* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Order reserved on: 08.07.2013

% Order delivered on: 07.11.2013

\+ **CS(OS) 290/2010**

KHAWAR BUTT

..... Plaintiff

Through: Mr. Manish Kaushik, Advocate with Mr. Vivek Singh, Advocate

versus

ASIF NAZIR MIR & ORS

..... Defendant

Through: Ms. Manmeet Arora, Ms. Mansi Sharma and Ms. Nidhi Parashar, Advocates

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

VIPIN SANGHI, J.

I.A. No. 13629/2011 (U/O 7 rule 11(a) read with Section 151 CPC by the defendant)
I.A. No. 13630/2011 (U/O 6 Rule 16 read with Section 151 CPC by the defendant)
I.A. No. 14479/2011(U/O 7 Rule 11 and Section 151 CPC by the defendant)
I.A. No. 8404/2013(U/O 6 Rule 17 CPC read with Section 151 CPC for amendment of plaint by the plaintiff)

1. By this common order, I proceed to dispose of the aforesaid four applications.

2. The plaintiff has preferred the present suit to claim damages of Rs. 1 crore and for mandatory injunction. Initially, there were two defendants in the suit – defendant No. 1 being Asif Nazir Mir, and defendant No. 2 being Mrs. Shaziya Shaw. Defendant No. 2 was the wife of the plaintiff at the time of filing of the suit. In a nutshell, the case of the plaintiff -as originally pleaded in the plaint, was that defendant No. 1 was having an adulterous relationship with his wife-defendant No. 2. In the plaint, the plaintiff goes on to narrate as to how he came to learn of it; how others came to learn of it; the conduct of the two defendants, and; the actions alleged to have been taken by the two defendants in collusion with each other with a view to harm the good name and reputation of the plaintiff, and to induce divorce between the plaintiff and defendant No. 2. The plaintiff pleaded that defendant Nos. 1 and 2 colluded to post false allegations against the plaintiff - of his being in an illicit relationship with the wife of defendant No. 1. These allegations were posted on the Facebook page of the wife of defendant No. 1, Mrs. Shazia Bakshi. According to the plaintiff, the wife of defendant No. 1, Mrs. Shazia Bakshi was in touch with the plaintiff so as to keep the plaintiff informed of the conduct of the two defendants.

3. After the filing of the suit and upon issuance of summons in the suit, the plaintiff moved I.A. No. 10296/2010 under Order 23 Rule 1 CPC to give up his claim against defendant No. 2 – then his wife, Mrs. Shazia Shaw. Along with the application, the plaintiff filed the agreement/settlement deed

dated 17.06.2010 entered into between the plaintiff and defendant No. 2. This application was allowed on 06.08.2010.

4. Upon service of defendant No. 1, he has preferred the aforesaid two applications under Order 7 Rule 11 CPC. In the first application i.e. I.A. No. 13629/2011, the submission of defendant no. 1 is that since the plaintiff has given up his claim against defendant No. 2, and the cause of action against both the defendants is the same, i.e. the alleged act of adultery between the two defendants, the plaintiff cannot proceed against defendant No. 2. The submission of the defendant is that in the absence of defendant No. 2, who has been voluntarily dropped from the array of defendants by the plaintiff as a consequence of withdrawal of the suit against her unconditionally, the allegations of adultery cannot be examined by this Court. According to the defendant, the defendant No. 2 is a necessary party- since the examination of the said issue would necessarily impinge on the conduct, name and reputation of the erstwhile defendant No. 2. Therefore, even if no relief is claimed against defendant No. 2 -who already stands deleted, in her absence, the aspect of adultery cannot be examined by this Court and the suit cannot proceed. The defendant also seeks to argue that the postings on the Facebook page of Mrs. Shazia Bakshi do not make any allegation against the plaintiff, since his name is not mentioned.

5. The second application under Order 7 Rule 11 CPC i.e. I.A. No. 14479/2011, has been preferred by the defendant with the plea that the claim of damages, as well as for mandatory injunction, arise out of the alleged libelous posting, as aforesaid, on the webpage of Mrs. Shazia Bakshi for which, inter alia, the defendant is allegedly responsible. The submission is

that the said publication took place, allegedly, on 26/27.10.2008. Reference is made to the averments in the plaint, according to which, the acquaintances of the plaintiff learnt of the same on 28.10.2008, 30.10.2008 and 05.11.2008. The plaintiff also claims the publication of certain libelous pamphlet, allegedly by the defendant on or about 25.12.2008. The submission of the defendant is that the limitation prescribed for preferring a suit to claim compensation for libel is one year from the date when the libel is published, in terms of Entry 75 of the Schedule to the Limitation Act, 1963. Therefore, the said period of limitation expired, at the latest, on or about 25.12.2009. However, the present suit has been preferred only on 11.02.2010. Therefore, the suit is barred by limitation. It is also argued that the relief of mandatory injunction sought by the plaintiff - to require the defendant to tender an unconditional apology by publishing notice in two national dailies, and relevant sites on the internet, is not maintainable under Section 39 of the Specific Relief Act, 1963.

6. The application under Order 6 Rule 16 CPC being IA No. 13630/2011 has been preferred by the defendant for deletion of various averments made by the plaintiff in the plaint, qua the erstwhile defendant No. 2. These are allegations at the erstwhile defendant No. 2 having an adulterous relationship with the defendant. The submission of the defendant in this respect is the same as made in support of the first application under Order 7 Rule 11 CPC, i.e., since the erstwhile defendant No. 2 is no longer a party to the suit, the allegations made against her, being scandalous, cannot be permitted to be retained on the record.

7. The plaintiff has moved the application for amendment under Order 6 Rule 17 CPC i.e. I.A. No. 8404/2013 with a view to delete certain allegations made against the erstwhile defendant No. 2. According to the defendant, the plaintiff would continue to retain several averments directed against the deleted defendant No. 2, even if the said amendment is allowed.

8. Learned counsel for the plaintiff, firstly, submits that the cause of action pleaded in the present suit is not only the libelous publication but also the conduct of the defendant No. 1 in having an adulterous relationship with his wife, which caused pain and mental agony to the plaintiff and lowered his reputation in the society. In this regard, reference is made to the averments made by the plaintiff as to how one of his drivers, namely, Sanjay witnessed the illicit relationship between the defendant No. 1 and deleted defendant No. 2. Reference is also drawn to paragraph 42 and 43 of the plaint which has also been incorporated in paragraphs 32 and 33 of the proposed amended plaint filed by the plaintiff along with the application under Order 6 Rule 17 CPC.

9. Learned counsel for the plaintiff submits that the publication of the posting on the Facebook gives right to a continuous cause of action, since it tantamounts to a fresh publication every moment the offending material remains on the website. He seeks to distinguish publication in a printed journal or a book, from publication on a website on the ground that a publication on a website can voluntarily be withdrawn by the publisher, unlike publication in print media, which, once published cannot be withdrawn. Learned counsel, therefore, submits that the suit cannot be said to be barred by limitation. Learned counsel further submits that since the

plaintiff is seeking composite damages of Rs. 1 crore for the tortuous act of the defendant in having an adulterous relationship with his wife i.e. the erstwhile defendant No. 2, and in making the libelous publication, the suit cannot be said to be barred by limitation since the claim of tortuous liability can be made within three years from the date when the cause of action arose. Learned counsel for the plaintiff has sought to place reliance on Order 1 Rule 2 CPC to submit that it is up to the plaintiff to chose as to who are to be joined as party defendant(s) to the suit. Therefore, the defendant cannot seek to take advantage of the fact that the erstwhile defendant No. 2 stands deleted from the suit.

10. Learned counsel for the defendant in support of her submissions qua the first application under Order 7 Rule 11 CPC (IA No. 13629/2011) and the application under Order 6 Rule 16 CPC has placed reliance on the judgment of the Division Bench of the Karnataka High Court in ***Arun Kumar Aggarwal Vs. Radha Arun and Another*** *AIR 2003 Karnataka 508*, and of this Court in ***Manjit K. Singh Vs. S.Kanwarjit Singh*** *58(1995) DLT 208*. She has also referred to the Delhi High Court Rules relating to the filing of matrimonial proceedings under The Hindu Marriage Act, 1955, The Indian Divorce Act, 1869 and The Special Marriage Act, 1954 which require that in a claim for divorce on the ground of adultery, it is necessary to implead both the parties allegedly involved in the adulterous relationship. Learned counsel submits that the said Rules have been framed keeping in view the fact that a declaration with regard to such conduct in respect of any person cannot be made behind his back, as it would impinge on that person's good name and reputation. Learned counsel for the defendant submits that

the second relief sought in the suit i.e. for a mandatory injunction to require the defendant to tender an unconditional apology by publication of a notice in two national dailies and relevant sites on the internet, thereby withdrawing the allegedly false and malicious allegations against the plaintiff (i.e. of his having relationship with the wife of the defendant Mrs. Shazia Bakshi), cannot be sustained as such a relief is beyond the scope of Section 39 of the Specific Relief Act, 1963 which provides that, *"When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."*

11. Learned counsel submits that the defendant owes no obligation to the plaintiff - contractually or otherwise, and consequently there is no question of the court issuing a mandatory injunction to the defendant to prevent the breach of such an obligation, or compel performance of a non-existing obligation.

12. Learned counsel for the plaintiff submits that his wife i.e. the erstwhile defendant No. 2, admitted having committed adultery while entering into the settlement/agreement dated 17.06.2010 above referred to. She has admitted to committing mistakes. She has also admitted that the plaintiff did not have any illicit relationship with the wife of defendant No. 1-Mrs. Shazia Bakshi.

13. With these submissions, learned counsels have prayed that respective applications be allowed, and those of the opposite party be dismissed.

14. I first proceed on to determine the legal issue: Whether, the leaving of the allegedly defamatory material on the internet/facebook page gives rise to a fresh cause of action every moment the said offending material is so left on the webpage – which can be viewed by others at any time, or whether the cause of action arises only when the offending material is first posted on the webpage/internet.

15. Learned counsel for the plaintiff has not substantiated his aforesaid submission with any case law or other academic discussion on the subject. I have, therefore, endeavored to examine the issue on my own. I have not come across any Indian case law on the subject, vis-à-vis internet publications. I have, therefore, proceeded to go beyond the Indian boundaries to see as to how this issue has been dealt with in other jurisdictions. In a nutshell, there are two conflicting legal positions, one being followed in U.K till recently - and this is still followed in Australia, Canada and Germany, and the other in U.S.A., France and, now the U.K. The earlier U.K. view was based on a long standing rule in defamation cases- that every time an article or statement is published or republished, it creates an individual, discrete, actionable, defamatory statement upon which one can sue, generally known as the "multiple publication rule".

16. The multiple publication rule was first developed in England in the case of ***Duke of Brunswick v. Harmer***, (1849) 14 QB 185. In 1847, the Duke was given a copy of the newspaper that contained material defamatory of him which had been published 17 years earlier. While upholding the claim for damages as being within limitation, the Court held that the limitation period of 6 years re-started when Duke viewed the publication. In

Godfrey v. Demon Internet Limited, (2001) QB 201, the same rule was applied to the internet. Moorland J observed:

> "*In my judgment the defendants, whenever they transmit and whenever there is transmitted from the storage of their news server a defamatory posting, publish that posting to any subscriber to their ISP who accesses the newsgroup containing that posting*."

17. The U.K. Government in a consultation paper – (the Multiple Publication Rule CP 20/09) describes the multiple publication rule as follows:

> "*The effect of the multiple publication rule in relation to online material is that each "hit" on a webpage creates a new publication, potentially giving rise to a separate cause of action, should it contain defamatory material. Each cause of action has its own limitation period that runs from the time at which the material is accessed. As a result, publishers are potentially liable for any defamatory material published by them and accessed via their online archive, however long after the initial publication the material is accessed, and whether or not proceedings have already been brought in relation to the initial publication*."

18. The effect of the Multiple Publication Rule is that the limitation period runs from the date of the last publication of the defamatory statement, allowing the affected party to sue many years after the statement was first made. In the case of archived materials, an action could follow decades after the original publication of the material.

19. The Multiple Publication Rule has been followed by the Australian Courts in ***Dow Jones & Co. Inc v. Gutnick***, (2002) HCA 56. The High

Court of Australia explicitly rejected calls to abolish the said rule in favour of the Single Publication Rule. The court rejected the argument that the Single Publication Rule be adopted for policy reasons, as it would be impossible for a publisher on the internet to protect itself against all the laws in every jurisdiction of the world. The High Court held that defamation proceedings sought to strike a balance between both - the rights of the publisher and the person who is the subject of the publication and whose rights would be severely constrained by the Single Publication Rule advocated by the applicant Dow Jones & Co. Inc.

20. There were several occasions when the English courts rejected the call to abandon the Multiple Publication Rule. Reference may be made to ***Berezovsky v. Michaels***, (2001) WLR 104 and ***Loutchansky v. Times Newspapers Ltd.***, (2002) QB 783. Lord Philips of Worth Matravers MR, while delivering the court's judgment observed:

> *"We do not accept that the rule in the Duke of Brunswick imposes a restriction on the readiness to maintain and provide access to archives that amounts to a disproportionate restriction on freedom of expression. We accept that the maintenance of archives, whether in hard copy or on the Internet, has a social utility, but consider that the maintenance of archives is a comparatively insignificant aspect of freedom of expression. Archive material is stale news and its publication cannot rank in importance with the dissemination of contemporary material. Nor do we believe that the law of defamation need inhibit the responsible maintenance of archives. Where it is known that archive material is or may be defamatory, the attachment of an appropriate notice warning against treating it as the truth will normally remove any sting from the material."*

Leave to appeal to the House of Lords was rejected.

21. An appeal was then preferred before the European Court of Human Rights (ECHR), seeking to enforce the newspapers right to freedom of expression under Article 10 of the European Convention of Human Rights (reported as ***Times Newspapers Ltd. – (Nos.1 and 2) v. United Kingdom (2009) EMLR 14***). While recognizing the importance of the press in disseminating information and acting as a public watchdog, the ECHR observed that the press also had the responsibility to protect the rights and reputations of the private individuals about whom it wrote. It was held that the interference with the rights of the press, in the facts of that case, was not disproportionate. It was held that the newspapers could have continued to maintain its archive without fear of litigation, had they placed a notice with the archived material thereby indicating that it was the subject of litigation, or had been found to contain defamatory comments - a solution offered by the Court of Appeal in that case. Since the action had been initiated within 18 months of the publication taking place, it was held that the defendant had not been required to defend an action many decades after the first publication had been made. Significantly, the court held:

> "*The Court would, however, emphasise that while an aggrieved applicant must be afforded a real opportunity to vindicate his right to reputation, libel proceedings brought against a newspaper after a significant lapse of time may well, in the absence of exceptional circumstances, give rise to a disproportionate interference with press freedom under Article 10*."

22. Therefore, even though the ECHR did not interfere with the decision of the English Court in the facts of the case, it did indicate that if the action was brought after a significant lapse of time, the situation could well have been different.

23. The Canadian Courts have also followed the earlier British Multiple Publication Rule. In ***Carter v. B.C. Federation of Foster Parents Association***, 2005 BCCA 398, the court of appeal for British Columbia preferred to follow the then prevailing English legal position over the American view by observing:

> "*18. ... . Although it is difficult to find an express statement in the Canadian cases about the single publication rule, the clear tendency of the authorities in my view is in favour of the English and the Australian position and not in favour of the American position*".

24. I may also refer to the decision of the Court of Appeal for Ontario in ***Shatif v. Toronto Life Publishing Co. Ltd.***, (2013) ONCA 405. While considering the issue, section 6 of the Libel and Slander Act, R.S.O 1990 c.L. 12 was considered by the court, which reads as follows:

> "*An action for a libel in a newspaper or in a broadcast shall be commenced* ***within three months after the libel has come to the knowledge of the person defamed****, but, where such an action is brought within that period, the action may include a claim for any other libel against the plaintiff by the defendant in the same newspaper or the same broadcasting station within a period of one year before the commencement of the action*". (emphasis supplied)

25. The court rejected the Single Publication Rule - applied by the American Courts, with the following observation:

"[31] However, the single publication rule has been rejected in England: see Berezovsky v. Michaels, *[2000] 2 All E.R. 986 (H.L.);*Loutchansky v. Times Newspapers Ltd., *[2002] Q.B. 783 (C.A.); in Australia: see* Dow Jones and Co. Inc. v. Gutnick, *[2002] H.C.A. 56, 2010 C.L.R. 575; and by the British Columbia Court of Appeal: see* Carter v. B.C. Federation of Foster Parents Assn.,*2005 BCCA 398 (CanLII), 2005 BCCA 398, 257 D.L.R. (4th) 133. And the motion judge refused to apply the rule in this case.*

[32] I, too, would not apply the single publication rule for three reasons. First, the rule does not fit comfortably with the words of s.6 of the Act. The single publication rule is based on publication of an alleged libel. Successive publications are considered a single publication and the date of the first publication triggers the running of the limitation period. Under s. 6 of Ontario's Act, the date when the libel first came to the plaintiffs' knowledge, not the date of publication, triggers the running of the limitation period.

[33] Moreover, the recapture provision in s. 6 is inconsistent with a single publication rule. A simple example will illustrate the inconsistency. Take a case where the same libel is published and later republished, and the plaintiff sues for damages for the republished libel. Section 6 would allow the plaintiff to recapture the earlier libel. In effect, s. 6 recognizes two separate libels; the single publication rule recognizes only one.

[34] Second, the jurisprudence of this court has, implicitly at least, rejected the single publication rule. In Weiss v. Sawyer, (2002) 61 O.R. (3d) 526 (C.A.), *at para. 28, Armstrong J.A. affirmed the traditional English rule: "Every republication of a libel is a new libel."`*

[35] Third, even if we were to consider a single publication rule in Ontario, I would not apply it across different mediums of communication. In my opinion, it would be unfair to plaintiffs to apply the rule to publications that are intended for different groups or that may reach different audiences. Even in American states that apply the single publication rule, at least

one state, California, has rejected its application for reprinting or republication in a different form: see Kanarek v. Bugliosi *(1980), 108 Cal. App. 3d 327. Also, the* Restatement of the Law, Second: Torts *(American Law Institute, 1977) states that the single publication rule does not include separate aggregate productions on different occasions. If the publication reaches a new group, the repetition justifies a new cause of action. See s. 577A.*

[36] Applying the single publication rule where, as in this case, the original publication is in print and the republication is on the internet could create a serious injustice for persons whose reputations are damaged by defamatory material. A plaintiff may not want to expend the time and resources to sue for an alleged libel in a magazine, which has a limited circulation and a limited lifespan. The plaintiff may consider the magazine's circulation insufficient to warrant a lawsuit.

[37] However, a plaintiff may well want to spend the time and money to sue if the alleged libel is on the magazine's website and accessible on the internet. Unless the article is removed from the website, its circulation is vast, its lifespan is unlimited, and its potential to damage a person's reputation is enormous. Yet, if a single publication rule is applied, the plaintiff's claim may be statute barred before real damage to reputation has occurred".

26. At this stage, I may note that the decision in this case was, inter alia, based on, firstly, the express language of section 6 of the Libel and Slander Act, as set out herein above, as also the fact that after the original publication had been made in print, the same was re-published on the internet. The re-publication of the same article on the internet would constitute a fresh publication, as it was directed towards a different set of people than those covered by the first publication in print media.

27. In Ireland, the Multiple Publication Rule was abolished by the introduction of the Defamation Act, 2009. The Government appointed legal advisory group of defamation, 2003 advocated, inter alia, introduction of the Single Publication Rule. Section 38(1)(b) of the Defamation Act, after amendment, reads as follows:

> "*For the purposes of bringing a defamation action within the meaning of the Defamation Act 2009, the date of accrual of the cause of action shall be the date upon which the defamatory statement is first published and, where the statement is published through the medium of the internet, the date on which it is first capable of being viewed or listened to through that medium*".

28. Recently, in the United Kingdom, the law has changed with the enactment of the Defamation Act, 2013. Section 8 has introduced the Single Publication Rule, which reads as follows:

> *"8. Single publication rule*
>
> *(1) This section applies if a person—*
>
> *(a) publishes a statement to the public ("the first publication"), and*
>
> *(b) subsequently publishes (whether or not to the public) that statement or a statement which is substantially the same.*
>
> *(2) In subsection (1) "publication to the public" includes publication to a section of the public.*
>
> *(3) For the purposes of section 4A of the Limitation Act 1980 (time limit for actions for defamation etc) any cause of action against the person for defamation in respect of the subsequent publication is to be treated as having accrued on the date of the first publication.*

(4) This section does not apply in relation to the subsequent publication if the manner of that publication is materially different from the manner of the first publication.

(5) In determining whether the manner of a subsequent publication is materially different from the manner of the first publication, the matters to which the court may have regard include (amongst other matters)—

(a) the level of prominence that a statement is given;

(b) the extent of the subsequent publication.

(6) Where this section applies—

(a) it does not affect the court's discretion under section 32A of the Limitation Act 1980 (discretionary exclusion of time limit for actions for defamation etc), and

(b) the reference in subsection (1)(a) of that section to the operation of section 4A of that Act is a reference to the operation of section 4A together with this section".

29. Therefore, the Multiple Publication Rule followed in the United Kingdom by the courts since ***Duke of Brunswick*** (supra), has statutorily been overruled. It would be interesting to observe the course of developments that may now take place in other commonwealth jurisdictions like Australia and Canada, post the aforesaid development in the United Kingdom.

30. As noticed above, the second principle is what the American Courts call the "Single Publication Rule". It states that the publication of a book, periodical or newspaper containing defamatory material gives rise to only one cause of action for defamation, which implies, that the limitation period starts to run at the time the first publication is made, even if copies continue to be sold several years later. The rule has a long history. It was first

developed in 1938 in respect of newspapers, in ***Wolfson v Syracuse Newspapers , Inc*** *(1939)279 NY 716.* Then it was applied to books in 1948 in the case of ***Gregoire v G.P Putnam's Sons*** *(1948) 298 NY119* . The facts of this case were that a book was originally put on sale in 1941. It had been reprinted seven times, and was still being sold from stock in 1946. The New York Court of Appeals held that the limitation period started to run in 1941 , when the book was first put on sale.

31. In ***Gregoire*** (supra), the New York Court did not accept the rule as set out in ***Duke of Brunswick*** (supra), as it had its origin in an era which long antedated the modern process of mass publication. The said rule, it was held, was no longer suited to modern conditions. The court held that under such a rule, the period of limitation would never expire so long as a copy of the published material remained in stock and is made by the publisher, the subject of a sale or inspection by the public. Such a rule would thwart the purpose of the legislature which is to bar completely and forever all actions which overpass the prescribed limitation period.

32. The Single Publication Rule is encapsulated in the American Law Institutes Uniform Single Publication Act, 1952. It is set out in Article 577A of the 2nd Restatement of Torts (197) as follows:

> "*(1) Except as stated in subsections (2) and (3), each of several communications to a third person by the same defamer is a separate publication.*
>
> *'(2) A single communication heard at the same time by two or more third persons is a single publication.*

'(3) Any one edition of a book or newspaper, or any one radio or television broadcast, exhibition of a motion picture or similar aggregate communication is a single publication.

'(4) As to any single publication, (a) only one action for damages can be maintained; (b) all damages suffered in all jurisdictions can be recovered in the one action; and a judgment for or against the plaintiff upon the merits of any action for damages bars any other action for damages between the same parties in all jurisdictions."

33. In 2002, the New York Court of Appeals, applied the single publication rule to a website publication in ***Firth v State of New York*** *(2002) NY int 88*. This appeal presented the first occasion for that court to determine how the defamation jurisprudence, developed in connection with traditional mass media communications, applies to communications in a new medium- cyberspace- in the modern information age. In this case a report had been published at a press conference on 16.12.1996, and placed on the internet on the same day. The Claimant, however, did not file a claim for over a year. The Court found that the limitation period started when the information was first placed on the website, and not from each "hit" received. Levine, J. observed that "*In addition to increasing the exposure of publishers to stale claims, applying the multiple publication rule to a communication distributed via mass media would permit a multiplicity of actions, leading to potential harassment and excessive liability, and draining of judicial resources (see Keeton v. Hustler Mag., Inc., 465 US 770, 777 [1984]*)". The court further held that the policies impelling the original adoption of the single publication rule *"are even more cogent when considered in connection with the exponential growth of the instantaneous ,*

worldwide ability to communicate through the internet." The alternative would give *"even greater potential for endless retriggering of the statute of limitations, multiplicity of suits and harassment of defendants."* The court further observed that if the single publication rule is not upheld with regard to internet publications, then "*Inevitably, there would be a serious inhibitory effect on the open, pervasive dissemination of information and ideas over the internet, which is, of course, its greatest beneficial promise."*

34. The court also rejected the argument that re-publication re-triggered the period of limitation. The court observed that re-publication occurs:

> "*upon a separate aggregate publication from the original, on a different occasion, which is not merely "a delayed circulation of the original edition" (Rinaldi v Viking Penguin, Inc., 52 NY2d at 435; Restatement [Second] of Torts § 577A, Comment d, at 210, supra). The justification for this exception to the single publication rule is that the subsequent publication is intended to and actually reaches a new audience (see Rinaldi, 52 NY2d at 433 [citing Cook v Conners, 215 NY 175 (1915)]; Restatement, Comment d). Thus, for example, repetition of a defamatory statement in a later edition of a book, magazine or newspaper may give rise to a new cause of action (seeRinaldi, 52 NY2d at 433-435 [hard-cover and paperback editions of the same book]; see also Cook v Conners, 215 NY at 179 [morning and afternoon editions of newspapers owned and published by the same individual]).*
>
> *The mere addition of unrelated information to a Web site cannot be equated with the repetition of defamatory matter in a separately published edition of a book or newspaper, as in Rinaldi and Cook. The justification for the republication exception has no application at all to the addition of unrelated material on a Web site, for it is not reasonably inferable that*

the addition was made either with the intent or the result of communicating the earlier and separate defamatory information to a new audience".

35. In 2005, the Superior Court of New Jersey, Appellate Division, in ***Scott Churchill & Anr v State of New Jersey****, 378 N.J. Super. 471,478 (App. Div. 2005)* discussed elaborately on the question of whether the "single publication rule" applies to publication on the internet. It was held that:

"*New Jersey follows the single publication rule for mass publications under which a plaintiff alleging defamation has a single cause of action, which arises at the first publication of an alleged libel, regardless of the number of copies of the publication distributed or sold. Barres v. Holt, Rinehart & Winston, Inc., 131 N.J.Super. 371, 374-375, 379, 390 (Law Div.1974), aff'd o.b., 141 N.J.Super. 563, (App.Div.1976), aff'd o.b., 74 N.J. 461, (1977). See also Restatement (Second) of Torts § 577A(3) (1977) ("Any one edition of a book or newspaper, or any one radio or television broadcast, exhibition of a motion picture or similar aggregate communication is a single publication."). In adopting the single publication rule for mass publications, New Jersey rejected the traditional multiple publication rule under which each repetition of a libel, for example, each sale of a publication, would create a new cause of action. Barres, supra, 131 N.J.Super. at 374-375,"*

The single publication rule prevents the constant tolling of the statute of limitations, effectuating express legislative policy in favor of a short statute of limitations period for defamation. It also allows ease of management whereby all the damages suffered by a plaintiff are consolidated in a single case, thereby preventing potential harassment of defendants through a multiplicity of suits. Id. at 379, 387-388. Accord, Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 777, 104 S. Ct. 1473, 1480, 79 L. Ed. 2d 790, 799 (1984); Gregoire v. G.P. Putnam's

Sons, 81 N.E.2d 45, 47-49 (N.Y. 1948); Restatement (Second) of Torts, supra, § 577A. Finally, the single publication rule is more consistent with modern practices of mass production and widespread distribution of printed information than the multiple publication rule. Barres, supra,131 N.J. Super. at 380-381 (citing Gregoire, supra, 81 N.E.2d at 46-47).

36. The question was again addressed by the superior court of New Jersey, Appellate Division, in a recent case entitled, ***Soloman v Gannett Co. Inc*** *(Docket No. A-6160-11T4) decided on 26.06.2013*. In this case, the plaintiff was subject of a news article posted on the internet which he alleged to be defamatory. However, he filed a suit, beyond the period of one year after the initial publication on the website. The plaintiff took the position that it was not time barred because it had been republished each time the Defendant changed advertisements on the site to reach a new or broader audience. The Court disagreed, and determined that the case was time barred under the principle enunciated in ***Churchill*** *(Supra)*.

37. In formulating my view, I have benefitted from the articles by Ursula Connolly titled "Multiple Publication and Online Defamation – Recent Reforms in Ireland and the United Kingdom" published in 2012; the article published in Harvard Law Review, Vol.123:1315 titled "The Single Publication Rule and Online Copyright : Tensions between Broadcast, Licensing and Defamation Law", apart from the U.K. Government consultation paper – "The Multiple Publication Rule CP 20/09".

38. I am of the view that the Single Publication Rule is more appropriate and pragmatic to apply, rather the Multiple Publication Rule. I find the reasoning adopted by the American Courts in this regard to be more

appealing than the one adopted by the English Courts, prior to the amendment of the law by the introduction of the Defamation Act, 2013. It is the policy of the law of limitation to bar the remedy beyond the prescribed period. That legislative policy would stand defeated if the mere continued residing of the defamatory material or article on the website were to give a continuous cause of action to the plaintiff to sue for defamation/libel. Of course, if there is re-publication resorted to by the defendant - with a view to reach the different or larger section of the public in respect of the defamatory article or material, it would give rise to a fresh cause of action.

39. The alleged libelous posting on Facebook, as averred in the plaint, was posted on around 26.10.2008, 27.10.2008 and even the booklet containing the allegedly defamatory material concerning the plaintiff is said to have been circulated around 25.12.2008. In view of the same, the limitation period for the suit expired on 25.12.2009.

40. Since the suit to claim damages for libel has not been filed within the period of limitation of one year from the date when the cause of action arose, i.e. when the libel was published, the said claim is barred by limitation.

41. The second relief sought by the plaintiff is that the defendant be mandatorily injuncted to tender an unconditional apology by publication in two national dailies/sites on the internet, stating that they withdraw the false and malicious allegations made against the plaintiff. Firstly, this relief is also barred by limitation, because the cause of action arose, as aforesaid, on or about 26.10.2008, 27.10.2008 or 25.12.2008 and expired on 25.12.2009.

The grant of the said mandatory injunction is premised on the foundation that the alleged postings on the facebook page or the printed materials was libelous qua the plaintiff. The said issue cannot be examined – the suit not having been filed within the period of limitation of one year from the date of publication. Consequently, the relief of mandatory injunction is also barred by limitation. Secondly, to claim this relief, the plaintiff has to establish that the defendant owes an obligation to the plaintiff, and to prevent the breach of the said obligation, it is necessary to compel the performance of requisite acts (See Section 39 Specific Relief Act, 1963). In the present case, even if it were to be accepted that the defendant owed a legal obligation to the plaintiff not to make or publish libelous statements against the plaintiff, the said obligation already stands breached according to the plaintiff. Therefore, there is no question of now preventing the breach of the said obligation. It is not a case where the plaintiff has approached the Court before the alleged publication of the libelous materials (as claimed by the plaintiff), and the plaintiff is seeking a preventive injunction, or a mandatory injunction to prevent the breach of the defendants legal obligation not to defame the plaintiff. Consequently, the said relief sought by the plaintiff cannot be granted in the facts of the present case, even if all the material averments of the plaintiff are accepted as correct-which this Court must assume to be true at this stage while dealing with the applications. I also find merit in the defendants other application under Order 7 Rule 11 CPC being I.A. No.13629/2011. In ***Arun Kumar Aggarwal*** *(supra)*, the court held as follows:

> *"6. Section 13(1)(i) provides that any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, after solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse. A petition under Section 13(1)(i) necessarily therefore involves an allegation of voluntary sexual intercourse by the spouse with a third party. Where such adulterer is named in the petition and evidence is let in to show that the spouse had intercourse with such person, the Court will have to record a finding that the spouse had voluntary sexual intercourse with such named person.* ***There is no gainsaying that such a finding/decision will adversely affect the reputation of the person who is alleged to have committed the adulterous act. Public interest and principles of natural justice require that the person concerned should have an opportunity to defend his reputation before such a finding is recorded. It is precisely for this reason that Rules framed by several High Courts (Allahabad, Andhra Pradesh, Mumbai, Delhi, Gujarat, Himachal Pradesh, Kerala, Chennai, Orissa, Patna, Punjab and Rajasthan) specifically require that the alleged adulterer should be impleaded as a co-respondent in a petition under Section 13(1)(i) of the Hindu Marriage Act, even though no relief may be claimed against him. ..As observed by a Division Bench of Calcutta High Court in Sikha Singh v. Dina Chakrabarty and Ors., : AIR1982Cal370 the rule requiring joinder of the adulterer as a co-respondent proceeds on a public policy to prevent collusion and character assassination".*** *(emphasis supplied)*

42. In ***Swaran Kumari Malhotra v Amir Chand Malhotra (****1970) ILR Delhi 673,* the husband in his divorce petition had not complied with rule 10 of the Rules framed by the Delhi High Court in exercise of the powers conferred on it by section 21 of the HMA, and had not impleaded all the alleged adulterers as co-respondents. The question that arose was whether -

in view of the rule made by the High Court, such a petition would be incompetent. The court held as under:

> *"(6) The word "adulterer" used in singular in this rule will include the plural of this word also (vide section 13 of the General Clauses Act) with the result that in case of a petition filed on the ground of* adultery *where* adultery *is alleged with more than one person, the petitioner is bound to implead all the adulterers as a party to the petition. The use of the word "shall" in this provision further makes it clear that this requirement is mandatory. The reason for it appears to be obvious.* ***It is the basic principle of jurisprudence that no person shall be condemned unheard. In the case of a petition for divorce on the ground of adultery the petitioner does not seek any direct relief against the adulterer but the character, and conduct of the alleged adulterer is very much before the court and the court is called upon to pronounce judgment over it. In keeping with the principles of natural justice the adulterer should, therefore, be a party to these proceedings and this is what the rule has provided.*** *A petition framed in disregard of this rule is defective and should not be allowed to be proceeded with and should be rejected by the trial court unless the petitioner claims to be excused from impleading the adulterer specifically on the grounds mentioned in clauses (a), (b) and (c) of the rule." (emphasis supplied)*

43. In ***M. K Kunhiraman v Santha @ Devaki****, AIR 1998, Ker 189,* the Kerala High Court, held that a petition for divorce under Section 13 (1) of HMA, is not maintainable without impleading such person as a respondent with whom adultery is alleged to have been committed. The court held that in absence of the adulterer, who is a "necessary party", the petition is in contravention of the provisions of the HMA and the rules framed by the High Court.

44. In ***Mirapala Venkata Ramana v Mirapala Peddiraju****, AIR 2000 AP 328,* the Division Bench of the Andhra Pradesh High Court on a similar question held that:

> *"In a case for divorce basing on* adultery*, the adulterer is a necessary party and ought to be made second respondent in the instant case. But, the respondent/husband had failed to implead the alleged adulterer and as such the OP is hit by non-joinder of necessary party."*

45. In ***M Mallika v M. Raju & Anr****, 2005 (2) CTC 28,* the Madras High Court upheld the order of the lower court that presence of the adulterer as a Co-respondent was necessary to adjudicate dispute of divorce based on adultery . The Court further held that in divorce proceedings, the adulterer was necessary party and should have been named and made party in proceedings. In a recent decision of the Andhra Pradesh High court in ***Smt. Ch. Padmavathi v Ch. Sai Babu****,2013 (1) ALD 165*, the Court has held that the alleged adulterer is a necessary and proper party to a proceeding under Sec 13(1)(i)of the HMA Act.

46. From the above catena of decisions, it is well settled that in a suit wherein the plaintiff alleges adulterous relationship against the defendant, both the parties allegedly involved in such adulterous relationship, of necessity, must be parties. The plaintiff cannot choose to implead only one of the two parties involved in the alleged adulterous relationship as a party defendant, while not proceeding against the other. In the present case, the plaintiff consciously impleaded his wife Mrs. Shazia Shaw as defendant no.2. Subsequently, he has voluntarily sought to withdraw the suit qua Mrs. Shazia Shaw by moving I.A. No.10296/2010 under Order 23 Rule 1 CPC on

the basis of the agreement/settlement deed dated 17.06.2010. Having done so voluntarily, the plaintiff cannot seek to proceed with the suit against the defendant – the alleged adulterer, to establish the conduct of the sole defendant vis-à-vis, the erstwhile defendant no.2 and his ex-wife Mrs. Shazia Shaw. This is so, because, it would also be the conduct of Mrs. Shazia Shaw which would be under scrutiny and her reputation would also be at stake, if the suit were to proceed to determine the primary issue as to whether, or not, the sole defendant and Mrs. Shazia Shaw were in an adulterous relationship. Such a finding cannot be returned in the absence of Mrs. Shazia Shaw. It would have been one thing if the suit had originally been filed by the plaintiff against the sole defendant Mr. Asif Nazir Mir. The objection regarding maintainability of such a suit in the absence of Mrs. Shazia Shaw could have been met by impleading Mrs. Shazia Shaw as a party defendant subject, of course, to the law of limitation. However, in the present case, Mrs. Shazia Shaw was initially impleaded as defendant no.2 and was voluntarily and unconditionally deleted from the array of defendants by the plaintiff, by giving up his claim against Mrs. Shazia Shaw. Therefore, once having given up his claim against Mrs. Shazia Shaw, the plaintiff cannot seek to bring her back as a party defendant. Any such move would not only be hit by Order 23 Rule 1 CPC, which not only bars the plaintiffs relief qua Mrs. Shazia Shaw, but would also be contrary to the settlement arrived at between the plaintiff and the erstwhile defendant no.2 Mrs. Shazia Shaw contained in the application under Order 23 Rule 1 CPC being I.A. No.10296/2010. The purport of the said settlement is that the plaintiff gave up his right to seek a trial of the issue whether the erstwhile defendant No. 2 was in an adulterous relationship with the defendant. The

plaintiff, who is shown as the second party in the agreement/settlement dated 17.06.2010, inter alia, expressly agreed to withdraw the present suit being Suit No.290/2009 pending in this court against the first party i.e. Mrs. Shazia Shaw. Consequently, the plaintiff cannot be permitted to proceed, either, by impleading Mrs. Shazia Shaw, or in her absence against the sole defendant, as the nature of allegations against the sole defendant impinge on the name, reputation and conduct of Mrs. Shazia Shaw. The plaintiff should have been mindful of this consequence when he entered the settlement deed dated 17.06.2010 with Mrs. Shazia Shaw. He did so voluntarily and at his own peril.

47. In view of the aforesaid, I.A no 13629/2011 and 14479 /2011 are allowed and the suit is dismissed as being barred by limitation and also as not being maintainable against the defendant. Accordingly, I.A No.13630/2011 and I.A. No. 8404/2013 also stand disposed of as having become infructuous.

VIPIN SANGHI, J.

NOVEMBER 07, 2013