desist from making and publishing defamatory allegations, recalling the book and issuing a public apology in respect of the article published in the newspaper but the defendant no.1 instead admitting the maliciousness of his statements, in series of e-mails on 02.03.2020, 03.03.2020 and 04.03.2020 without giving an actual response to the contents of the legal notice proceeded to make further wild allegations about the plaintiff and threatened his advocate with legal action in Great Britain and India. He also took out a press release stating that the defamatory book was true and the plaintiff is trying to bully him. He moved from an evasive response to a non apology justifying his statements "*believe to be true*" which is ex



facie contradictory to the tone and the tenor of the book, the article and even the general concept of a memoir. It is alleged that the defamatory statements made by defendant no.1 were published with the specific intentions to harm the reputation and defame the plaintiff for cheap publicity. It were neither bonafide nor made in good faith.

15. It is stated that no possible exposition of right to freedom of speech and expression entitles the defendant no.1 and 2 to defame the plaintiff independently and on account of his connection to his deceased father as well as cause severe mental agony and distress to Singhvi's family.

16. It is stated that plaintiff first initiated the criminal defamation proceedings being '*Dr. Abhishek Manu Singvi v. Sarosh Zaiwalla*, Ct. Case No. 5845/20' wherein vide order dated 18.03.2020, the Court summoned the defendant no.1 herein. It is stated that the concocted nature of the defamatory Article is evident from the fact that at no point, the defendant no.1 or defendant no.3 seek to check the allegations much less enquire about the same from the plaintiff. The entire version of the defendant no.1 has seen the light of the day for the first time in 2019/2020 almost 30 years after the alleged incidents when conveniently the plaintiff's deceased father, Chief Justice Sh. R.S Pathak (Retd.) or Mr. Kuldeep Nayar are not alive to rebut the libelous allegations made against them. The statements made by the defendant no.1 in the defamatory book published by the defendant no.2 are neither bonafide nor made in good faith.



17. It is stated that the plaintiff's reputation would suffer irreparable harm if the injunctions as prayed for in the present application are not granted in as much as he would suffer further loss to his reputation coupled with prejudice caused to his practice of the law. The continuous injury to the plaintiff stands aggravated by the manner in which the defendant no.1 has made the false allegations which have been published by defendant no.2 and 3 and remained unretracted till date despite having been put to notice by the plaintiff. It is stated that the present application is bonafide and in the interest of justice. The plaintiff has rushed to this court with great haste and urgency considering the present situation prevailing in the country.

18. I have heard Ld. Counsel Sh. Vijay Aggarwal for the plaintiff.

19. Ld. Counsel reiterated what is stated in the plaint. He also referred the documents as well as the e-mails and the statements as above and placed reliance on the case, *Frankfinn Aviations Services Pvt ltd v. Tara Kerkar & ors*, 2016 SCC Online Del 4641, *M/s Future Gaming and Hotel Services Pvt ltd v. Malayala Manorama & ors*, Criminal Appeal No. 2042/17 decided on 28.11.2017 by the Supreme Court, *Swami Ramdev v. Juggernaut Books Pvt. Ltd & ors*, CM (M) 556/2018 decided on 29.09.2018 by the High Court of Delhi, *K.A Abbas v. Union of India*, (1970) 2 SCC 780, *Sahara India & anr v/s Tamal Bandyopadhyay & ors*, 2013 SCC Online Cal 21559, *Reliance Petrochemicals Ltd. v/s Indian Express Newspapers*



Bombay P. Ltd, (1988) 4 SCC 592, All India Dravida Munnetra Kazaam and etc v. Thiru K. Govindan Kutty & anr, 1996 SCC Online AP 1047. Ld. counsel also placed the order of the Metropolitan Magistrate -07, Patiala House Courts, New Delhi in CC No. 4629/2020, titled *Dr. Abhishek Singhvi v/s Sarosh Zaiwalla dated 18.03.2020* whereby the defendant no.1 was summoned as an accused for commission of offence under Section 499 IPC to stand trial. Ld. counsel contended that the plaintiff's reputation would suffer irreparable harm if the injunctions as prayed for in the present application are not granted in as much as he would suffer further loss to his reputation couple with prejudice caused to his practice of the law. Ld. counsels submitted that this court has jurisdiction to try the suit as the defamatory article as well as the defamatory book are available in circulation in New Delhi within the jurisdiction of this court. Similarly, the article was published in the print edition of The Times of India and available within the jurisdiction of this court. The plaintiff was also confronted by Mr. Sumit Chander, Advocate, amongst others, in relation to the allegations contained in the book and the article within the jurisdiction of this court.

20. I have considered the submissions and gone through the material placed on record including the press statement given by defendant no.1 and the E-mails and the order of the Metropolitan Magistrate dated 18.03.2020.



21. The plaintiff is aggrieved by the passage contained at page 103 and 104 of the book written by the defendant no.1, titled as, "*Honour Bound: Adventures of an Indian Lawyer in English Courts*". The book has already been published and is in circulation. According to the plaintiff, in the concerned passage, the defendant no.1 has made a speculative reference of the deceased which the plaintiff contends to be inherently defamatory having been made with an intention to cause harm to his reputation and to hurt the feelings of the Singhvi's family. He is also aggrieved by the statements made by the defendant no.1 after the publication.

22. The plaintiff as per the averments made claims to be a reputed and respected member of the society, a renowned lawyer across India, an eminent jurist, a parliamentarian and a visible media personality. He was designated as a senior Advocate at the age of 34. He also served as Additional Solicitor General. He also claims to have been awarded the global leader of tomorrow award by the World Economic Forum. He commands a high respect among the bar members. He is invited as guest at various seminars and for lectures in the law schools. He also claims that his deceased father Late Dr. L.N Singhvi was an eminent jurist, a leading constitutional expert and an acclaimed diplomat and a distinguished Parliamentarian. He was the Rajasthan's first rotary scholar to Harvard University for his LLM. He served as Advocate General of Rajasthan as well as Parliamentarian in both the houses of Indian Parliament. He also served as High Commissioner



for India to the United Kingdom. He also headed Indian delegation to UN conference on human rights in Vienna. He was awarded Padam Bhushan. He was also a member of Permanent Court of Arbitration at Hague. It was claimed by the plaintiff that the deceased earned immense name and fame in public at large through his hardwork. He followed the ethics in his advocacy with complete honesty.

23. In the instant case, the defendant no.1 in his book has referred about Mr. Vir Singhvi as the source of information but Mr. Vir Singhvi during personal interaction and letter dated 09.03.2020 denied having any conversation with the defendant no.1 regarding his late father Mr. L.N Singhvi handing over an envelope to Ex-Minister Madhavsini Solanki aboard a private plane enroute Switzerland. It was alleged by Mr. Vir Singhvi that it is completely a figment of imagination of the author Sarosh Zaiwalla (defendant no.1 herein), who has chosen to misquote him (Mr. Vir Singhvi) for reasons best known to him. He (Mr. Vir Singhvi) also denied making such statement attributed to him in Sarosh Zaiwalla book '*Honour Bound*'. Further, the defendant no.1 in his interview with the newspaper, Times of India published on 23.02.2020 stated that deceased Late L.N Singhvi acted unfairly towards his firm possibly for personal reason. When the plaintiff came to know of these facts as stated above, he got sent a legal notice to the defendant no.1 who instead of giving actual response to the contents of the legal notice proceeded to make further allegations about the plaintiff. He moved from an evasive response to



a non apology, justifying his statement “*believe to be true.*” In his e-mail dated 06.04.2020 to the plaintiff, he wrote as under:

“You will see that in this press release I have said that in order to maintain accuracy and truthfulness of the facts, the draft chapter relating to late Dr. L.M Singhvi were personally sent on my behalf to both the Indian High Commissioner and the Deputy High Commissioner in London before the draft manuscript were sent to my publishers. My purpose of doing so was to give the Indian High Commission at which Dr. LM Singhvi was the High Commissioner at the relevant time, an opportunity to consider the contents of the draft chapter and thereafter propose corrections. The Indian High Commission did not respond as others had done. They would naturally have done so if they had believed what I had said to be inaccurate.”

24. It is stated by the plaintiff that the above referred contents written/made by the defendant no.1 in his book and in his interview published in the newspaper, 'The Times of India' are defamatory statements made by him to harm his reputation and defame his deceased father and hurt the feelings of his family.

25. A perusal of the record would also show that plaintiff had filed a criminal case of defamation against the defendant no.1 wherein the court vide detailed order after recording the evidence of the plaintiff and his witness and perusal of the record observed that the defendant



no.1 published a speculative information given by Mr. Vir Singhvi as claimed by him, in his book without verification about the truthfulness of the facts. Further, Mr. Vir Singhvi has refuted to have made any statement to the defendant no.1 regarding the deceased as published in the book. He (defendant no.1) also in his interview dated 23.02.2020 stated that the deceased acted unfairly towards his firm possibly for personal reason. He made the imputation qua the plaintiff of pressurizing the Arbitrator by his appearance and obtaining a dissenting award prima facie appears to have been made with an intention to harm the reputation of the complainant to continue to practice law.

26. It is a well settled law that the right to free speech cannot mean that a citizen can defame the other. The protection of reputation is a fundamental right and also a human right and cumulatively serves the social interest. The infringement of the right to reputation may result into civil as well as criminal action. The fair comment implies making of a genuine effort to reach truth and a mere belief of there being truth without there being reasonable grounds for such plea is not synonymous with fair comment. It is also the duty of the printer/publisher to act with due care and caution. A person is entitled to be treated with dignity. He has right of social reputation as an ordinary citizen. Even if he be a public figure and as reputation is a cherished value and an element of personal security, portions of the book which made readers think that he is an ambitious villain, until so



proved in the court of law are necessarily to be restrained from being published and distributed for sale. The right of reputation of a living individual under Article 21 of the Constitution of India cannot be sacrificed and crucified at the altar of the right of freedom of speech and expression of another and both have to be harmonized and balanced in as much as no amount of damages can redeem the damage to reputation of any person. Merely because, there have been publications on the same issue, the same does not permit making further unverified and unsubstantiated defamatory statements concerning the plaintiff and his family and republishing the statements made in the Article and distributing or marketing the same to the individuals of book vendors/sellers etc for reading or further resale during the pendency of the suit.

27. In the instant case, the reputation of the plaintiff is at stake. His reputation would suffer irreparable harm if injunctions as prayed for is not granted as much as he would suffer further loss to his reputation. A strong prima facie case is made out in favour of the plaintiff.

28. The defendant no.1 is accordingly restrained from making any further unverified, unsubstantiated, and ex facie defamatory statements concerning the plaintiff and his family or repeating and republishing the statements made in the Article and reproduced in the plaint at Paragraph 18 during the pendency of the present suit. Similarly, defendant no.2, 4-5, and 6 or their associates, agents,

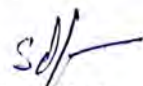


representatives, wholesalers, and/or distributors are restrained from marketing, selling, or supplying, the book titled "*Honor Bound: Adventures of an Indian Lawyer in English Court*" to individuals or book vendors/sellers for reading or further resale during the pendency of the present suit till the next date of hearing.

29. Plaintiff is directed to comply with the provision of the order 39 Rule 3, CPC.

30. Issue summons for settlement of issues and notice of the application under Order 39 Rule 1 and 2, CPC and Order 2 Rule 2 of CPC to all the defendants on filing process fee and Speed post/E-mail etc. Additionally, defendants be also served through all additional modes permissible under the High Court rules and orders. The plaintiff is also directed to deposit the court fees on or before next date of hearing. An undertaking to this effect be given by the plaintiff within a week.

31. Renotify on 04.05.2020. Copy of the order be given dasti to the ld. Counsel for the plaintiff forthwith.


(Sanjiv Jain)
District Judge (Roaster)
Commercial Court-03 District Judge
New Delhi
Patiala House Courts, N. Delhi



Attested True
copy.

Readers
14/04/2020