

Ashwini

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 337 OF 2014

Taher Fakhruddin Saheb alias Taherbhai K

Qutbuddin alias Taher Bhai Qutubuddin

...Plaintiff

Versus

Mufaddal Burhanuddin Saifuddin

...Defendant

WITH

INTERIM APPLICATION NO. 1152 OF 2021

IN

SUIT NO. 337 OF 2014

Mufaddal Burhanuddin Saifuddin

...Applicant

Versus

Taher Fakhruddin Saheb alias Taherbhai K

Qutbuddin alias Taher Bhai Qutubuddin

... Respondent

Mr Anand Desai, with Mr Chirag Mody, Mr Nausher Kohli & Ms Saloni Shah, i/b DSK Legal, for the Plaintiff in Suit and for the Respondent in Interim Application.

Mr Iqbal Chagla, Senior Counsel, with Mr Fredun DeVitre, Senior Counsel, Mr Pankaj Savant, Senior Counsel, Mr Firdosh Pooniwalla, Mr Shahen Pradhan & Mr Murtaza Kachwala, i/b Argus Partners for the Defendant in Suit and for the Applicant in Interim Application.

CORAM: G.S. PATEL, J

(Through Video Conferencing)

DATED: 21st June 2021

PC:-

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1. Heard through video conferencing.
2. The Interim Application is by the Defendant. It raises a matter of very serious concern. That concern relates to the very integrity of the trial in the suit, presently going on before me.
3. The specific complaint of the Defendant is that, despite an express direction, the Plaintiff apparently made available or gave access to trial records although the trial is incomplete; or impermissibly referenced and circulated some third-party material that quoted parts of the cross-examination before me.
4. The 2nd Respondent is an Udaipur-based newspaper, the *Udaipur Times*. Somehow, it seems to have got access to one or more sessions of the cross-examinations of witnesses before me. It is unclear whether the Udaipur Times was provided this material (viz., transcripts of the cross-examinations) or one of its reporters was present at the cross-examinations, which were being conducted online, and took down and then reproduced bits and pieces of the questions and answers. The result is the same — an entirely impermissible reporting of the actual trial before it is complete.
5. The material annexed to the Interim Application indicates that a journalist or reporter with the Udaipur Times did indeed have access to the trial record or the trial itself. That newspaper

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published extracts of the cross-examination. Whether or not these are verbatim reproductions of the transcripts will need to be more closely examined at a later date. If indeed they are exact reproductions, then the matter is even more serious because the transcripts are unavailable to anyone except the two parties, their legal teams and the Court. They are certainly not made available to the press. They are not uploaded online.

6. That is not all. The Udaipur Times's newsreports — and I use that expression very loosely — also have editorial comments on the cross-examination itself, including comments about Mr Chagla, learned Senior Advocate for the Defendant, and even some commentary about me as the Judge presiding over the trial.

7. There are, therefore, two separate issues, though linked. The first is the conduct of the Plaintiff. This will need to be assessed in the context of previous orders, specifically the orders dated 9th July 2018, 5th October 2020 and the protocol for online cross-examination that was agreed on and which I made an order of the Court on 5th October 2020.

8. The Plaintiff will need to explain how, despite the unambiguous wordings of these orders he believed he was entitled to circulate the Udaipur Times articles. He must also explain, if he can, how the Udaipur Times had access to the trial records.

9. One of the prayers in the Interim Application is for a direction to the Plaintiff to remove links to the online reports and articles

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annexed as Exhibits 'F' and 'I' to the Interim Application. It seems that the Plaintiff thought it was perfectly all right to put these links on social media. It is most emphatically not all right.

10. If the Plaintiff believes that a litigation like this is going to be more satisfactorily addressed on social media or in print media, he is welcome to invite a dismissal of his suit, one that I will accompany with an extremely significant order of costs.

11. It is the Plaintiff who chose to come to this Court. He is therefore rigidly subject to the Court's discipline, procedures and rules. It makes not the slightest difference who the Plaintiff is or he imagines himself to be.

12. I demand an explanatory affidavit personally from the Plaintiff with an appropriately worded apology and an undertaking. The exact wording of that I will leave to Mr Desai. I also expect the Plaintiff to be personally present at the next online hearing. I am making it clear that if there is a single infraction after this, no matter how slight, I will not only proceed in contempt — if necessary, suo motu since there is no prayer for contempt — against the Plaintiff for interfering with the administration of justice among other things, but I will also immediately dismiss the suit and, as I said I, will do so with costs. Under no circumstances will there be a repeat of any of this. On the next date, I will in fact consider an order to the effect that from now until the judgment is delivered, the Plaintiff is not to make any comment on any media under his control except, at most,

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to say that the matter is still pending. I will leave that for the next date.

13. The Udaipur Times has much to answer for. I do not know how it gained access. I do not know to what it gained access, or when. It is true that I did permit reporters to attend the online hearings and cross-examination session; more accurately, I did not bar them. This was subject to some restrictions, which were well-known. Among these was the requirement that every reporter had to identify himself or herself by name and the name of the publication. I do not know if the Udaipur Times did that. Even if the transcripts are not online, orders of this Court most certainly are. The Udaipur Times, prima facie, could not have been unaware of these restrictions. If it obtained the transcripts from the Plaintiff or somebody on behalf of the Plaintiff, then that is indeed very serious. If one of its reporters had joined the Court proceedings online and took down portions of the cross-examination verbatim, then that is no less serious. As a general rule, reproductions of ongoing trials are not permitted and every journalist knows this or is expected to know this. There have been other newspaper reporters in Court and so far, at least as far as we are aware, not one has gone to this extent. In this matter there were specific protocols in addition because of the deep interest and concern of the Dawoodi Bohra community. That is all the more reason the Udaipur Times ought to have been more circumspect.

14. The Interim Application does not presently contain a prayer in contempt. That does not prevent me, if necessary, from exercising my contempt jurisdiction suo moto. At present, I will not

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do that. Instead, I will require the Udaipur Times to appear before me online (the link is given below) either through an authorized representative or by an Advocate duly instructed to explain its conduct.

LOGIN LINK <https://bombayhighcourt.webex.com/meet/rg-bhc>
MEETING ID 170 478 6692

15. Mr Chagla states that a copy of the Interim Application has been served on the Udaipur Times, the 2nd Respondent. There is a delivery report by the courier.

16. The Advocates for the Defendant will send a copy of this order to Udaipur Times by email and courier.

17. The Udaipur Times is to appear before this Court on 19th July 2021.

18. In addition, the Prothonotary and Senior Master of this Court is requested to urgently issue a notice to the Udaipur Times at the physical address given in the cause-title and at the email address provided by the Advocates for the Defendant. The notice from the Court will accompany with an authenticated copy of this order.

19. If the Udaipur Times seeks to file an Affidavit in Reply, that must be done no later than by 6th July 2021. Copies must be served on the Advocates for the Defendant and the Advocates for the Plaintiff.

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20. An Affidavit in Reply is also to be filed by the Plaintiff personally and served on or before 6th July 2021.

21. List the matter high on board on 19th July 2021.

(G. S. PATEL, J)