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Shree Maheshwar Hydel Power Corporation Ltd. V. Chitroopa Palit, 2012

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

CIVIL APPLICATION NO.5201 OF 2011
IN
FIRST APPEAL NO.611 OF 2010

Shree Maheshwar Hydel Power
Corporation Ltd.

....Applicant

Vs.

Chitroopa Palit & Anr.

...Respondents

Mr. S. U. Kamdar, Senior Advocate i/b. M/s. Little & Co. for the
Applicant.

Mr. Mihir Desai a/w. Mr. Hemant i/b. Haresh Mehta & Co. for
Respondent Nos.1 and 2.

Mr. R. Gonsalves for respondent No.3.

CORAM : SMT. R.P.SONDURBALDOTA,J.

DATE : 3rd August 2012

PC. :

1. The applicant by this civil application pray for action under Order XXXIX Rule 2-A of the Code of Civil Procedure, 1908 against the respondents for alleged wilful flouting of the orders passed by this Court from time to time. The prayers in the civil application do not specify the orders of this Court that are allegedly breached. Paragraph No.2 of the civil application, however, alleges that the respondents have, in breach of the order dated 4th October 2010, has published defamatory article against the applicant. The order dated 4th October 2011 was passed in the First Appeal herein dismissing the same on the ground of jurisdiction. This court had, however, continued the interim relief granted in the First Appeal on 4th August

2010 for a period of ten weeks. The order dated 4th August 2010 was passed in terms of the order of the Apex court dated 24th February 2006 in Special Leave Petition (Civil) No.23991 of 2003 which directs the respondents “not to make any per se defamatory allegations” against the applicants.

2. The application alleges two breaches on the part of the respondents of the order dated 4th October 2011. According to the applicant, respondents had, on 13th October 2011 released a press note which was found on the internet by the applicant on 9th December 2011 containing defamatory material and allegations against the applicants. The text of the imputation quoted in the civil application reads as follows:

“In a statement issued to the media following the high Court Order, activist Chitroopa Palit said the verdict makes it clear that “such companies are resorting to such baseless prosecutions and abuse of the legal process in order to suppress valid criticism about the misuse of public money in such unviable projects and the failure of the project authorities to rehabilitate the ousters, and to suppress the voice of the common people of this country, people's movements as well as the press”

3. The second breach alleged is of recirculation of the press note dated 22nd October 2001. The application, however, does not indicate anything to support recirculation of press note dated 22nd October 2001. Therefore there is nothing to consider as far as this alleged breach is concerned.

4. As regards the alleged press note dated 13th October 2011, a copy thereof is annexed at Exhibit-”C” to the civil application. It is

seen to be not a press note by respondent No.1 but an article written by one Anupam Chakraborty on the web site by name “Down to Earth”. The imputations quoted in the civil application are found at the end of the article wherein it is stated to have been a statement issued to the media by respondent No.1. The tags at the bottom of the article also disclose the name of respondent No.1 as one of the sources of material stated in the article.

5. In view of the allegation made by the applicant, a notice was issued to Anupam Chakraborty, the Author of the article who has filed his affidavit in reply in which he states that he has been regularly writing for the magazine “Down to Earth” and was aware of the factual aspects of the Maheshwari Dam controversy since a long time. He also claimed to be in possession of the documents on which Narmada Bachao Andolan relies since long. According to him, since he was not a party either to the Appeal from Order or to the Civil Application, there can be no allegation of violation of the orders of this court against him.

6. Respondent No.1 in her affidavit in reply denies any connection with the article written by Anupam Chakraborty. She also denies that after the order, she gave any interview to the media or held any press conference. She claims that after the judgment, a press-note was issued on 5th October 2011 which was innocuous and in any case can hardly be said to be per se defamatory.

7. From the reply of Respondent No.1, the one thing which becomes clear is that whatever has been attributed to Respondent No.1 in the article is not disputed. Therefore the only question to be

considered is whether her statements can be said to be per se defamatory. Mr. Kamdar, the learned Senior Counsel appearing for the Applicant has strongly urged that the statements are per se defamatory. Whereas, Mr. Desai for Respondent No.1 argues otherwise. In my considered opinion, the alleged imputation can be connected to the applicant only partly, i.e. the first half part reading;

“such companies are resorting to such baseless prosecutions and abuse of the legal process in order to suppress valid criticism.”

The later half of misuse of public money would relate to the concerned public authorities. The first part can hardly be said to be per se defamatory.

8. The civil application seeking an action for contempt against the respondents for committing breach of the orders of the court must fail on a technical ground also. As already mentioned above, the prayer clause in the civil application does not specify the alleged act of contempt. In fact, it does not even state the particulars of the orders alleged to have been breached. This renders the prayer clause vague. It is well established position in law that the proceedings for contempt of court are quasi-criminal proceedings. The prayer in such applications act as a charge to be answered by the alleged contemnor. There cannot be conviction of a party on a vague charge. Though the details of the alleged act of contempt are stated in the body of the civil application, that is not sufficient and does not cure the defect in the charge. Hence, the civil application is dismissed.

(SMT. R. P. SONDURBALDOTA,J.)