

## HR Law Hotline

December 11, 2015

### INJUNCTION AGAINST FORMER EMPLOYEE FOR DEFAMATION

- Former employee made defamatory statements and allegations on social media against his employer.
- Based on a petition, the Court directed the employee to remove all defamatory posts.
- The employee was also directed to refrain from posting or promoting any material on social media or print media pendant *lite*.

The Bombay High Court has acted swiftly in restraining<sup>1</sup> a former employee (“**Defendant**”) from posting defamatory content on social media against his employer. The Court also directed the employee to remove all defamatory content already posted on social media.

Though this order was passed at an interim stage, it is encouraging to note the way the Court reacted quickly to prevent further damage to the employer’s reputation and business, since the employee’s comments did not fall within the realm of ‘*fair comment*’.

#### FACTS

The Defendant was employed by a group entity of Tata, one of India’s largest business groups. After termination of the Defendant’s employment, the Defendant made various complaints to certain employees, investors, journalists and media houses.

The Defendant also made allegations against the employer through various social media platforms such as posts on his Facebook page, the employer’s Facebook page and on Twitter. The employer attempted to placate the Defendant by conducting settlement discussions - however, it appears that the discussions were inconclusive due to certain demands by the Defendant.

The employer argued that the posts made on social media by the Defendant were *per se* defamatory and that there was no genuine or fair comment by the Defendant. The Defendant’s comments were a result of his discontentment on the termination of his employment. The employer also brought before the court evidence that monetary demands were made by the Defendant in relation to the termination of his employment.

#### ORDER

The Court agreed with the employer’s views and noted that the Defendant had, in his posts on social media, made allegations that the employer had engaged in unethical conduct. The Court could not find any reason to believe that these comments were made in good faith. Further, the Court felt that the allegations appeared to be made to satisfy a personal vendetta. The Court also took into account the conduct of the Defendant during settlement discussions between the parties.

Accepting the contentions of the employer, the Court found that a *prima facie* case was made out for the grant of a restraining order preventing the Defendant from “*issuing, disseminating or communicating any defamatory statements*” against the employer, its employees or companies that were a part of the Tata Group. Further, the Court directed the Defendant to remove all defamatory material including Facebook comments and tweets on Twitter, and restrained the Defendant from posting any material in social media or print media during the pendency of the suit.

#### ANALYSIS

The Indian legal position on defamation<sup>2</sup> has broadly adopted the rule in *Bonnard v Perryman*<sup>3</sup> (“**Bonnard**”) wherein it was held that a court would have to be cautious while interfering with a person’s right to free speech or fair criticism by way of an injunction. The court noted in *Bonnard* “*Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions...*”

In the present case, an injunction was granted since the Court was of the opinion that the Defendant’s allegations were not made in good faith. Another aspect considered by the Court was that damage to a person’s reputation could not be made good through monetary compensation; therefore the plaintiff’s freedom of speech would have to be curtailed by way of an injunction.

This order sheds light on how companies can deal with the defamatory content posted by employees on social media.

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<sup>1</sup> *Tata Value Homes Ltd v. Nityanand Sinha*, Suit (L) No. 1040 of 2015, Bombay High Court, Order passed on October 08, 2015

<sup>2</sup> *Khushwant Singh v. Maneka Gandhi* AIR 2002 Delhi 58

<sup>3</sup> (1891) 2 Ch. 269

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