

**IN THE COURT OF SH. SUNIL BENIWAL,
DISTRICT JUDGE-06, SOUTH DISTRICT,
SAKET COURTS, NEW DELHI.**

CS DJ No.220/2023

CNR No.DLST01-003775-2023

....Plaintiff

VERSUS

.....Defendant

Date of Institution : 20.04.2023

Date of arguments : 10.07.2024

Date of Judgment : 29.07.2024

**SUIT FOR RECOVERY OF RS.25,00,000/- AS DAMAGES FOR
DEFAMATION, MALICIOUS AND FALSE LITIGATION.**

JUDGMENT

1. That the present suit has been filed by the plaintiff for recovery of Rs. 25 Lacs as damages for defamation, malicious and false litigations along with pendent lite and future interest at 18% per annum. The brief facts are that the plaintiff and the defendant got married on 30.06.2001 according to Hindu rites and ceremonies.
2. It is the case of the plaintiff that with the passage of time the behaviour of the defendant towards the plaintiff and his other family members became cruel and aggressive. It is further stated by the plaintiff that the defendant left the matrimonial house on 10.07.2009 with the minor daughter of the parties herein after creating an atrocious environment, and began to file frivolous and false litigations by putting defamatory allegations against the plaintiff and his other family members before various Courts and authorities. It has also been submitted by the plaintiff that the defendant did not allow the plaintiff to meet with their daughter and deprived him of her

love and affection.

3. The plaintiff has further submitted that the defendant used to chat with her friends and while chatting used abusive/defamatory language against the plaintiff and her mother specifically through her email accounts (**Exb. PW-1/7 & Exb. PW-1/8 i.e. email chats**).
4. Thereafter, as submitted, the plaintiff filed a petition seeking dissolution of marriage vide HMA no. 336/2011, before Saket Court, South District on the ground of cruelty under section 13 (1) (ia) of Hindu Marriage Act. 1955. It is further submitted that the petition U/s 13 of The HMA Act, 1955 was decreed by the Court of Sh. Praveen Kumar, Ld. Principal Judge, Family Court, South, vide its order dated 01.12.2021. A copy of the same is marked as **PW-1/5**. Further, a certified copy of the same was also produced during evidence proceedings.
5. It is the case of the plaintiff that the defendant continued to nag the aged and ill maternal uncle (the business provider of Altima Systems, the employer of the plaintiff) by

sending emails (**Exb. PW-1/9 Colly**) with false allegations and defamatory remarks, which caused immense pain to the plaintiff and the plaintiff had gone into depression, and his health became worse day by day due to constant psychological stress.

6. It is submitted that the plaintiff sent a legal notice dated 05.08.2020 **Ex PW-1/11 Colly. (not denied by the defendant)** to the defendant thereby calling her to restrain herself and to tender a written apology for her derogatory act/allegation but the defendant further in continuation of her malafide intention to defame the plaintiff sent a reply **Exb. PW1/12 (not denied)** dated 21.08.2020 to the legal notice through her advocate Fauzi Sayeed to the official email of Sh. M.G.S. Yadav (**Exb. PW1/13**), which caused immense psychological pain to the plaintiff.

7. It is submitted by the plaintiff that due to constant harassment and aforesaid acts of the defendant, the plaintiff had to undergo major surgery on March 2022. The medical treatment and expenses documents (approx. total Rs.6 lakhs expenses for

surgery and post-surgery expenses) are exhibited as **EX PW-1/10(OSR)**.

8. Further, as pleaded, after the divorce decree was passed, the defendant intentionally, just to malign the plaintiff, sent an mail to, the maternal uncle (mama) of the plaintiff dated 16.06.2022 through her daughter's email ID i.e. (Exb. PW-1/14) on his official email ID despite the fact that has/had no concern with the family affairs of the plaintiff and the defendant, since he has been living in USA for last many decades. The plaintiff has also submitted that it is worth mentioning the maternal uncle of the plaintiff was a chronic patient of kidney failure and had undergone kidney transplant in the year of 2021 and he was bedridden at that time. **The email has been admitted by the defendant in her cross examination as well as her written statement.** It is also submitted by the plaintiff that the daughter of the plaintiff examined herself as **PW-2 in Mt Case. No. 215/2011**. In her cross examination the daughter of the parties herein admits that

Email ID i.e. ishaa2003ven11a@gmail.com is her email ID, however she denied that she sent any email dated 16.06.2022 (Exb. PW-1/10) to (at page 2 of her cross **examination**). The daughter of the parties Ms Ishita further stated that 'whatever stated in my affidavit **Exb. PW-2/A is told to me by my mother**'. A certified copy of the cross examination of Ishita is annexed as Annexure-P1 along with the written submissions.

9. It is stated that the defendant has taken a single plea in her defence that the present suit is time barred as well as the suit of the plaintiff is pre-mature. No other defence has been pleaded by the defendant effectively. It has also been submitted that the defendant took two contrary pleas in her written statement. As pleaded further, the defendant has contended that the email chat on the basis of which the plaintiff has claimed the relief in the present suit pertains to the year 2010 to 2020 itself which are electronic records and the plaintiff has not filed the requisite certificate U/s 65B of the Indian Evidence Act, which was filed by the plaintiff along with his evidence affidavit. The same was

duly exhibited as **Exb. PW-1/15**.

10. It is further submitted that the counsel for the defendant duly cross examined PW-1 at length and a total 75 questions were put by the counsel for the defendant. As alleged, in the entire cross examination of PW-1, the counsel of the defendant focused only on the income of the plaintiff and the alleged intimate relationship of one with the plaintiff. The Ld. Counsel has submitted that the said cross examination is further defamatory in nature, and the plaintiff has reserved his right for the same. It is also submitted that the defendant remains silent in respect of Exhibits **PW-1/7 (Colly) & PW-1/8 (Colly)** the same being email chats between the defendantand her friend ie Ms _____

and aquarianboy
in most vulgar and defamatory
language/ contents against the plaintiff, his mother, sister-in-law and other relatives. The email chats have been duly

exhibited supported with a 65B Indian Evidence Act certificate. Further, as submitted by the plaintiff, the defendant has also admitted the **Exb. PW-1/9 (Colly)** the defamatory emails sent to Mr. MGS Yadav dated 06.06.2020, 13.06.2020 and 20.07.2020.

11. It is submitted by the plaintiff that the DW-1 Sonia was cross examined at length by the counsel for the plaintiff to bring the truth on record. About 46 questions were put to the defendant in the cross examination. The plaintiff has further submitted that the defendant admits she had/has been using several Email

It has also been submitted that the **falsehood of the defendant has been exposed on several facts and averments more particularly in respect of the defendant deposing under oath that she was staying at matrimonial home i.e. in reply to question no. 43 to 46, where the defendant has stated that the defendant was staying at her matrimonial home in the year 2016 when she filed the Case of DV Act, 2005.** It

has been further pressed by the Ld. Counsel for the plaintiff that the address mentioned by the defendant as her matrimonial home is of her father which is evidently contrary to the fact. The plaintiff has also submitted that the defendant claims the date of separation as 10.07.2009, which has been mentioned in HMA petition no. 336/2011, more specifically mentioned at Para 7 of the Judgement dated 01.12.2021 (**Exb. PW-1/5**), vide MT. No. 215/2011 in para no. 8 & DV petition No. 12754/2017.

12. It has further been submitted that the testimony of the DW-1 is contemptuous, and false on several points. It has been submitted that the defendant declined and avoided to answer the question no. 2, 4, 11, 16, 19, 40 & 41 of the cross examination.

13. It is also been submitted by the Ld. Counsel for the plaintiff that the defendant has changed her own statement time and again. It has been pointed out that DW-1 in her cross examination in HMA petition No.336/2011 dated 12.02.2020 states that the photographs filed by the plaintiff in

his HMA petition no. 336/2011 and Ex. PW-1/2 are morphed. However, in the present proceedings, as alleged, the defendant admits all the photographs except one photo at page no. 51 which marked as Mark-A. The plaintiff submits that it is worth mentioning that in the said photograph, DW-1 Sonia has declined to identify the plaintiff who was standing amongst the others.

14. It is further submitted that in cross examination in HMA petition No. 336/2011 conducted on 12.02.2020 the DW-1 states that Ms. Anjali Awasthi & were/are her friends and was/is his brother. On the contrary the defendant states in DV petition no. 12754/2017 that
might be some Vendor, which reads as follows

“I do not know who is There are some entries reflected in the name of in EX CW1/R-1. He might be some vendor.”

15. However, the defendant no.1 further twisted her version in the present proceeding and has stated that she does not know

The defendant no.1 further states that _____ was the boyfriend of the sister of plaintiff (while answering the Q. no. 14 & 15) which is a defamatory statement of the DWI. A certified copy of the cross examination of DW-1 _____ in HMA & DV petition are annexed with the written submissions as Annexure-P2 & P3.

16. This Court is inclined to observe that the defendant has stated that she doesn't know _____ and in the same breath, the defendant has stated that he is / was a friend of the plaintiff's sister, thereby establishing the fact that defendant did know of the said

17. Further, as submitted, DW-1 again denied her emails IDs i.e. _____ from which, as alleged, the defendant no.1 used to chat with her friends, however, in reply to Q.No.6 of the cross examination the defendant answered that the '**aforsaid email ID is only being used for court formalities**', however, the defendant used to chat with this email ID amongst her friends. As alleged, the defendant used to

plan how to implicate the plaintiff and his family members into the false criminal cases by using abusive and defamatory language (**Ex. PW-1/7 Colly at Page no. 59 to 70**) which cannot be narrated herein as being extremely vulgar. Further, as submitted, the said chats evidently reflect the conspiracy to exploit the plaintiff. The Ld. Counsel for the plaintiff has categorically pointed out that the defendant shared her future conspiracy of not allowing the plaintiff to meet his minor daughter (**Exb. PW-1/7 Colly at page no. 72**). The defendant also used to talk to her friends namely

whilst using vulgar and abusive language against the plaintiff and his other family members (**Exb. PW-1/8 Colly at page 79 to 83**). The defendant has not put any question(s) qua the said documents i.e. **Exb PW-1/7 Colly & Exb. PW-1/8 Colly**, hence the plaintiff pleads that the presumption goes in favour of the plaintiff being admitted by the defendant hence the said documents/email chats have been proved by the plaintiff.

18. It is also submitted that the defendant has admitted **Ex. PW-1/9**

Colly ie emails sent by the defendant to the maternal uncle (Mama) of the plaintiff on his official email

more particularly **at page no. 132.**

Further, the defendant continued to use derogatory remarks in the said conversation, and stated that "you all get Sunil married to , Me and my daughter's soul will always curse you all.”.

19. It is further submitted that due to the aforesaid act and action, the plaintiff suffered from deep depression and psychological pain. Further the plaintiff could not concentrate on the work as assigned to him by his employer as well as due to the pending false litigations and medical treatment. As submitted, on account of the mentioned developments, the plaintiff had to take frequent leaves from his work every month, which adversely affected and damaged his career and the plaintiff could not grow financially, hence the plaintiff suffered huge financial and physical loss due to which the plaintiff had to undergo surgery. A copy of medical documents filed by the plaintiff is **Ex. PW-1/10(Colly.)**. It is also the case of the

plaintiff that his doctor advised the plaintiff to consult with Psychiatrist for his mental health (at page no. 96 of Ex. PW-1/10 Colly.). Since the defendant used to call the relatives and friends of the plaintiff with her premeditated mind and malafides to poison their thought process against the plaintiff, as alleged, the same resulted into boycotting and ostracizing the plaintiff from the social arena by the all relatives and friends who were earlier harmonious and had respect towards the plaintiff.

20. As a result of the aforementioned, the said intentional and deliberate acts and conduct of the defendant adversely affected the financial, physical and mental health of the plaintiff. The plaintiff has claimed an amount of Rs.25 Lacs which includes the medical expenses incurred, along with damages for defamation in the present suit. It has also been submitted that the actual damages are neither assessable. It is also submitted that the plaintiff has suffered immensely at the hands of the defendant, which is a matter of record.

21. The plaintiff has also pressed upon another extract of the cross

examination from case no. HMA 336/2011 titled as
dated 12.02.2020 at page 13 onwards
of the written submissions which reads as follows:

*“It is correct that email id _____ has
been mentioned in my income affidavit filed by me in 125Crpc
Case. Vol: the said email id was generated by the petitioner. I
have never used the said email id
_____ It is wrong to suggest that I
have given wrong information in my income affidavit filed in
125CrPC case. At the time of opening of savings account
HDFC Bank at GK-1, I have given the above mentioned
mobile no. ie _____ and the email id
_____ used by family members. It is
wrong to suggest that email id
_____ was given by me at the time of opening savings bank account.”*

*“Anjali Awasthi, are my friends. Payal Chitra,
..... are not my friends. Deepak is my brother. I never
chat on email with _____ : Vol: Used to talk to her on
landline telephone no. from office landline no.”*

SUBMISSIONS OF THE DEFENDANT:

22. **PER CONTRA**, the Ld. Counsel for the defendant submits that the suit filed by the plaintiff is false, frivolous, malicious and is nothing but an afterthought to harass the defendant. The defendant filed her written statement, following which the issues were framed as:-

(i) Whether the plaintiff is entitled for recovery of an amount of Rs.25,00,000/- from the defendant, as prayed for? OPP.

(ii) If issue no. (i) is proved in affirmative, whether plaintiff is entitled for interest thereon, if so, at what rate and period? OPP

(iii) Whether the suit is barred by limitation as explained in the preliminary objection no.1 of the written statement? OPD

23. The defendant submits that the suit of the plaintiff is barred by limitation as the suit of the plaintiff is based on the libel. As per the Article 75 of the limitation Act a suit for defamation seeking compensation is required to be filed within one year from the date of publication of the libel. As submitted the plaintiff filed the present suit on the basis of chats for the year

of 2010 and certain mails dated 06.06.2020, 13.06.2020, 20.07.2020.

24. The defendant has placed on record judgments wherein it has been held that the language of the Article 75 of the Schedule to the Limitation Act is clear and unambiguous that the period of limitation would start from the date of publication and it has to be interpreted according to the rule of Literal Construction. The defendant has placed reliance upon NNS Rana Vs UOI & Ors RFA /757/2010, Delhi High Court, Khawar Butt Vs. Asif Nazir Mir & Ors. CS(OS)/290/2010 decided by Delhi High Court on 07.11.2013., Delhi High Court on 21.12.2015, Indresh Dhiman Vs. Hindustan Times & Ors., OMP No. 388/2017 decided by High Court of Himachal Pradesh, Shimla on 07.03.2019.

25. The defendant has also submitted that it is a settled legal proposition law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. Further, as submitted, even the last email dated 16.06.2022 as is being relied upon by the

plaintiff is firstly, not sent by the defendant secondly, even if the contents are read as it is, then it nowhere attracts defamation. It is also submitted that a perusal of the email dated 16.06.2022 sent by the daughter of the plaintiff, as alleged by the defendant, was only related to her maintenance and as stated earlier, does not attract the defamation. It is stated by the defendant that Ishita ie the daughter of the parties herein was not called as a witness to prove the email dated 16.06.2022.

26. It is also submitted by the defendant that the plaintiff in his reply to cross examination at question **no. 69 "Did you ever default toward the payment of interim maintenance which was to be paid to your daughter Ishita in the year 2022?"** which was objected by the counsel for the plaintiff That in reply to the said question no. 69 the plaintiff admitted that there may be default towards payment of interim maintenance but the plaintiff does not remember.

27. Further, in the cross examination held on 12.02.2024 the plaintiff admitted that he had the knowledge about the said

email within few days from the date of the alleged mail.

28. It is also the case of the defendant that on filing of complaint by the defendant under section 12 of PWDV Act 2005, against the plaintiff, the plaintiff filed the resent suit as a counter blast. It is submitted that the plaintiff has also asked for compensation for malicious and false litigation but the complaint of the defendant under DV Act is yet to be decided since the said complaint is yet to be decided, thus the present suit being immature is liable to be dismissed.

29. It is also stated by the defendant that as stated above, the suit of the plaintiff is based on the alleged chats of year 2010 and emails of year 2020, the suit is clearly barred by law of limitation and it is nothing, but an abuse of process of law. The defendant submits that the plaintiff is in a habit of levelling false and frivolous allegations against the defendant without any proof. It is also the case of the defendant that she was forced to leave her matrimonial home due to ill-treatment and harassment caused by the plaintiff and his family members. The defendant submits that the medical treatment documents

annexed by the plaintiff along with the plaint nowhere mentions the "cause" or/and "opinion" of the doctor qua the plaintiff suffering constant mental and physical pain.

30. The defendant submits that there is no loss of work, reputation to the plaintiff due to alleged emails by the defendant. It has also been submitted that the plaintiff has failed to disclose as to on what basis the damages amounting to Rs.25 Lac have been quantified. The contention of the plaintiff that there was loss of work is false and the lie has been established by his own answer in plaintiff's cross examination to question No. 28 wherein he stated that he worked with **M/s Altima Systems from 1998-2023 In the capacity of MD and authorized signatory.**

31. That when at question No. 45 of the cross examination of plaintiff, it was asked that "Can you tell us since when Smt Smita Srivastava is a tenant at your mother's house?", the plaintiff replied since 2019-2020. The plaintiff further stated that he knew Smt. Smita Srivastva. It has also been pointed out by the Ld. Counsel for the defendant that while at question No.

61 the plaintiff was asked “Is it correct to say that you did not know Smita Srivastava prior to her becoming a tenant in the aforesaid property?”, the plaintiff replied that "it is correct".

32. The defendant asked the plaintiff in question No.73: "You filed certain documents/bank accounts statement in Domestic violence case No.12754/2017 in the court of Ld. MM (Mahila Court) South District, Saket Court in which it is shown that you had transferred certain amount in favour of Ms. Smita Srivastava. Is it correct?" the same was objected to by the counsel for the plaintiff as the document was not on record. But the plaintiff answered that "I do no remember, I might have."

33. **The Ld. Counsel for the defendant submits that any party in a cross examination can submit any document for confrontation even if it is not on record.** It is further submitted that in Ct. Cases No. 12754/2017 under Domestic Violence Act Titled as Mrs. Sonia Vs. Sunil Kumar & Ors, the plaintiff himself had filed the affidavit of income and expenditure where in the plaintiff filed his statement of bank account where there are several entries of credit and debit between the plaintiff and

Smt. Smita Srivastava since November 2016 onwards which shows that the plaintiff knew said Smt. Smita Srivastava much prior to 2019. It is pertinent to observe the defendant has not filed the said alleged documents, either on the record of the suit or along with the written submissions.

34. That the defendant submits that even otherwise, the alleged e-mails addressed to maternal uncle of the plaintiff were to only inform the addressee regarding discontinuation of maintenance amount which was to be paid by the plaintiff to her daughter Ishita. The defendant states that in her cross examination she has denied the contents of mail dated 13.06.2020 but even assuming, without admitting the said email, the same nowhere states that the plaintiff got married. The word is "you all get Sunil Married to Priyadarshini Yadav (Smita Srivastava) and hence the same does not amount to defamation.

HEARD & PERUSED

OBSERVATIONS

35. The parties herein through their respective Counsels have

advanced arguments at length and have also filed detailed written submissions in support of their case.

36. The present case is arising out of the issues and familial discord pertaining to the marriage between the parties.

37. The present matter pertains to the issue of defamation. The plaintiff ie the husband of the defendant herein has pleaded damages amounting to Rs 25 Lac plus pendente lite and future interest at 18% per annum, on account of defamation including libel.

38. It is pertinent to understand the legislative and juridical intent behind the issue pertaining to Civil Defamation.

Essentials of Defamation:

39. There are three main essentials of Defamation viz.,

The statement must be published:

40. Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally or which tends to make them shun or avoid

that person.

41. The standard to be applied is that of a layman/ right minded citizen. A man of fair average intelligence, and not that of a special class of persons whose values are not shared or approved by the fair minded members of the society generally.

42. In Ram Jethmalani v. Subramaniam Swamy AIR 2006 Delhi 300 an inquiry commission was setup for examining the facts and circumstances relating to assassination of late Shri Rajiv Gandhi. The defendant, at a press conference alleged that the then Chief Minister of Tamil Nadu had prior information that LTTE cadre would make an assassination bid on the life of Rajiv Gandhi. The plaintiff was engaged as a Sr. Counsel to the then CM of TN. In discharge of his professional duties, the plaintiff cross examined the defendant. **During the proceeding, the defendant in the written conclusive submission, alleged that the plaintiff had been receiving money from LTTE, a banned organization. The statement by defendant was ex facie defamatory.**

43. In **Ramdhara v. Phulwatibai** 1970 CriLJ 286 It has been held that the imputation by the defendant that the plaintiff, a widow of 45 year age, is a keep of the maternal uncle of the plaintiffs, is not a mere vulgar abuse but a definite imputation upon her chastity and thus constitutes defamation.

The statement must refer to the plaintiff:

44. If the person to whom the statement was published could reasonably infer that the statement referred to the plaintiff, the defendant is nevertheless liable. The Hon'ble High Court of Delhi in **Harsh Mendiratta v. Maharaj Singh** 95 (2002) DLT 78; said that an action for defamation was maintainable only by the person who was defamed and not by his friends or relatives.

Defamation must be published:

45. Publication means making the defamatory matter known to some person other than the person defamed and unless that is done, no civil action for defamation lies.

46. In the case of **Mahender Ram v. Harnandan Prasad** AIR 1958

Pat 445 it was said when a defamatory letter is written in urdu to the plaintiff and he doesn't know Urdu, he asks a third person to read it, it is not defamation unless it was proved that at the time of writing letter defendant knew that urdu was not known to the plaintiff.

DEFENCES AVAILABLE:

47. There are three defences of defamation namely **Justification or truth**: Under criminal law, merely proving that the statement was true is no defence but in civil law merely showing truth is a good defence. A statement is not defamatory if it is both true and made or published for the public good. Whether the statement is in the public interest is a question of fact. In *Chaman Lal v. State* AIR 1970 SC 1372 the Supreme Court emphasised certain factors in determining whether an imputation was made in good faith—namely, (i) the circumstances under which the imputation was made, (ii) whether there was any malice, (iii) whether the accused inquired into the facts before making the imputation; (iv) whether the accused acted with sufficient care and caution; and

(v) whether there is a preponderance of probability that the accused acted in good faith.

48. In the landmark case of **Alexander v. N.E. Rly (1865) 6 B&S 340**, the plaintiff had been convicted of riding a train from Leeds without having purchased a valid ticket. The penalty was a fine and a period of imprisonment of fourteen days if he defaulted on the fine. However, following the conviction, the defendant published a notice that the plaintiff was convicted and issued a fine or three weeks imprisonment if in default. The plaintiff alleged that the defendant had committed libel by describing the penalty issued to him inaccurately. The defendants argued that the conviction was described with substantial and sufficient accuracy and the words so far as they differed in their literal meaning from the words of the conviction were not libellous. Judgment was given in favour of the defendants. The gist of the libel was that the plaintiff was sentenced to pay a sum of money and, in default of payment, to be imprisoned. **Blackburn J**; noted that the substance of the libel was true but the question was whether what was stated

inaccurately was the gist of the libel.

Fair Comment-

49. The comment must be an expression of opinion rather than assertion of fact.

50. The comment must be fair i.e. without malice. The matter commented upon must be of public interest.

Privilege

51. There are certain occasions when the law recognizes the right to freedom of speech outweighs the plaintiff's right to reputation, the law treats those occasions as a privileged communication. These are further of two types;-

Absolute privilege- No action lies for the defamatory statement even though the statement is false or made maliciously. It applies to Parliamentary Privilege, Judicial proceeding and State communication.

52. **Qualified privilege-** It is necessary that the statement must have been without malice. The defendant has to prove that statement was made on a privileged occasion fairly. The Court must take

the following things into consideration while deciding the question of compensation in a defamatory publication:

The conduct of the plaintiff.

His position and standing in society.

The nature of libel.

The absence or refusal of any retraction or apology of libel.

The whole conduct of the defendant from the date of publication of libel to the date of the decree.

53. In **Gorantla Venkateshwarlu v. B. Demudu**, AIR 2003 AP 251, the respondent was a bank officer and was sent on deputation to work as the Managing Director of Co-operative society. The appellant, the President of Society sent a complaint to the Bank alleging that the respondent had illicit connections with ladies which affected the image of the society during his tenure as the Managing Director. The respondent sent a reply denying the allegations made against him. The branch manager of the bank conducted an inquiry and found out that the allegations were false and were made only with a view to see that the respondent

is not deputed to inspect the affairs of the society. The respondent filed a suit of defamation claiming damages of Rs. 20,000. The court held that the allegations were *per se* defamatory and the appellant was liable to pay damages.

54. The law on defamation serves the purpose of protecting people from having their reputation injured resulting from false statements made against them. However, it is still in accordance with the right to freedom of speech and expression, as people can make true statements and give their opinions. This area of law seeks to protect a person's reputation from being hurt by preventing unfair speech. The apex court has stated in various cases that the ambit of freedom of speech and expression is "sacrosanct" but is not "absolute". It also said that the right to life under Art. 21 includes the right to reputation of a person and it cannot be violated at the cost of the freedom of speech of another.

REASONING:

55. From the record of the case, it is evident that the defendant has

indulged in acts amounting to defamation by way of Libel. The copy of email/ chats filed by the plaintiff have been duly proved, supported by way of an electronic evidence affidavit, and remain unrebutted. The defendant has not challenged and or taken any steps to challenge the authenticity of the said emails.

56. It is also observed that the defendant has chosen to taken contradictory stands as per her convenience. It is observed that at Question no. 5 of the cross examination the defendant has stated that she only has only used one email ID till date ie 2012soniaa@gmail.com, where as in the very next question the defendant has admitted that she had mentioned another email ID in her income affidavit in the month of November 2017 being soniavermayadav@gmail.com, filed in the DV case as filed between the present parties which is duly mentioned above.

57. It is also observed that the defendant mentioned another email ID in her income affidavit in the year 2019 vermasonia1976@gmail.com. Further, the defendant has

admitted to using the said email id.

58. It is also observed that while in one case the defendant has admitted knowing her alleged friends ie Anjali Awasthi, Praveen, Mukesh, Payal Chitra, Aquarianboy and Deepak, during her cross examination in the HMA Petition no. 336/2011, the defendant, in the present case has stated that she has no friends, and has never had any friends, while being cross examined under oath.

59. It is also pertinent to observe that the defendant has admitted that she had sent the emails (**EX PW-1/9 Colly.**) dated 06.06.2020, 13.06.2020, 20.07.2020 to the one MGS Yadav ie the maternal uncle of the plaintiff, while the defendant has denied the said emails in her affidavit of admission and denial of documents, which forms the foundation of the present matter.

60. It is also observed that the defendant has admitted the legal notice sent by the plaintiff to the defendant herein dated 05.08.2020 **Ex PW-1/11** on account of derogatory comments/

defamation. It is further observed that the defendants counsel, under her instructions, replied to the above mentioned legal notice by sending a reply through counsel dated 21.08.2020 (**Ex PW-1/12**) and a copy of the same was sent to the MGS Yadav i.e. Maternal Uncle of the plaintiff.

61. It is also observed that the defendant has admitted the document **EX PW-1/13**, being an email titled as **REPLY TO NOTICE OF SUNIL KUMAR BY SONIA**, which was sent by the defendant through her counsel (fauzisayeed@yahoo.co.in) to the maternal uncle of the plaintiff MGS Yadav on his email ID mgsy@netzoom.com. Further, the defendant has been kept in CC in the email (2012soniaa@gmail.com). It has also been admitted by the defendant that the plaintiff was not marked as a recipient in the said email.

62. The plaintiff has filed a certified copy of the cross examination of the daughter of the plaintiff and the defendant Ms. Ishita dated 22.03.2023, from the case having details as M No. 215/2011 titled as Sonia Vs Sunil Kumar. The plaintiff has pressed upon certain relevant portions of the cross examination

starting from page 8, the relevant portion is reproduced as follows:

“My email ID us At this stage, _____
hard copy of email dated 16.06.2022 sent by the email id
ishaa2003verma@gmail.com to
mgsy@ultimatech.com/netzoom.com. After seen the said copy
of email the witness reply ‘I have not sent the said email, same
is Mark-PW2/X1.’”

63. The plaintiff has also pressed upon another extract of the cross examination at page 10 of the written submissions which reads as follows;

“ It is correct my mother has told me about the income and property of my father I do not have any personal knowledge. It is correct that whatever stated in my affidavit EX PW2/A is told to me by my mother.”

64. In light of the above mentioned cross examination, a question was put to the defendant regarding an email dated 16.06.2022 wherein it has been alleged and implied that the email was by

the defendant while using the email ID of her daughter Ms. Ishita.

65. It is also observed that the defendant has stated under oath that she had left her matrimonial home in the year 2009 while, while in the same breath, the defendant has stated under cross examination that the defendant filed a case against the plaintiff herein under PWDV Act 2005 in the year 2016 while she was staying at her matrimonial home. It is also observed that the defendant has mentioned the address of her matrimonial home as D/o Sh SK Verma 89 Phase-1, Sai Complex, Chattarpur New Delhi-110074. Further, in the very next line of the cross examination, the defendant has stated that the above mentioned address is of her parents.

66. It is observed that the defendant has not pleaded any defence other than the plea of the suit being barred by limitation. The plaintiff has submitted that the present case is based on a continuing and a subsisting cause of action, which last arose on 16.06.2022. As per the schedule of the Limitation act, 1963, the limitation period for filing a case for damages pertaining to

Libel is 1 year from the date of cause of action. The present suit was filed on and around 10.04.2023. Further, earlier pleaded causes of action have also merged with the cause of action dated 16.06.2022.

67. For the sake of argument, even if the plea of the defendant is to be appreciated, then, it is to be observed that the cause of action pertaining to the emails **EX PW-1/9 Colly.**, last arose on 20.07.2020. Further, as per the Orders of the Hon'ble Supreme Court of India **In re: Cognizance for Extension of Limitation, (2022) 3 SCC 117, 119**, the limitation period is to be calculated from 01.03.2022, in light of the then Covid-19 pandemic, which would evidently expire on 28.02.2023. In such a case, there would have been a delay of 40 days in filing the present suit.

68. Further, the Supreme Court has held in a catena of judgements that the Courts are to adopt a pragmatic justice oriented approach, and not reject cases/ suits on hyper-technical grounds.

69. Based on the arguments and submissions of the parties, the delay, if any, can be conveniently condoned whilst placing reliance upon the judgement of The Hon'ble Supreme Court of India Sesh Nath Singh & Anr. v. Baidyabati Sheoraphulli Co-operative bank Ltd. & Anr. Civil Appeal 9198/2019, where it has been held that; “ 63. Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.”

70. In light of the above reasoning, the judgements cited by the

defendant do not come to their aid as the present suit is within the period of limitation.

DECISION:

71. Based on the pleadings between the parties herein, this Court had framed the below mentioned issues:

(i) Whether the plaintiff is entitled for recovery of an amount of Rs.25,00,000/- from the defendant, as prayed for? OPP

(ii) If issue no. (i) is proved in affirmative, whether plaintiff is entitled for interest thereon, if so, at what rate and period? OPP

(iii) Whether the suit is barred by limitation as explained in the preliminary objection no.1 of the written statement? OPD

72. This Court finds merits in the submissions of the plaintiff, and is inclined to decide the present suit in favour of the plaintiff.

73. Issue no.1 is decided in favour of the plaintiff and against the defendant. The Court finds that the acts of the defendant have caused injury to the plaintiff, which have hampered his professional growth. The defendant is directed to pay damages

of Rs.15,00,000/- (Rs.15 Lac) to the plaintiff on the ground of defamation, namely libel, and the damage caused to the plaintiff being a direct consequence of the action of the defendant.

74. Issue no.2 is decided in favour of the plaintiff and against the defendant to the extent the plaintiff being entitled to a rate of interest at 9% per annum simple interest, from the date of filing of the present suit till the realization of the decreed amount.

75. Issue no.3 is decided against the defendant and in favour of the plaintiff, on account of the aforementioned facts, submissions, observations and reasoning.

Relief.

76. In view of above discussion, suit is decreed in favour of the plaintiff and against the defendant. The defendant is directed to pay damages of Rs.15,00,000/- (Rs.15 Lac) to the plaintiff on the ground of defamation, namely libel, and the damage caused to the plaintiff being a direct consequence of the action of the defendant.

77. Plaintiff is also held entitled to simple interest @ 9% per annum, from the date of filing of the present suit till the realization of the decreed amount.

78. Cost is also awarded in favour of plaintiff.

79. Decree sheet be drawn up accordingly, upon payment of deficit court fees, if any.

80. File be consigned to record room.

Announced in the open
court on 29.07.2024.

(Sunil Beniwal)
District Judge-06(South),
Saket Courts, New Delhi