

MHCC010004182022

IN THE BOMBAY CITY CIVIL COURT FOR GREATER MUMBAINOTICE OF MOTION NO.188/2022INS. C. SUIT NO.132/2022

Mr. Salman S. Khan

..Plaintiff/
Ori. ApplicantIn the matter between :-

Mr. Salman S. Khan

... Plaintiff.

V/s.

1. Mr. Ketan Kakkad
 2. Sandeep Phogat
 3. Mr. Paras Bhat
 4. Mr. Ujjwal Narain
 5. Facebook Inc.
 6. Facebook India Online Services Pvt. Ltd.
 7. Twitter Inc.
 8. Twitter Communications India Pvt. Ltd.
 9. Twitter International Company.
 10. YouTube LLC.
 11. Google LLC.
 12. Google India Pvt. Ltd.
- ..Defendants

Appearances :-

Adv. Pradeep Gandhi a/w Adv. Chandrima Mitra, Adv. Parag Khandhar, Adv. Prachi Garg and Adv. Nehal Gaikwad i/b DSK Legal for plaintiff.

Adv. Abha Singh a/w Adv Aditya Pratap Singh, Adv. Shyam Panchmukh, Adv. Kandarp Trivedi, Adv. Suhail Mhasvadkar, Adv. Tanmay Bidkar, Adv. Rishabh Khot for Deft. No. 1 through VC.

Deft. No.2 is present through VC.

Senior Adv. Soli Cooper, Mr. Yohann Cooper a/w Mr. Gauhar Mirza,

Mr. Bryan Pillai, Ms. Ekta Sharma and Mr. Suyash Srivastava i/b Shardul Amarchand Mangaldas and Co. for Deft. No.6 through VC.

Adv. Alankar Kirpekar a/w Shekhar Bhagat, Rajas Panandikar for Deft. no. 7,8 and 9.

Adv. Dinesh Pednekar a/w Adv. Chanakya Keswani and Adv. Akash Manwani I/b Economic Laws Practice for Deft. no.10 and 11.

Adv. Padmaja Dholakia a/w. Adv. Charushila More i/b. Dholakia Law Associates for deft. No. 12 through VC.

Coram : His Honour Judge
Shri. A.H.Laddhad
CR No. :03.

Date : 23.03.2022.

ORDER

1. Plaintiff filed instant notice of motion seeking following reliefs :-

- (a) *That pending the hearing and final disposal of this suit, this Hon'ble Court be pleased to pass an order and direction against the defendant nos. 1 to 4 and/or their agents and/or servants and/or person claiming through and/or under them, directing/ restraining them by a temporary order and injunction of this Hon'ble Court from directly or indirectly loading/ uploading, posting, re-posting, tweeting, re-tweeting, giving interviews, corresponding, communicating, hosting, printing, publishing, issuing, disseminating, circulating, any further or other defamatory content and/or derogatory remarks or making any further or other defamatory content, malicious or scandalous statements, posts, messages, tweets, videos, interviews, communications and correspondence in relation to the plaintiff and/or his Panvel Farmhouse on social media platforms, including but not limited to the ones, run and operated by defendant nos. 5 to 12 or otherwise in any manner including on any other medium/ mode whatsoever either directly and/or indirectly in any manner whatsoever;*
- (b) *That pending the hearing and final disposal of this suit, this*

Hon'ble Court be pleased to pass an order and direction against the defendants and/or their agents and/or servants and/or any person claiming through and/or under them, directing them to forthwith remove and/or take down and/or block and/or restrict and/or disable access to all the defamatory contents or derogatory remarks including but not limited to the contents described in Exhibits "A and B" to this plaint and any other and further defamatory content or derogatory remarks which is published directly or indirectly by any of them as also all and any other posts, messages, tweets, videos, interviews, communications and correspondence similar to the defamatory content in relation to the plaintiff and/or his Panvel Farmhouse on all public domains and social media platforms including but not limited to the ones run and operated by defendant nos.5 to 12 and/or from all other mediums where the same or any of them are hosted or exist;

- (c) *That pending the hearing and final disposal of this suit, this Hon'ble Court be pleased to pass an order and direction against the defendant nos. 5 to 12 and/or their agents and/or servants and/or any person claiming through and/or under them directing them to restrict and prevent the publication of any further or other defamatory content, derogatory remarks, posts, messages, tweets, videos, interviews, communications and correspondence of any nature whatsoever in relation to the plaintiff and/or his Panvel Farmhouse on the social media platforms run and operated by defendant nos.5 to 12 or otherwise in any manner including on any other medium whatsoever either directly and/or indirectly in any manner;*
- (d) *That pending the hearing and final disposal of this suit, this Hon'ble Court be pleased to pass an order and direction against the defendant nos. 5 to 12 and/or their agents and/or servants and/or any person claiming through and/or*

under them, directing them to forthwith block/suspend/withdraw the social media accounts as maintained by defendant nos.1 to 4 on their platforms;

- (e) For ad-interim reliefs in terms of prayers(a) to (d) above;*
- (f) For such further and other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case;*
- (g) For costs of this Suit.*

2. It is the contention of the plaintiff that, he is an Actor and part of Indian film and entertainment industry since about 1989 and is one of India's most acclaimed and successful actors, enjoying an excellent reputation, tremendous goodwill and extensive fan following in India and internationally. He is an eminent public figure. Besides acting, the plaintiff also participates in live performances, hosts television shows, attends events and various shows on Television, Models for and endorses select brands of products. The television show "Big Boss" hosted by the plaintiff was a huge commercial success. Over the years, the plaintiff and his films has also won several prestigious awards *inter-alia* including *Filmfare Awards*, *Star Screen Award*, *Zee Cine Award*, *IIFA Awards*, *Stardust Awards* and *Apsara Award*.

3. It is alleged that the Defendant no.1 is causing grave and irreparable harm, loss of goodwill, reputation and injury to the plaintiff and his family members, by making/publishing defamatory, false, derogatory, libelous posts, messages, tweets, videos, interviews, communications and correspondence about the plaintiff and his family members on various social media platforms run and operated by defendant nos. 5 to 12.

4. The defendant no.2 is a Youtuber and engaged in the business of content creation, reviewing Bollywood news and other news through his page/channel titled as "*Phogat Films*". Most of the contents posted on his various social media accounts are controversial in nature. The plaintiff understands that the defendant no.2 is active on social media platforms including Facebook, Twitter and YouTube. It is alleged that the Defendant no.2 has posted several defamatory statements and false contents against the plaintiff and his family members on the social media accounts owned and operated by either of defendant nos.5 to 12. The Defendant nos.3 and 4 have also published defamatory content against the plaintiff and his family members by participating in a program/ talk show with defendant nos.1 and 2.

5. It is contended by the plaintiff that, the defendant nos.1 to 4 made several defamatory statements / derogatory remarks against the plaintiff and his family members by participating in their Live videos/Sessions on Facebook, which was conducted and hosted by the defendant no.2 wherein the defendant no.1 to 4 hosted and participated in Live Session on Facebook by name "*Salman Khan ke farmhouse ka ganda sach aya sabke samne*", which was also later uploaded on the defendant no.2's Youtube channel by name "*Phogat Films*" by name "*Big Revelation - Real Truth behind Farmhouse of Khan family// Close neighbour told us the truth*".

6. It is further contended that, the defendant nos. 5 and 6 are social media conglomerates which provide the online social platform "Facebook". Defendant nos.7 to 9 provide popular micro-blogging and social networking services on their social medial platform. 'Twitter' on

which users including the defendant no.1 posted and interacts with messages known as "Tweets". The defendant no.10 owns and operates the popular website *www.youtube.com*. It is further contended that, the defendant no.10 allows users to upload, view, rate, share, add to playlists, report, comment on videos and subscribe to other users. The defendant no.11 runs a world's most popular search engine "Google". Defendant no.12 is a wholly owned subsidiary of Google LLC/ Defendant no.11. The services and social media platforms offered by defendant nos. 5 to 12 are amongst the most widely used social media platforms across the world. Posts, messages, tweets, videos, interviews, communications and correspondence exchanged across these social media platforms are easily and prominently accessible across the world by all.

7. It is further contended by the plaintiff that, the defendant nos. 1 to 4 have been and continue loading/ uploading, posting and publishing various malicious and defamatory content against the plaintiff, his family members and his *Panvel* farmhouse on social media platforms including that of defendant nos.5 to 12. The extent of publishing/circulation of the defamatory content being published about the plaintiff has resulted in grave and irreparable harm, loss and injury to the plaintiff, his family members, their business, their reputation, all of which, the plaintiff and his family members have painstakingly achieved over the past several years. The defamatory content is absolutely *inter-alia* provocative, unsubstantiated, false and malicious in nature as same is made with a view to defame, malign and disrepute the plaintiff. It is contended that there is no shred of truth in the defamatory content/ comments as made against the plaintiff. Comments made by the defendants travel well beyond the scope of 'fair

comment'. The defamatory comments are solely borne out of personal vendetta and ill will of the defendants against the plaintiff.

8. It is further contended by the plaintiff that, defendant no.1 claims that in or around 1995, he and his wife had acquired/ purchased certain plot of land near plaintiff's farmhouse, for constructing a house, ashram, temple, etc. Subsequently the transaction of allotment of plot of land to defendant no.1 was cancelled by the Government of Maharashtra/ concerned forest department as illegal. Pursuant thereto, on untenable and baseless pretexts, the defendant no.1 started raising baseless and false accusations and allegations against the plaintiff and his family members *inter-alia* viz.(a) that the plot of land allotted to him was allegedly cancelled by forest department at the behest and in collusion with the plaintiff; (b) that the entry and exit to his plot of land was illegally acquired and blocked by the plaintiff by constructing a gate; (c) that allegedly on the access road of defendant no.1's plot he had constructed an eco-friendly Ganesh Temple, access to the same also was allegedly blocked by the plaintiff and the said temple is grabbed/ usurped by the plaintiff; (d) that the plaintiff has usurped/grabbed the said land of the defendant no.1; (e) that certain other plots were also sold to him by plaintiff by taking monies from him and plots were not handed over to defendant no.1, thereby allegedly committing fraud on him. Defendant nos. 1 to 4 further *inter-alia* falsely alleged that the plaintiff connected to the underworld in particular D-Company and that several illegal and criminal activities are conducted on his *Panvel* farmhouse. All these allegations are baseless, false and unsubstantiated and are defamatory/ derogatory in nature.

9. It is contended by the plaintiff that, he is not the owner of

the alleged parcels then allotted or sold to defendant no.1, and therefore there is no question for defendant no.1 paying any monies to the plaintiff as alleged. In relation to cancellation of defendant no.1's land acquisition transaction near plaintiff's *Panvel* Farmhouse, defendant no.1 is agitated and is unnecessary blaming and raising false accusations against the plaintiff to defame him and to gain cheap media publicity. It is contended by the plaintiff that, the aforesaid alleged land issue of defendant no.1 is not the subject matter of the present suit. However, in furtherance to the aforesaid, defendant nos. 1 to 4 have unnecessarily raised and made several obnoxious, defamatory and derogatory allegations/ remarks against the plaintiff, his *Panvel* farmhouse and his family members, which are recorded in the form of videos, tweets, etc and uploaded/ live recorded on the social media platforms owned, controlled and/or operated by defendant nos. 5 to 12. All these allegations are completely false, baseless, unsubstantiated and made solely with an intention to defame/ malign his image and to cause harm and damage to the goodwill and reputation of the plaintiff and his family members. Defendant no.1 is falsely accusing the plaintiff and his family members of alleged illegal and anti-social activities in the *Panvel* farmhouse, which is absolutely false, baseless and untenable. It intends to cause communal violence in society by attributing the plaintiff and his family members for so called illegal grabbing/ usurping the *Ganesh* temple purportedly made by defendant no.1 and the defendants are required to be restrained from doing so. None of the defendants have initiated formal legal proceedings as regards their alleged title or alleged blocking of access or alleged collision or otherwise. This clearly shows that the acts of defendants are merely borne out of desperate publicity attempt, personal grudge and vendetta against the plaintiff and to defame him.

10. It is further contended that, the plaintiff and his team members come across several videos in relation to the plaintiff and his *Panvel* farmhouse posted and uploaded by defendant no.2 on his channel titled "*Phogat Films*" on YouTube and on his official Facebook page- *Phogat Films* featuring defendant nos.1 to 4. In addition to the same, there are certain other videos uploaded/posted on defendants' platform featuring defendant no.1, in which also various derogatory and defamatory remarks are made against the plaintiff, his *Panvel* Farmhouse and his family members.

11. It is alleged by the Plaintiff that in the aforesaid defamatory videos, defendant nos.1 to 4 have made various scandalous, false, grossly defamatory, derogatory and baseless allegations against the plaintiff and his family members. For illustrative purpose, the plaintiff set out certain statements from the defamatory videos as are ex-facie false, derogatory and defamatory in nature.

12. It is further contended that, the aforesaid defamatory videos as set out in the plaint are only by way of certain illustrations and the plaintiff believes that there are many other videos and posts uploaded by defendant nos. 1 to 4 with the intention to malign, defame and cause damage to the plaintiff and his family members. A bare perusal of the transcripts of the defamatory videos clearly reflects that defendant nos. 1 to 4 intent to cause grave harm and damage to the plaintiff and his family members and tarnish their goodwill and reputation. Neither the plaintiff nor his family members be linked to D-Company by any stretch of imagination as alleged. Further there are no alleged illegal or criminal activities are carried out in the *Panvel* farmhouse as alleged by the defendants. The plaintiff and his family

members are law abiding citizens of India and are in no way involved or connected with alleged illegal or criminal activities or any insinuations thereto, as alleged by defendant nos. 1 to 4.

13. It is further contended that, in fact, defendant nos. 1 to 4 are inciting communal violence of Hindu-Muslim and hatred by making provocative, baseless and false statements based on religion, which are absolutely irrelevant and absurd.

14. It is further contended by the plaintiff that, the defamatory videos have a wide reach to the public in general and he has set out by way of illustrations, the comments received from the public on the said videos titled as '*Big Revelation - Real Truth behind Farmhouse of Khan family// Close neighbour told us the truth*'. It is contended that, the said comments of the public and viewers shows that, the defendants are clearly guilty of making defamatory and derogatory remarks against the plaintiff and his family members and the defendants are trying to create hatred in the society against the plaintiff by making such false accusations against him.

15. It is further contended that, in addition to the defamatory videos, the defendants from time to time till as recent as till filing of the present suit, posted various defamatory and derogatory remarks on Twitter, some of them are extracted for illustrative purpose as shown in the plaint and the plaintiff also attached screen-shots of the defamatory posts published by the defendant no.1 on Twitter.

16. It is contended that, the defendant no.1 still continues to post numerous defamatory posts against the plaintiff, his *Panvel*

farmhouse and his family members on twitter as on till date of filing of the suit. It is contended that, the sheer volume of the post itself reflects malafide intention of the defendant no.1 to defame the plaintiff and his family members. Therefore, it is imperative that in the facts and circumstances of the present case, the Court should grant relief to the plaintiff. It is contended that, on bare perusal of videos, tweets, posts and comments received from the public, it is clear that all the defamatory and derogatory remarks are clear and direct reference and/or insinuations made by the defendants against the plaintiff. It is contended that the defendants are fully aware, conscious of their comments and acts. The plaintiff apprehends that the defendants nos.1 to 4 have personal vendetta/ intention to cause communal tension, desperation for cheap publicity and absolutely no regard for the truth, conscience and decency. Therefore, the plaintiff through his advocate's notice dated 2nd January 2022, lodged the grievances with defendant nos. 5 to 12 and called upon them forthwith to take down the defamatory contents against the plaintiff. The defendant nos.5 to 12 replied through mail and failed to remove the contents.

17. It is thus contended that, the defamatory contents have a direct bearing upon career, business, reputation of the plaintiff which is required to be protected. The derogatory and/or defamatory contents *albeit* untrue, prejudice against the plaintiff. It is submitted that, the conduct of the defendants have caused injury, damage and harm to the goodwill, reputation and business of the plaintiff and his family.

18. Thus, the plaintiff submitted that, he has an excellent case on merits and that considering the serious prejudice that will occasion and result to the plaintiff, it is just, fair, equitable and absolutely

necessary that interim and ad-interim reliefs in the terms of the prayers be granted. The plaintiff will suffer grave and irreparable harm, loss and injury if, the interim and ad-interim reliefs as prayed for herein are not granted. In fact, the harm, loss and injury being caused to the plaintiff is being amplified with each passing day. On the other hand, no prejudice will be caused to the defendants, if the ad-interim and interim reliefs, as prayed, are granted. Therefore, it is just, fair, equitable and necessary that interim and ad-interim reliefs in terms of the prayers be granted. The balance of convenience is entirely in favour of the plaintiff for the grant of interim and ad-interim reliefs and against the defendants.

19. Notice of Motion is opposed by the defendant no.1 by filing his say on the ground that, the plaintiff is a habitual and confirmed law violator. The plaintiff has done a series of violations of law. The present suit aims at silencing the defendant so that the violations of law done by the plaintiff are not revealed in the press and that his illegal actions would evade the prescribed consequences. He cannot use the machinery of this Court to tender legitimacy of to his illegal acts. It is alleged that, the plaintiff has not approached the court with clean hands and he is not entitled for any relief.

20. It is alleged that the plaintiff along with other co-owners has done a massive construction on forest land, right under the gaze of forest officers- a person who has encroached upon forest land with the help of public servants cannot seek any discretionary relief from the Court. It is contended that, without any statutory permissions, the plaintiff constructed a massive housing complex along with several attached structures in the forest land, where not even a brick could be

laid. It is submitted that, if any construction starts in the forest area without permission, the forest officers immediately intervene and get the construction stopped. But, looking to the construction done by the plaintiff, it is nothing but a mammoth corruption done in a blatant manner by the forest officers only to confer an illegal pecuniary advantage to the plaintiff. It is alleged that, the plaintiff created false papers and based on such false papers, obtained *post facto* forest clearance, which was done as a simplicitor i.e. without prejudice to the corruption inherent in the matter. Therefore, the wife of the defendant no.1 made several complaints to the forest department and the complaints are under inquiry.

21. It is further contended that, the plaintiff has done serious violation of the Environmental Protection Act, 1986 by violating the Mathran Eco-Sensitive Zone Notification 2003 and having constructed a massive housing complex on land where no construction was allowed. The plaintiff managed to do a massive construction right under the gaze of the statutory officers, without any statutory permission. It is further alleged that, in order to overcome the Eco-Sensitive Zone Notification 2003, the plaintiff committed a fraud whereby he showed the entire construction was done before issuance of said Notification 2003 by creating false records. Therefore, the defendant made a complaint.

22. It is further contended that, there have been three forest information reports and two notices have been issued against the plaintiff for violating the Forest Conservation Act, 1980 and inquiry in this respect is going on. It is further alleged that, the plaintiff falsely stated that he is the owner of '*Arpita Farms*' and in fact, it has been owned by seven owners. As the plaintiff stated false facts therefore, he

cannot claim equity and relief from the Court. It is further alleged that, in the case filed under Wild Life Protection Act 1972 by the forest department, in order to escape from the prosecution the plaintiff showed that his father was the owner of the plot. The prosecution with respect to the same being Case no. RC 116/1999 is pending before the Judicial Magistrate, First Class, Panvel. It is submitted that, surprisingly even though there were about 7 owners of the land including the plaintiff, these owners which ought to be prosecuted were not prosecuted. Instead, the person who was put up for prosecution was the father of the plaintiff and some other persons. The aforesaid fact clearly shows that, the plaintiff is a habitual violator of law and in case discretionary remedies are invoked, it would be travesty of justice. It is further contended by the defendant no.1 that, a person who is habitual offender and has got a criminal past on the subject matter under reference, he cannot claim any equity before the Court.

23. It is further contended that, the plaintiff had earlier gone to the extent of collecting the people to ensure that the defendant is unable to reach his property and restricted the entry to his plot and therefore, NC report dated 25.5.2017 was lodged at Panvel police station.

24. It is further contended that, the Article 19 of the Constitution of India ensures that those who are doing frauds, ought to be exposed through free expression. The plaintiff being a habitual law violator of forest laws and also being a public figure, it would be in public interest to expose him before the public. Therefore, it is submitted that, if any interim relief is granted to him, it would undermine the spirit of free expression. It is further contended that, it is

the public duty of any person who knows about the commission of law violations to bring it in the public domain. It is further submitted that, the statement made in respect of the Panvel farmhouse is a matter of public record. Various newspapers have published Articles with respect to the act of the plaintiff of encroaching the land of the defendant no.1 and therefore, the act of the plaintiff seeking temporary injunction is nothing but an act to gag the defendant no.1 from speaking in public domain with respect to the illegal act of the plaintiff. It is submitted that the defendant no.1 is willing to justify the statement made by pressing material on record. The defendant no.1 honestly believes his statement to be true and thus, no injunction shall be granted. It is thus contended that, granting injunction relief to the plaintiff will result to great harm and injustice perpetrated upon the defendant. Thus, the defendant no.1 prayed for dismissal of the Motion.

25. The defendant no.2 opposed the Motion by filing his one page say which has been sent through mail to this Court. He has contended that, he has already sent a reply on 13th January to the plaintiff's advocate. It is contended by him that, he has only hosted *Mr. Ketan Kakkad* for the first time. He found a video from ABP new channel about the dispute between the plaintiff and defendant no.1, therefore he invited defendant no.1 to talk about the issue. He is made unnecessary party to the proceeding. which causing him mental harassment. He contended that, he works fulltime in Australia and also makes videos on YouTube on social issues. He has complied with law and YouTube policy. Hence, his name be taken off from the suit as the main defendant is *Ketak Kakkad*. It is further contended that, the case between the plaintiff and defendant no.1 was already on public platform for several years and he has just asked questions to the

defendant no.1, as a host.

26. The defendant no.6 Facebook India Online Services Pvt. Ltd. also opposed the Motion by filing their reply. It is contended by them that, the Facebook India is not a necessary or proper party to the suit. The Facebook India does not operate or control the Facebook services and therefore, cannot action content on the Facebook Service or deliver the relief that plaintiff praying. 'Meta' is the relevant data controller for users of Facebook service in India. Thus, they are not responsible for the hosting the contents that appeared in the Facebook services or any website. As such, the Facebook Indian cannot provide relief requested by the plaintiff. In alternatively, they have contended that, even if Facebook India controlled the Facebook service (which it does not), they are an intermediary immune from liability u/s.79 of the Information Technology Act.

27. It is further contended by defendant no.6 that, the Facebook India would neither be the author not the publisher of any third party content on the Facebook Services, including the Contested Content. They have no role in initiating transmissions, selecting the receiver of any transmission and/or selecting or modifying the information contained in any transmission of third party accounts. Therefore, they have prayed for deleting them from the proceeding.

28. It is further, without prejudice to the above, contended by them that the plaintiff has failed to adequately identify all the contested content allegedly posted to the Facebook service. Every webpage has a unique address on the internet i.e. URL, which has not been provided by the Plaintiff except one. It is thus, contended that in the absence of a

URL for each specific instance of the contested content, this court cannot consider it unlawful. It is further submitted that there are more than 2.9 billion users of Facebook, who register millions of “likes” and “comments”. Therefore, it is impracticable to locate or identify the contested content posted on the Facebook service without URLs.

29. It is further submitted by the defendant no.6 that the Plaintiff has failed to submit certificate as required by Section 65 – B of Evidence Act with the list of documents filed. In view of the above preliminary objection the plaint and the motion devoid of any merit and should be dismissed against them.

30. The notice of motion is also opposed by the defendant no.7 by filing reply. It is contended by them that they are only service provider having no role in creation of content uploaded by the user of Twitter. They are only intermediary and exempted u/s.79 of I.T. Act. Their role only comes if the unloader fails to remove the content and on the specific direction given by the Court they can remove the content, that too after specifically identifying the URL. Therefore, the prayer made by the plaintiff for taking down the present content and future is inconsistent with the law laid down by the Hon'ble Apex Court in *Shreya Singhal V/s. Union of India (AIR 2015 SC 1523)*. Thus, the defendant no.1 is not a necessary nor a proper party. They have also mentioned that, the defendant no.8 is Tweeter communication India Pvt. Ltd is a separate legal entity, distinct from them and their role is also limited for providing support services for promoting and marketing Twitter India. Thus, it is not possible for them also to said entity to take down any content from *www.twitter.com*.

31. It is further contended by defendant no.7 that, similarly, defendant no.9 is the Twitter International Unlimited Company, is a separate legal entity distinct from them. The said entity provides the services allowing the users to create and share short messages; sharing images, videos. Thus, it is not possible for the said entity to comply with any order directing take down/ blocking/ disabling access of any content on Twitter. Thus, it is contended that, neither of defendant nos.7,8 or 9 have any role to play in this matter. Therefore, their names should be deleted from the suit.

32. The Motion is also opposed by defendant no.10 and 11 by filing their reply. They have also taken similar stand as the other defendant nos.6 to 9 have taken that Google LLC i.e. defendant no.11 is responsible for operational control and administration of defendant no.10 YouTube LLC. It is contended that, Google LLC is service provider of YouTube and bears all legal risks and liabilities that may be accrued to YouTube LLC. It is contended that, defendant nos.10 and 12 are neither necessary nor proper parties and therefore, their names should be deleted.

33. I have heard extensively all the parties, partly through video conferencing and partly through hybrid mode of hearing.

34. Ld. Advocate Mr. Gandhi for plaintiff submitted by way of written as well as oral submissions that, the defendant nos.1 to 4 have violated the plaintiff's right to reputation and right to privacy by publishing defamatory contents on social media websites. He has submitted that personal right of a human being include right of reputation and equaled to the right to enjoyment of life, liberty and

property. Therefore, it is a necessary element in regard to the right to life of citizen under Article 21 of the Constitution of India.

35. In support of his submission, Ld. Advocate for the plaintiff relied on the judgment of the Hon'ble Apex Court in case of ***Umesh Kumar V/s. State of Andhra Pradesh and Anr. ((2013) 10 SCC 591)***. In the said judgment, there were allegations against the appellant that he has forged certain signatures and no inquiry was held to ascertain the veracity of those allegations. Similarly, without any legal proceedings being filed by the defendant no.1 for recovery of his land let alone an inquiry being held into the alleged encroachment, the defendant no.1 has chosen to approach online journalists and social medial websites to defame plaintiff. He has further contended that, merely because the plaintiff is a public figure, his right to privacy cannot be sacrificed at the altar of the defendant's right to freedom of speech.

36. Ld. Advocate by relying on the judgment of the Hon'ble Bombay High Court in case of ***Shilpa Shetty Kundra V/s. Clapping Hands Pvt. Ltd ((2021(5) ALL MR 751)*** argued that, the Hon'ble High Court has held that the wide freedom of press must be balanced against the right to privacy and no court can say that because the person is a public figure of some sort, therefore that person must be deemed to have forever sacrificed her or his right to privacy.

37. It is further argued that, the statements in the interviews given by the defendant no.1 and the tweets of defendant no.1 are *prima facie per-se* defamatory. The statements and the allegations made by defendant nos. 1 to 4 clearly lower down the reputation of the plaintiff

and his family in the estimation of right thinking members of the society. Another test that is applied to ascertain whether a statement is defamatory or not is, whether it has the tendency to excite against the plaintiff the adverse opinions or feelings of other persons. An attack upon the moral character of the plaintiff attributing him to any form of disgraceful conduct.

38. It is vehemently contended that, from the defamatory content, it is clear that the statements made by defendant nos. 1 to 4 have led the public to form a negative opinion about the plaintiff and defame him in the eyes of public. They are of the view that the plaintiff has grabbed defendant's land and there are illegal activities being carried out at the plaintiff's farmhouse. In fact, no material whatsoever has been relied upon by the defendant nos.1 to 4 to substantiate the aforesaid allegations.

39. It is further contended that, the suggestions/ imputations made by the defendant no.2 of illegal activities going on at the plaintiff's farmhouse and alleged connection to *Sushant Singh Rajput's* case- in view of the stand taken by defendant no.1, it would not be necessary for the plaintiff to prove the publication of a scandalous imputation was done out of any ill will or malice. It would be sufficient for the plaintiff to show that the defendant no.2 intended or had reason to believe that the imputation made by him would harm the reputation of the plaintiff.

40. In support of his submission, the Ld. Advocate *Mr. Gandhi* relied on the judgment of Hon'ble Gujarat High Court in case of *Rohini Singh d/o. late Mr M.B. Singh and 6 others V/s. State of Gujarat*

and one anr. (2018 SCC Online Guj. 10). He has also relied on the judgment of the Hon'ble Bombay High Court in case of *Tata Value Homes Ltd and Ors. V/s. Nityanand Sinha (Notice of Motion no. 2760 of 2015 in Suit(L) No.1040 of 2015, decided on 8.10.2015*, wherein the Hon'ble Bombay High Court after observing that the balance of convenience is in favour of the plaintiff and that allowing the defendant to continue posting would cause irreparable loss to the plaintiff *inter alia* ordered that the defamatory posts be removed. It was also held that, the posts did not meet a good faith standard and were made only to further a private agenda and vendetta of some kind.

41. Ld. Advocate *Mr. Gandhi* by relying on the judgment of the *Rohini Singh (supra)* and of *Subramanian Swamy V/s. Union of India ((2016) 7 SCC 221)* argued that, freedom of speech is not absolute. The right to free speech cannot mean that a citizen can defame another and cannot be used to determine an individual's right to dignity and reputation. Further, the allegations which have been made have a communal colour such as, the comparisons to *Aurangzeb, Taliban, Ayodhya* incident and how the plaintiff has hurt the sentiments of all Hindus of this country by denying defendant no.1's access to the temple. The reason being that the public has no way of forming an independent opinion on the matter as there is no material placed by defendant no.1 to show that the allegations are not simply a figment of defendant no.1 to 4's imagination. Admittedly, the defendant no.1 has not taken a legal recourse for the purpose of recovering his land that has been allegedly grabbed and encroached by the plaintiff.

42. It is further contended that, it is well settled that the mere

plea of justification would not be sufficient to deny the plaintiff interim relief and the material produced by the defendant can be looked into by the court to test its veracity with regard to the defamatory allegations. The defendants have to plead and prove the truth of the defamatory words and not merely his belief in their truth, though honest. If the statements made by defendants turns out to be not true, they would be absolutely liable however, honestly and carefully they may have acted. In support of his submission, Ld. Advocate has relied on the judgment of the Hon'ble Bombay High Court in the case *Shree Maheshwar Hydel Power Corporation Ltd V/s. Chitroopa Palit & Ors. (AIR 2004 Bom 143)*.

43. It is further contended that, under Rule 3 of Information Technology Rules, a duty is casted upon the intermediary including social medial intermediary to observe following due diligence while discharging its duties;

(a) the intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the rules and regulations, privacy policy and user agreement for access or usage of its computer resource by any person;

(b) the rules and regulations, privacy policy or user agreement of the intermediary shall inform the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that, -

- (i) belongs to another person and to which the user does not have any right;
- (ii) is defamatory, obscene, pornographic, paedophilic, invasive of another's privacy, including bodily privacy, insulting or harassing on the basis of gender, libelous, racially or

ethnically objectionable, relating or encouraging money laundering or gambling, or otherwise inconsistent with or contrary to the laws in force.

44. At last, Ld. Advocate for Plaintiff has submitted that in the aforesaid circumstances, the plaintiff has made out more than *prima facie* case, the balance of convenience is heavily in favour of the plaintiff and if the defendants are allowed to continue to publish posts/ tweets against the plaintiff, grave and irreparable harm/injury would be caused to him. As such, ad-interim/ interim relief be granted to the plaintiff in terms of prayer clause(a) to (d) and the Motion be allowed.

45. *Per contra*, Ld. Advocate *Mrs. Abha Singh* for defendant no.1 vehemently argued that, the statement made in respect of *Panvel* farmhouse is a matter of public record. Various newspapers have published articles with respect to the acts of the plaintiff of encroaching the land of the defendant no.1 and therefore, the act of the plaintiff seeking injunction is nothing but an act to gag the defendant no.1 from the speaking in public domain with respect to the illegal act of the plaintiff. She has further contended that, the plaintiff being a habitual and confirmed law violator, he has not approached the Court with clean hands and therefore, no injunction can be granted to him.

46. It is further contended that, the wife of the defendant made several complaints against the massive constructions on the forest land done by the plaintiff. The action was also taken by some of the officers which clearly shows the manipulation done at the instance of the plaintiff. The plaintiff done massive illegal construction with the help of public servants. In order to escape from statutory action, the plaintiff

created false papers and based on such papers, he obtained the *post facto* forest clearance which was done as a simpliciter, without prejudice to the corruption inherent in the matter. It is contended that, the plaintiff's act caused serious violation of Environment Protection Act by violating the Matheran Eco-Sensitive Zone Notification.

47. Ld. Advocate Mrs. Singh further argued that, admittedly, the defendant no.1 is having his land above the land of the plaintiff which has been blocked by the plaintiff by putting an iron gate. In order to show the same, she has invited my attention to the NC Report dated 25.5.2017 filed at *Panvel* police station as well as various photographs showing the aforesaid fact.

48. In order to support her defence of justification, Ld. Advocate for defendant no.1 invited my attention to complaints dated 2nd December 2017 and 22nd January 2018, which has been made by the wife of the defendant no.1 to the Dy. Conservator of Forests wherein she has pointed out, by attaching various documents of supplied and pictures alleging that, 23 items of constructions were made illegally in violation of Forest Act. She has also relied on the show cause notices dated 20.11.2017 and 9.6.2018 issued by the forest department against the plaintiff and his father for removal of unauthorized constructions. She has also pointed out the charge-sheet filed by the Forest Department against the plaintiff's father with respect to *Panvel* farmhouse encroachment which was registered as RC No. 116/1999 at *Panvel* Court. Thus, on the basis of the same, Ld. Advocate for the defendant no.1 contended that, the defendant no.1 is willing to justify the statements made by him and he honestly believes those statements to be true. She has further argued that, the defendant has

right of 'freedom of speech', as guaranteed under Article 19 of the Constitution and the plaintiff cannot gag him by filing such suit.

49. In support of her above submissions, Ld. Advocate for defendant no.1 has relied on the following judgments :-

- 1 *D.R. Logistics (P) Limited V/s. Prithvi Asset Reconstruction and Securitization Company Ltd. and ors. (MANU/TN/0011/2019).*
- 2 *Essel Infraprojects Limited V/s. Devendra Prakash Mishra (2016 ALL MR 675).*
- 3 *Kishore Samrite V/s. State of U.P. and Ors. (MANU/SC/0892/2012) = ((2013)2 SCC 398)*
- 4 *Mitha Rustomji Murzban V/s. Nusserwanji Nowroji Engineer (AIR 1941 Bom 278)=(MANU/MH/0015/1941).*
- 5 *S. Rangarajan and Ors V/s. P. Jagjevan Ram and Ors. ((1989) 2 SCC 574) = (MANU/SC/0475/1989).*
- 6 *Sanj Daily Lokopchar V/s. Gokulchand Govindlal Sananda (2015(5) ALL MR 245).*
- 7 *Subramanian Swamy V/s. Union of India(UOI) and Ors. (AIR 2016 SC 2728).*

50. Ld. Advocate for defendant no.1 has also invited my attention to the transcripts of defamatory videos, YouTube and Facebook contents and argued that, the defendant no.1 before making any statement gave a disclaimer that he has no grievances against anybody. He has no malice against anybody. She invited my attention to page no.88 of the transcript wherein, the defendant no.1 has stated "*Aur me disclaimer ke taur pe aap sabko bata du ye platform pe ye channel ko bhi bata du ki as being spiritual person or other ek spiritually*

enlightened person ke taur ke muje kisise raag nahi hain ya dwesh hain. Main kisio bura nahi kehta". He further at pg.89 stated that, "hum neighbourer the, neighbourers hein aur disclaimer ke taur pe me kisi individual caste, creed, religion, politician, nationality kisi ke against me kuch baat nahi rakhta, kisike bareme kuch bura sochta nahi hu, na kuch bura chahta hu".

51. By inviting my attention to various conversations, Ld. Advocate contended that, the illegal activities being conducted at the farmhouse, those questions were never asked by the defendant no.1, rather he said he do not know anything about the same. The defendant has not said anything defamatory against the plaintiff and his farmhouse. Thus, it is contended that, whatever the statement which has been made by the defendant no.1 under the defence of justification can be justified on the basis of documentary evidence and therefore, injunction cannot be granted to the plaintiff. In support of her contention, she has relied on the judgment of the Hon'ble Bombay High Court in case of *Essel Infraprojects Limited V/s. Devendra Prakash Mishra (supra)*.

52. Ld. Advocate for defendant no.1 as further contended that, the defendant no.1 spoke in simple manner and was talking to defendant no.2 about his pains and sufferings. As long as the defendant no.1's came for a visit, the plaintiff had no problem because the property is such that after plaintiffs farm is the piece of land of defendant no.1, which goes into forest. The crown is with the defendant no.1. The plaintiff did not allow the defendant to enter and now they are dragged for defamation. It is alleged that the plaintiff do not want

to talk about his farmhouse. It is contended that, the defendant also put his hard-earned money. Both the lands are situated at the same place. The plaintiff's plan was regularized and defendant's land was put into the forest land. Therefore, the defendant no.1 has spoken his pain. Rather, the defendant no.1 and plaintiff's father were friends and never have any ill-will towards the plaintiff. The defendant no.1 merely expressed his unhappiness, frustration and anguish in the video. It is contended that, the defendant no.1 has not referred the plaintiff by his name in his allegations relating to the D-company. The defendant no.1 is talking generally and it is not a gospel truth. Defendant no.1 is saying only that they are Hindus and the plaintiff is a Muslim, which is a fact. He has used the term "gag rape of nature" as an adjective because nature has been exploited in Eco-sensitive zone. Thus, she prayed for dismissal of the motion.

53. The respective advocates of Defendant nos.7, 8 and 9 took almost similar objection that they are not necessary parties. The defendant nos.1 to 4 are the first persons to whom the Court should direct to remove the contents and in case of failure, then only their role would come to play. It is further contended that, moreover, each URL has to be shown to be defamatory and only then they can comply with the orders of the Court. Even they made a statement that, in the event the Court directs them, they are ready to comply with the directions for the removal, provided the plaintiff should give each URL. There is no pleading as to how the tweets are defamatory.

54. The learned Advocate for the Defendant no.7 contended that, there is no specific pleading in the plaint how statements are defamatory and connecting the plaintiff. The plaint lacks necessary

pleadings, which are required for the suit under defamation. In support of his contention, he has relied on the judgment of the Hon'ble Bombay High Court in case of *Essel Infraprojects Limited V/s. Devendra Prakash Mishra (supra)*.

55. Thus, sum and substance of the defence of the defendants are that the defendant no.1 took the defence of justification, which, according to them, are supported by the documentary evidence and some of them are matter of record. The defence of the defendant no.2 and 3 are that, they have taken the interviews of the defendant no.1 with 'disclaimer clause' and their action is well within the law applicable in the case. The defence of the defendant nos.6 to 12 is that, firstly the defendant nos.1 to 4 should be directed to remove the contents. In the event they do not comply with the same then they are ready to abide by the orders of the Court. They have also raised a plea that as such at this juncture they are not necessary parties to the proceedings.

56. The intermediaries raised very crucial issue of pleading which has been foremost point for consideration in the suit for defamation. The defendant no.1 and 7 relied on the judgment of the Hon'ble Bombay High Court in case of *Essel Infraprojects Limited V/s. Devendra Prakash Mishra (supra)*.

57. I have perused the aforesaid judgment. The Hon'ble High Court observed that, *the averments made in the plaint had not been particularized alleged defamatory portion. Plaintiffs had not been able to satisfy from averments made in plaint that any of topics tabularized in plaint would be per se or prima facie defamatory. Plaintiffs had not*

applied for amendment of plaint to set-out verbatim alleged defamatory words in plaint though plaintiffs had such opportunity before proceeding with hearing of the Motion. The plaintiff did not avail such opportunity, therefore, the plaintiffs are not entitled for temporary injunction.

58. Thus, after considering the case of each parties, I am of the view that in the present matter, the only point which comes first for my determination is, ***whether the defendant no.1 prima facie made out a defence for justification and the pleadings of the plaint are according to the requirement of law? and, whether the imputations are per se defamatory?.***

59. In the case of ***Essel Infraprojects (supra)***, it was allegations of plaintiffs that the defendant no.1 in connivance with the defendant no.2 to 9 hatched criminal conspiracy and in furtherance thereof, the defendant no.1 was called at New Delhi to make false imputations against the plaintiffs, its officials and promoters by holding a press conference which was arranged by active involvement of defendant nos.2 to 9. It was averred by the plaintiff therein that in the said press conference, the defendant no.1 and 2 made false imputation and defamatory allegations which are mentioned in the paragraph 18 of the plaint. It was averred that, the defendant no. 2 to 9 tele-casted program "*Azab MP Gazab Ghotala*" on its '*Focus News Channel*' containing false, baseless, highly defamatory contents to defame and cause injury to the reputation and goodwill of the plaintiff, its officials and promoters.

60. It is further the contention of the plaintiffs therein that, after conclusion of the press conference they and their officials started

receiving calls from other media and public at large inquiring as to why the plaintiffs were engaged in such kind of illegal activities and making unwarranted gains at the costs of the public. In paragraph 25 of the plaint, the plaintiffs therein have tabulated the allegations made in the press release and factual position according to the plaintiffs which are alleged to be false and defamatory allegations levelled against them. The plaintiffs also annexed copy of CD containing recording of press conference and transcript.

61. It was the submission on behalf of the plaintiffs that, they have sufficiently described defamatory allegations in the plaint. The documents containing defamatory allegations are already on record and formed part of the plaint which are not disputed by the defendants. Therefore, the material brought on record are *prima facie* defamatory *per se*.

62. It was the argument on behalf of the defendant no.3 to 8 that, the plaintiffs have not averred and disclosed which part of the telecast or statements was defamatory. It was their contention that, a party who files a suit for defamation has to give details and particulars of such defamatory Articles and which part and in what manner the same would be defamatory to the plaintiffs. It was submitted that, the plaintiffs therein have made their allegations under different topics in the tabulated form but not particularized any of the defamatory allegations. It was submitted that since no details and particulars are furnished in the suit for defamation, suit does not disclose any cause of action. No relief of any nature whatsoever can be granted. It was further argument of the defendants that if the plaintiffs have alleged that the defendants have published and/or telecasted any defamatory

Articles, it was duty of the plaintiffs to be very specific in their allegations to enable the defendants to give response to such allegations which would be in compliance of principle of natural justice. It was submitted that, if there is any justification available on record to decide *prima facie* that the articles and/or telecast was justified, no injunction can be granted against the defendants. There cannot be any trial at interim stage. Ld. Advocate for the defendants therein relied on the judgment of the Hon'ble Apex Court in the case of ***M.J.Zakharia Sait v/s. T.M.Mohammed and others ((1990) 3 SCC 396)***, which has been referred by the Lordship in paragraph 18 which are reproduced as under :-

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

30. *In ***W.Hay and Ors v. Aswini Kumar Samanta MANU/WB/0067/1958 : AIR1958Cal269*** a Division Bench of the Calcutta High Court held that it is well-settled that in a "libel action" the ordinary defamatory words must be set out in the plaint. Where the words are *per se* or *prima facie* defamatory only the words need to be set out. Wherever the defamatory sense is not apparent on the face of the words, the defamatory meaning or as it is technically known in law, the innuendo must also be set out and stated in clear and specific terms. Where again the offending words would be defamatory only in the particular context in which they were used, uttered or published, it is necessary also to set out except where as in England, the law is or has been made expressly otherwise, the offending context (colloquium) in the plaint, and to state or ever further that this context or the circumstances constituting the same, were known to the persons to whom the words were published, or, at least, that they understood the words*

in the defamatory sense. In the absence of these necessary averments, the plaint would be liable to be rejected on the ground that it does not disclose any cause of action.

31. *What exactly should be pleaded in an action for defamation has been stated also in Halsbury's Laws of England [Vol. 28 - 4th ed.], In paragraphs 174, 175, 176, 177 and 178 of the said Volume, we have discussion with regard to natural and ordinary meaning of the words complained of, and about the innuendo and the facts and matters supporting innuendo which should be pleaded and proved. It is stated there that in Kvm NMS1086.14 drafting a statement of claim in libel or slander, it is necessary to distinguish between cases in which the words complained of are alleged to be defamatory in their natural and ordinary meaning, whether the literal or the inferential meaning, and those in which the defamatory meaning is a secondary meaning derived from extrinsic or special facts or matters, so that a legal or true innuendo must be pleaded. If it is claimed that the words are defamatory in their natural and ordinary meaning and the words bear only one literal meaning, which is clear and explicit, it is not necessary to plead the meaning in the statement of claim. However, if the words are reasonably capable of bearing more than one literal meaning or if the defamatory meaning relied on is inferential (a "false or popular" innuendo), it is desirable and may even be necessary to plead the defamatory meaning or meanings. Where the plaintiff wishes to claim that the words complained of were understood to be defamatory in a secondary or extended meaning by those persons having knowledge of some special facts or matters, such a meaning constitutes a separate cause of action and the same should be pleaded expressly in a separate paragraph in the statement of claim (emphasis supplied). Particulars must be given of the facts and matters on which the plaintiff relies in support of any secondary or extended defamatory meaning which it is decided to plead. These special facts or matters may be extrinsic to the words used or there may be some special meaning*

of the words themselves. The plaintiff should plead that particular words bore the innuendo meaning.

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

*172. Pleading and proof of words - In an action for defamation, the actual words complained of, and not merely their substance, must be set out verbatim in the statement of claim. A libel action cannot be brought in respect of a document the contents of which the plaintiff is unaware; but in a slander action interrogatories may, in an exceptional case, be permitted, prior to the statement of claim, to ascertain the precise words spoken. It is no longer necessary to prove at trial the precise words pleaded; it will suffice to prove words *Kvm NMS1086.14* substantially the same and the jury should be invited to consider whether the words are defamatory in the version it has accepted. Where the plaintiff complains of a book or long article, he must specify the passages which he alleges to be defamatory rather than merely plead the whole book or article."*

63. In the above case, Their Lordship after considering the judgments cited and law laid down by the Hon'ble Apex Court on the requirements of the pleadings in case of defamatory suit, gave reasons and conclusions in its paragraph 39 with reasons which are reproduced as under :-

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

interlocutory stage, the defendants raise a plea of justification and has relied upon the evidence by which they might substantiate their case.

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

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

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

*47. In so far as judgment of learned single Judge in case of **Shree***

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

48. Keeping in mind the aforesaid statement of law declared by the Supreme Court and this court, I will now consider whether in the facts of this case how far both the parties have satisfied the criteria laid down by the Supreme Court and this court on the requirement of pleading in a suit based on tort and the effect on justification with material sought to be pleaded by the defendants in opposition to the grant of relief for injunction.

49. A perusal of the averments made in the plaint indicates that the plaintiffs have not particularized the alleged defamatory portion from the press release and also the telecast. The plaintiffs have generalized the allegations of defamation in the plaint and has basically relied upon the entire press report and the telecast on the news channel. In my view in the case of the suit for libel which is in tort, plaintiffs have to specify the defamatory words from the entire article and/or press release and telecast with details and as to how such words from the material published/telecast, the plaintiffs were defamed. The plaintiffs cannot make any vague plea without particularizing and specifying the defamatory words out of

the entire publication unless the words are per se or prima facie defamatory. In my view the plaintiffs have not been able to satisfy from the averments made in the plaint that any of the topics tabularized in the plaint would be per se or prima facie defamatory. A perusal of paragraph 25 of the plaint in which the plaintiffs have tabulated some of such topics do not even refer to any specific allegations against the defendant nos. 3 to 8.

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

65. *The Division Bench of this court in the case of Dr. Jaswant Trivedi (supra), has held that in a libel action at the interlocutory stage if the defendant raises a plea of justification and mentions evidence by which he might substantiate his case, the court is unlikely to grant any interlocutory injunction in favour of the plaintiffs to restrain further publication of the alleged libel. The*

said judgment of the Division Bench of this court is binding on this court and is squarely applicable to the facts of this case. On the basis of documents produced on record which are not disputed by the plaintiffs, in my prima facie view, the submissions of the defendants that the publication and telecast respectively was issued after verifying the documents and that the same was bona fide and in public interest cannot be brushed aside and deserves acceptance.

64. In view of the above law laid down by the Hon'ble Apex Court as well as the Hon'ble Their Lordship in the aforesaid case, let us examine first the pleadings of the plaintiff. The plaintiff generalized his grievance that, the defendant no.1 claims that in or around 1995, he and his wife had acquired certain plot of land near plaintiff's *Parvel* farmhouse for constructing a house, temple etc. The plaintiff understands that, subsequently the transaction of allotment of the plot of land to defendant no.1 was cancelled by the Government of Maharashtra/concerned forest department as illegal. It is the allegations of the plaintiff that, pursuant thereto, on untenable and baseless pretexts, defendant no.1 started raising baseless and false accusations and allegations against the plaintiff and his family members, *inter alia* viz **(a)** that the plot of land allotted to him was allegedly cancelled by forest department at the behest and in collusion with plaintiff; **(b)** that the entry and exit of his plot of land was illegally acquired and blocked by the plaintiff by constructing a gate; **(c)** that allegedly on the access road of defendant no.1's plot he had constructed an eco-friendly *Ganesh* temple, access to the same was also was allegedly blocked by the plaintiff and same temple is grabbed or usurp by the plaintiff and the said temple is grabbed/ usurped by the plaintiff; **(d)** that the plaintiff has usurped/ grabbed the said land of defendant no.1; **(e)** that certain

other plots were also sold to him by the plaintiff by taking monies from him and plots were not handed over to defendant no.1, thereby allegedly committing fraud on him; **(f)** the defendant also alleged that the plaintiff has used his influence to carry out illegal construction on plaintiff's plot and there are alleged illegal activities such as human trafficking and drug trade going on in the plaintiff's *Panvel* Farmhouse.

65. The plaintiff at para no. 3.4 of plaint gave particulars of videos along with title of the video, duration of the video, platform such as Facebook, YouTube and uploaded by him. According to the plaintiff, in the aforesaid defamatory videos the defendant nos.1 to 4 have made various scandalous, false, grossly defamatory, derogatory and baseless allegations against the plaintiff and his family members. For illustrative purpose, he has described certain statements from the videos, which, according to the plaintiff, are *ex-facia* defamatory in nature.

66. The plaintiff has annexed copies of transcripts of the defamatory videos posted on YouTube, Facebook as **Exh.A** and contended that, it should be treated as part of the plaint. The plaintiff also downloaded and copied all defamatory videos from YouTube and Facebook in a Pen-drive, which is filed along with the plaint as **Exh.A1**. The plaintiff also filed snapshots of the comments which, according to plaintiff, are derogatory and defamatory and attached as **Exh.B**. For illustrative purpose, he has also narrated certain comments, which, according to him, created hatred against the plaintiff. The plaintiff also annexed the defamatory posts made by the defendant no.1 on Twitters at **Exh.C** and by way of amendment, he has annexed the URLs at **Exh.B1**. For illustrative purpose, some tweets, which, according to the plaintiff, are defamatory are reproduced at para 3.6 of the plaint.

67. I have perused the aforesaid material at Sr. Nos.1 and 2 of table of videos, titled as "*Big Revelation-Real Truth behind Farmhouse of Khan family, dated 19.6.2021 on Phogat Films*". The plaintiff set out certain statements for illustrative purpose.

68. The videos with URL <https://www.youtube.com/watch?v=vZfaM5QcXfM> and also on [facebook.com](https://www.facebook.com) at 8.25 to 9.32 minutes. It is the conversation between defendant no.1 and 2. The defendant no.1 is talking about human rights, democracy, law and order and about his land being looted. He is also talking about modus to grab temple which would concern and affect to 100 crore of Hindus & NRI's. Here, neither the defendant no.1 nor the defendant no.2 have named the plaintiff.

69. At 26.25 to 26.46 the defendant no.1 is talking about mother nature and land. If he would be prevented to approach his land, his sentiments and sentiments of 100 crore of Hindus would affect. Here also, none of them have named the plaintiff or his farmhouse.

70. At 24.32 minutes to 26.48 minutes, the defendant no.1 is talking about grabbing of temple, not granting electricity. He alleged that the Plaintiff is grabbing his temple. Further, the defendant no.1 uttered certain sarcastic remarks or skeptical questions such as, "*Achi bat hain, lekin, by profession ye log actor he na?, Toh ye to real life me bhi acting karte hoyenge, who knows, lekin agar yo mein agar ganpati dada ki bhakti karte hain toh humko hamare mandir me jaane kyo nahi dete?- Humko vaha pe ek bulb mandir ke liye kyu nahi lagane dete?, humko vahape ek bulb mandir ke liye kyu nahi lagane dete?, Hum bolte hain ki jagda apni jagah pe chalu rahe hain, land dispute unhone government ko*

misuse karke, forest department ko misuse karke, politicians ko misuse karke, jo bhi karke jisne bhi dispute dala hamari zameen ka forest me daal ke, Aur unko illegal ko legal karvaye 2.5 acre ko. Here the defendant no.1 has not accusing the Plaintiff by taking his name that he has put his land in forest Zone.

71. At 37.06 to 38.18, the defendant no.1 is talking about D company, asserting that “Dawood Ibrahim” never do personally anything. Here he has not named Plaintiff. He is putting rhetorical questions.

72. At 43.28 minutes to 44.28 minutes, the defendant no.1 talking *bish-bosh*, without any relevance. He is talking about one team on front as he heard, there are 500 + individuals, 500 shell company. He is talking about that it is not only matter of land/forest grabbing but it is beyond that. Here also he has not named the either plaintiff or his farm house or his family members.

73. At 1.15.02 to 1.15.07, Ketan : *Duniya ka sabse bada kaand waha pe chal raha. Usmei Adani bhi involved hai aisa sunne mei aaaya hain.* Here also he has not named the either plaintiff or his farm house.

74. At 1.15.12 to 1.15.56 here the defendant no.2, Sandeep is asking certain doubtful questions. He, by putting aphoristic questions raising bout about child trafficking, organ trafficking and the defendant no.1 stating all assumptions, having no evidence. Here also neither defendant no.1 nor 2 named plaintiff or his farm house.

75. At 1.27.26-1.27.43 the defendant no.2 asking aphoristic questions that probably from upward area one can get what is going on at downside. He is also asking about party between 7 to 14 June. At 1.44.47 to 1.46.19 the defendant no.3 paras is asking about doubtful questions of deaths of some celebrities indirectly connecting with farm house. The defendant no.1 express his opinion about the death of Shushant Singh Rajput that it is not suicide but it may a murder. Here they have not named plaintiff, his farm house nor alleged that plaintiff is involved in death of actor Shushant Rajput.

76. At 1.47.49 to 1.48.19 the defendant no.1 is talking about mountain of 265 acres is sold to one company or political link which goes to Dubai, Bahrin, Jihad, Madras. Here defendant no.1 has not linked the plaintiff with above places nor named him. At 2.00.53 to 02.02.07 he is talking about recent form of terrorism how it takes placed and named it as "*Safed aatankwad*". He has not addressed the Plaintiff as *atankwadi* or terrorist. At 57.40 to 58.26 the defendant no.1 is taking about it is not his money which has been grabbed but also of thousands of NRI's. Here also not named the plaintiff specifically. At 1.12.28 to 1.13.37, the defendant no.1 is talking about his various complaints made to NCB, NIA, NSA but why any of the authorities did not visit. He is also comparing with *Babar* and *Aurangzeb* but to whom is not explained. He further stated that he has made complaint to Minster *Mungantiwar*. In media the plaintiff was seen invitee by *Mungantiwar*. He has questioned how he can invite him, when his complaints are pending with him.

77. At Ssr. no.3 of table of video titled in plaint "*Massive-SSR*

fans attacked on panvel Farmhouse- Salman Khan stop doing this nonsense there” posted on 14.07.2021 on Phogat films. It is featured by defendant no.1. At 0.13 to 0.34 minutes he gave introduction about earlier discussion with the defendant no.1 on farm house. At 2.18 to 3.34 defendant no.1 is asking about doubtful and skeptical questions about what is being going on at farmhouse, why access way of defendant no.1 has been blocked. He has also made comments about the brother of Plaintiff, *Arbaz Khan* and about his shows. At 4.24 to 8.59 he is talking about boycott but of what and whose boycott. At 13.11 to 13.44 again he is talking about the brother of Plaintiff, *Arbaz Khan* and his show troll and his house.

78. At sr. no.4 of table of video titled in plaint “*Shocking expose about Salman Khan's Farmhouse ? By ketan Kakkad streamed live on Youtube 23.06.2021*” At 20.51 to 23.28 the defendant no.1 is talking about that they were told in early 2015 they want to buy, he did not mind but he don't want gun on his head. He has stated that there is a gate, you cant go and do any activities over there. The whole idea is to shooing them off. At 27.05 to 27.35 minutes , he is again by raising doubt stated that he is Hindu and they are *Muslims* therefore he think that they don't want any temple or ashram or any kind of religious activities. Here also the defendant no.1 did not name the plaintiff.

79. At sr. no.5 of table of video titled in plaint “ *KETAN KAKKAD ON:- Panvel Mei Mafia Raj/ Salman Khan*. At 10.06 to 15.46 minutes the defendant no.1 is asking questions to *Modiji, Amit Shah*. Appealing them with instigating language but no defamatory words. Thus, on perusal of the above illustrative transcript of the so called

defamatory videos, I do not find them as *defamatory per se*.

80. The defendant no.1 in order to justify his allegations that he has been restrained from approaching his land and it has been grabbed by the plaintiff, he has filed NC report as well as the photographs showing that one iron gate has been installed on the way. On perusal of the pleadings as well as specific query made by the Court, whether the plaintiff admits that the defendant no.1's plot is situated above his farmhouse, to which there is no specific denial; rather the plaintiff came up with a case that, according to their knowledge, the plot of land above the farmhouse of the defendant no.1 have been cancelled by the government. With respect to the aforesaid allegations, the defendant has put specific material and came up with the defence of justification.

81. I have also perused the complaints made by the wife of the defendant no.1 dated 2nd December 2017 and 22nd January 2018, in which she has made allegations about regularization of 23 structures of the plaintiff, which were done intentionally to circumvent the *Matheran Eco-Sensitive Zone Notification 2003*. As per her allegations, the structures were shown to have been done prior to cut off date. The defendant also annexed documents including the complaint. The show cause notice dated 20.11.2017 which was issued by the Forest Department for removal of unauthorized construction and the notice dated 9.6.2018 also shows that, 7 days notice was issued to the plaintiff's father on the ground that, inspite of issuance of notice they have done construction in violation of the Forest Act. The charge-sheet of RC No.116/1999 shows allegations for keeping Schedule-I wild life animals in contravention of Wildlife Protection Act, 1972.

82. Moreover, when the defendant no.1 alleged that they cannot approach their land directly, they have to enter the farm house of the Plaintiff and then they can proceed further, there is no denial to this allegations by the Plaintiff by way of rejoinder. The Plaintiff only gave justification that no illegal activities are being carried out at his farmhouse.

83. Thus, on perusal of the aforesaid material, prima facie, it appears the allegations of the defendant no.1 with respect to illegal constructions done by the plaintiff in violation of Environment Law, he has been restrained from approaching his plot, the Plaintiff has put iron gate in way of his approaching his plat, there are *prima facie* material produced by the defendant no.1 in support of his defence of justification.

84. As far as regarding contents of videos as discussed above illustrated in the plaint are with respect to certain activities conducted inside the farmhouse, deaths of various celebrities such as *Sushant Singh Rajput* connecting the plaintiff with *Dawood Ibrahim* calling him as white collar *Atankwadi*, those are not directly imputed against the plaintiff. The plaintiff, in these allegations, ought to have pleaded how those imputations are connecting to him because those are not defamatory *per se*. Those communications are dubious. The allegations of the plaintiff are inferential and therefore, the plaintiff ought to have pleaded what in legal term called as *innuendo*.

85. The plaintiff by filing brief submission has explained the allegations how it is related to him such as, as per his contention it is

the allegations in the transcript that the plaintiff has constructed gate blocking access to defendant no.1's plot and temple. Defendant no.1 was never handed property however, money was taken from him. The plaintiff removed electricity pole installed on defendant no.1's land. The plaintiff grabbed his land. The plaintiff by carrying on construction on plot of land has raped mother nature. The defendant also referred to *Ram Mandir* with a view to incite communal hatred against the plaintiff. The plaintiff has manipulated government, forest department, politicians and made his illegal acts legal. The defendant no.1 refers *Ayodhya* Land dispute and stated that this issue could escalate to the level of *Ayodhya*. The defendant no.1 alleges of conspiracy. The plaintiff is keeping wild animals in his farmhouse which is illegal and there are proceedings filed against him. The plaintiff has carried out illegal construction. The plaintiff is connected to underworld- *D company*. The plaintiff has a gang which is also residing in the Bungalows in *Panvel*. The plaintiff's farmhouse is a front for D-company. The alleged pending litigation against the plaintiff is not proceeding because of his influence. The defendant no.1 is mentally raped. Insinuations of trafficking, humans drugs, weapons were found in vehicle transporting the horses. An employee was allegedly murder at farmhouse. Comparison to *Ayodhya* incident and comparing the plaintiff to *Babar* and *Aurangzeb*. Comparison/ suggestion that the plaintiff is an invader. Speculation that drug/child trafficking is going on in the farmhouse. The defendant no.2 attempted to connect the plaintiff to *Sushant Singh Rajput* case. The plaintiff has used explosives. The speculation that someone died under suspicious circumstances on plaintiff's land. The death of Bollywood actors, high profile deaths are linked to the plaintiff's *Panvel* farmhouse. The plaintiff used his influence to get officers of forest

department transferred. The plaintiff's instruction to someone to threaten the defendant no.1 if he visited the temple. The defendant trying to make a communal issue. Attempt to link the farmhouse to *Sushant Singh Rajput*.

86. In the video uploaded on YouTube on 23.6.2021, the plaintiff further explained the allegations calling him a Mafia and alleging that they are bullying the defendant no.1 in to selling his land. The plaintiff does not want defendant no.1 to have a temple. White collar terrorism. The plaintiff is terrorizing locals and manipulating the records.

87. The plaintiff further explained the allegations of YouTube video dated 10.11.2021 and 25.11.2021 stating that, the plaintiff is obstructing installation of a bulb in the temple. Interviewed by journalist who alleged that, whoever is assigned this case in the forest department, gets transferred at the behest of the plaintiff. Comparing the plaintiff to the Taliban.

88. The plaintiff in paragraph 3.5 of *Plaint* also pleaded about the comments which has been made by the public on the aforesaid defamatory videos and which has been illustratively pleaded in the *plaint*. I have perused the aforesaid comments in which certain words were used as, "*Chulman Khan, Sulemon, SSR, Selmon, Chulman's farmhouse*". But the plaintiff has not explained these innuendos in his *plaint* that he has been referred by these names.

89. I have also perused the pleadings of *plaint* in paragraph 3.6 wherein illustrative of twitter posts are made. These tweets are alleged

to be made by the defendant no.1. He has referred, "*Why so called H BJP is scared of Solmom Kwan & Co.,.... World's largest democratic political party- is scared of one "M"?..... Prakruti ke balatkari, safed Atankwad, Solmon, kwan, In Panvel, In Loot, Atyachar and Atankwad..... Modiji, Panvel, Nanganach by Miyaan Solmon Kwan & Co., Loot Atyachar, Safed Atankwad, Mega Corruption, Peedit-Desh, Hindus, NRIs, Adiwasis.* Admittedly, the plaintiff has not explained and pleaded these innuendos and how they relate to him.

90. Ld. Advocate for the defendant no.7 vehemently argued that, even though after carrying out amendment and putting URLs as per Annexure "C", that will not be a sufficient pleading in order to get injunction by the plaintiff. He has argued that, the plaintiff has not explained the *innuendo*.

91. *Per contra*, Ld. Advocate Mr. Gandhi vehemently argued that, he has put transcript of entire videos and tweets which is part and parcel of the plaint and hence, it can be read as pleadings of the plaint. On perusal of illustrative pleadings of transcript which has been mentioned in the plaint, I am of the view that, entire transcripts are not defamatory *per se*. Even I consider the submission of Mr. Gandhi then still, in the transcript which he has annexed as Annexures- A, entire transcript is not *defamatory per se*. The plaintiff has not explained the allegations which he has mentioned in his brief submissions and orally argued by him and which is the requirement of law as laid down by the Hon'ble Apex Court, which has been summarized by the Hon'ble Bombay High Court in the above case of *Essel Infraprojects Ltd.(supra)*

92. The defendant no.1 raises the plea of justification with *prima facie* material and ready to prove the same during trial. Their

Lordship in *Essel Infraprojects Ltd. (supra)* case at para no.65 by relying on the case of *Dr. Jaswant Trivedi*, wherein it was held that in libel action at the interlocutory stage if the defendant raises a plea of justification and mentions evidence by which he might substantiate his case, the court is unlikely to grant any interlocutory injunction in favour of the Plaintiff to restrained further publication of the alleged libel, refused to grant injunction.

The observations of the Hon'ble Court in aforesaid case at para 65 is reproduced as under :-

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

93. For the plea of justification, as observed in the aforesaid case, should be supported by the sufficient material subject to scrutiny by the court for its veracity and the statement made should be bonafide and should be made in the larger public interest and that the defendants had taken reasonable precaution of ascertaining the truth. As I have already discussed that in order to substantiate the allegations of the plaintiff restraining the defendant no.1 from approaching his land, there is documentary proof to that effect. For the allegations that

the plaintiff committed encroachment and violated the Forest Act and *Matheram* Eco-Sensitive Notification, he has placed the applications which have been made to the concerned forest department and the Collector along with the Annexures and also the show-cause notices issued by the forest department. The defendant contended that, he is a whistle-blower to the illegal acts done by the plaintiff and he made imputations in public interest by taking reasonable precautions by producing documentary material in support of the same. Therefore, at preliminary stage, I find the defendant's plea of justification is more probable than the *prima facie* case of the plaintiff. Thus, in view of judgment of the Hon'ble High Court in case of *Essel Infraprojects Limited V/s. Devendra Prakash Mishra (supra)* and of *Dr. Jaswant Trivedi*, I am of the view that, as the plaintiff failed to explain innuendo how it relates to him and the defendant raised the plea of justification which is *prima facie* supported by documentary evidence, therefore in view of judgment in case of *Dr. Jaswant Trivedi*, I am not inclined to grant injunction to the plaintiff. Thus, I proceed to pass following order :-

ORDER

1. Notice of Motion No.188 of 2022 is rejected.
2. Costs in cause.
3. Notice of Motion is disposed of accordingly.



Dated : 23.3.2022

Dictated on : 23.3.2022 (audio record)
Typed on : 24.3.2022 and 25.3.2022
Draft given on : 25.3.2022.
Signed on : 28.3.2022.

(A.H.Laddhad)
Judge,
City Civil and Sessions Court,
Greater Bombay (CR 03)

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

Dated 28.3.2022, at 4.20 pm
UPLOAD DATE AND TIME

(Nitin V. Ubale)
Selection Gr. Stenographer(Gr.1)

Name of the Judge (With Court room no.)	Shri A.H.LADDHAD (C.R. No.3)
Date of Pronouncement of JUDGMENT/ ORDER	23.3.2022
JUDGMENT/ORDER signed by P.O. on	28.3.2022
JUDGMENT/ORDER uploaded on	29.3.2022