



2025:DHC:9658-DB



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

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*Judgment reserved on: 09.10.2025*

*Judgment pronounced on: 04.11.2025*

+ RFA(OS) 104/2014

ANURADHA BHATTACHARJEE .....Appellant

Through: Ms. Prachi Johri and Ms.  
Mrigangi Parul, Advs.

versus

ANU RADHA .....Respondent

Through: Mr. Gurmeet Singh Narula and  
Mr. Vijender Singh, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**

### **J U D G M E N T**

#### **ANIL KSHETARPAL, J.**

1. Through this appeal filed under Sections 96 and 151 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'], the Appellant challenges the Judgment dated 07.03.2014 passed by the learned Single Judge in CS(OS) 825/2013 captioned **Anuradha Bhattacharjee vs. Anu Radha**, wherein the Appellant's suit for injunction and damages was dismissed.

2. By the said judgment, it was held that the claim for permanent injunction did not survive. For the relief of damages, the learned Single Judge, without framing issues or affording an opportunity to lead evidence, held that no cause of action had accrued to the Appellant against the Respondent for recovery of damages. The issue for consideration before us is whether a civil suit seeking damages for



unauthorised use of the Appellant's name as a researcher/expert can be dismissed without providing an opportunity to her to prove a case.

### **BRIEF BACKGROUND**

3. It is appropriate to refer to the facts of the present matter to understand the scope of the Appeal. The Appellant claims to be a historian and the Respondent is a film-maker. The Appellant holds a PhD from the University of Pune for her research on the history of the Polish Refugees during the Second World War [Between 1942-48]. In reference to this, a book titled "The Second Homeland: Polish Refugees in India" has also been published by the Appellant in the year 2012.

4. Through execution of the Rights Acquisition and Consultancy Agreement dated 26.06.2011, the Appellant granted M/s. Primehouse GmbH, Germany [hereinafter referred to as "Primehouse"] exclusive rights for the use, publication, and dissemination of her doctoral thesis, books, articles, interviews, and other related intellectual works for a period of two years.

5. The Respondent, by an email dated 01.05.2011, offered the Appellant a position as a consultant for a film titled "Little Warsaw of Kathiawar" for a sum of Rs. 50,000/-. The Appellant asserts that this was the first instance in which the Respondent indicated any intention to establish an association with her. However, the Appellant declined the offer by email dated 04.05.2011, informing the Respondent about her two-year exclusive contract with the Primehouse.



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6. Subsequently, Primehouse sent a legal notice dated 13.08.2012 to the Respondent asking it to cease and desist the preparation of an audio-visual production namely “Little Warsaw of Kathiawar” which was based on the Appellant’s thesis and books whereby the Appellant is also named to be working as an Expert and researcher of the project. Additionally, the legal notice also called upon the Respondent to stop using the consultancy services of the Appellant for the said project, thereby desisting the further infringement of her works

7. In response to the above notice, the Respondent, by an email dated 13.08.2012, stated that the said audio-visual production neither infringes nor uses the works of the Appellant and is solely based on the Respondent’s personal research of material available in the public domain.

8. It is the case of the Appellant that the Respondent has used her name in the Concept Note submitted to the Government for having the audio-visual production funded on 18.12.2012, which was submitted after she refused to be associated with the project of the Respondent. The Respondent has consistently taken the stand that the Concept Note was submitted well before the rejection, and only names the Appellant as an Expert in the field, with no indication of her being involved in the project.

9. Thereafter, the Appellant instituted the writ petition bearing W.P.(C) No. 802/2013 against the Respondent, which was withdrawn on 11.02.2013, with liberty to adopt an alternate remedy. The



Appellant, accordingly, filed Suit No. 08/2013 before the Civil Judge, Patiala House Courts, New Delhi; however, it was returned *vide* Order dated 15.04.2013 to be presented before a Court of competent jurisdiction.

10. The Appellant filed the underlying suit, being CS (OS) No. 825 of 2013, for permanent injunction and damages, seeking the following reliefs:

*“(a) Pass an order permanently restraining the Defendant, her agents, associates, successors, assigns, servants from, in any manner, using, utilizing, referring to her thesis titled “History of Polish Refugees in India 1942-1948” or referring to her book titled “The Second homeland” or to the Plaintiff’s interview as published in “Outlook” magazine in October 2010 in any communication or document in relation to/or in furtherance of her project titled “Little Poland in Kathiawar” or any other representation of Polish Refugees in India during World War II;*

*(b) award damages in favour of the Plaintiff for an amount of Rs. 30 lacs;*

*(c) Pass a decree of declaration declaring the use of the Plaintiff’s name, Plaintiff’s thesis, Plaintiff’s book in any communication, including the Concept Note, with reference to Polish Refugees in India of the Defendant and the Defendant’s proposed film titled “Little Poland in Kathiawar” with any person, Authority or Government is unauthorized and accordingly the same is expunged from the record.*

*(d) Direct the Defendant to expunge the name of the Plaintiff as appearing in her Concept Note dated 5.10.2011 as submitted to Government of India, Government of Gujarat, Embassy of Poland and any other agency.*

*(e) Direct the Defendant to pay to the Plaintiff cost of the present suit.”*

11. During the pendency of the suit, the Appellant filed an application bearing **IA No. 17915/2013**, under Order XXXIX Rules 1 and 2 read with Section 151 of the CPC, seeking an *ad-interim ex*



*parte* injunction restraining the Defendant/Respondent from publishing, releasing, or broadcasting any film or movie on the subject of refugees from Poland residing in Kathiawar, Gujarat during the Second World War, as researched and published by the Plaintiff/Appellant in her works titled “The History of Polish Refugees in India” and “The Second Homeland.” The Appellant further sought an order restraining the Respondent from telecasting or otherwise exhibiting the film titled “Little Poland in India (Documentary)” on Doordarshan (DD National) on 10.11.2013 at 3:00 p.m. or at any time thereafter, during the pendency of the suit.

12. The learned Single Judge, on 08.11.2013, directed the Respondent to make arrangements for viewing of the documentary film in Court and to also provide a soft copy of the script and DVD of the movie to the counsel of the Appellant on that date itself.

13. On 09.11.2013, after viewing the documentary, the Appellant was not able to point out the use of any part of her work/thesis, in which she claims copyright. She stated that she has no grievance with the documentary produced by the Respondent. **IA No. 17915/2013** was, therefore, dismissed on grounds of lack of merit.

14. Subsequently, the civil suit, being **CS (OS) No. 825 of 2013**, was listed for hearing on 07.03.2014. On that date, the counsel for the Appellant conceded that the suit seeking the relief of permanent injunction did not survive. The Respondent, in turn, contended that the claim for damages in the suit also did not survive.



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### **FINDINGS OF THE IMPUGNED JUDGMENT**

15. The learned Single Judge opined that the Concept Note was made as per the prescribed format in which the names of the Experts and Researchers on the subject are required to be mentioned, and the name of the Appellant was mentioned only in this limited context without trying to gain any benefit or advantage of her reputation.

16. It was further held that the Appellant had given her tacit consent to the Respondent to refer to her work available in the public domain and to contact the University where she had submitted the said thesis. The learned Single Judge observed that, having permitted the Respondent to do so, the Appellant cannot now be heard to raise any objection or claim any damages in that regard. Accordingly, the Court found that the plaint, admitted documents, and subsequent events do not disclose any cause of action accruing to the Appellant against the Respondent for recovery of damages. The relevant paragraphs of the Impugned Judgment are extracted hereinbelow:

*“17. I am of the view that the use by the defendant of the name of the plaintiff in the Concept Note is not in a fashion so as to gain any benefit or advantage to the defendant so as to entitle the plaintiff to any damages from the defendant on this account. It appears that as per the prescribed format of the Concept Note, the names of Experts and Researchers on the subject are required to be mentioned and it is only in this context that the name of the plaintiff has been mentioned. The plaintiff, who is admittedly an Expert and Researcher on the subject can certainly have no objection to her name as such Expert/Researcher being referred to. The defendant, in no way portrayed that the plaintiff was associated in any manner with the proposed documentary film or that the same had the patronage or blessings of the plaintiff. All that has been said is that the expert's/researcher's named therein "will be" tailored to / feature in the then proposed film.*



18. *I am also of the view that the communication dated 4<sup>th</sup> May, 2012 supra of the plaintiff clearly shows that though the plaintiff desired to be involved with the project of the defendant but the only thing which stopped her from doing so was her contract with a producer from Germany. It is for this reason only that the plaintiff, though refused to work “formally” with the defendant but nevertheless gave her tacit consent to the defendant to refer to the plaintiff’s work and which the plaintiff assured the defendant was in public domain. Not only so, the plaintiff also permitted the defendant to contact the Pune University where the plaintiff had submitted the said thesis. The plaintiff then treated all the same as a matter of honour for herself and gave the defendant “go ahead” and also agreed to, after verifying with the German producer with whom she had entered into contract, to make an appearance/comment in the documentary film of the defendant.*

19. *The counsel for the plaintiff has today stated that the plaintiff’s thesis is not in public domain and the plaintiff had not made it available to the defendant. However, the admitted communication of the plaintiff suggests otherwise.*

20. *The plaintiff, after having allowed the defendant in this fashion, certainly cannot now be heard to make any objection and to claim damages therefor.*

21. *Even if it were to be held that the Concept Note was submitted by the defendant for the first time on 18<sup>th</sup> June, 2012, as contended by the plaintiff, the communication dated 4<sup>th</sup> May, 2012 of the plaintiff was certainly a permission to the defendant to use the name of the plaintiff in the manner it has been used in the Concept Note.*

22. *The counsel for the defendant otherwise states that the defendant will in future not use the name of the plaintiff or refer to the plaintiff in connection with the aforesaid documentary film or otherwise.”*

17. Being aggrieved, the Appellant has instituted the present appeal against the impugned judgment dated 07.03.2014.

### **SUBMISSIONS MADE ON BEHALF OF THE PARTIES**

18. Learned counsel for the Appellant has advanced the following submissions:



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18.1. The Respondent used the Appellant's name as an "Expert and Researcher" in the Concept and Treatment Note attached with the application dated 05.10.2011 to the Ministry of External Affairs, which was sent on 06.06.2012, without her consent/approval/authority, which has been admitted by the Respondent in her Written Statement dated 07.06.2013.

18.2. The material available on the web, though available freely but is not usable freely for commercial purposes, and the Respondent was duty-bound to cite the source, including the website with the date of access.

18.3. The email dated 04.05.2012 demonstrates the clear refusal of the Respondent's offer, and no tacit consent has been given by the Appellant.

18.4. The Respondent raised funds for her project by misrepresenting the Appellant to be her expert consultant to gain advantage of her reputation, even after the refusal of the Appellant.

18.5. The Appellant has suffered loss by unauthorised use of her name by the Respondent. The *mala fide* acts of the Respondent make the Appellant liable to be sued by Primehouse as it breaches the contract between the Appellant and Primehouse, and for that, she is liable for the relief of damages.

18.6. Reliance has been placed on the judgment of ***D.M. Entertainment (P) Ltd. v. Baby Gift House***<sup>1</sup>, which upheld the right

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<sup>1</sup>2010 SCC OnLine Del 4790





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to publicity and observed that the unauthorized commercial use of a celebrity's persona amounts to infringement and passing off.

19. *Per contra*, learned counsel for the Respondent, while supporting the impugned judgment, has contended that the Respondent, inspired by the historical event, independently researched and created a documentary film initially titled "Little Poland in Kathiawar" (final title: "A Little Poland in India").

20. It has been contended that the Appellant's work narrates the broader story of Polish refugees in India during the Second World War (1942–1948), who were sheltered by Jam Sahib of Jamnagar in Balachadi (Gujarat) and Valivade (near Kolhapur, Maharashtra), whereas the Respondent's documentary, co-produced by the Government of Gujarat, Doordarshan, National Audio-Visual Institute, and Polish Television, focuses narrowly on five Polish survivors who had lived in Jamnagar and Balachadi as children, with their consent and approved the script prepared by the Respondent.

21. Learned counsel states that the Respondent had first circulated the Concept Note regarding the project in October 2011, and the name of the Appellant, along with other researchers/writers, was included as experts on the subject. However, after the offer was refused, the Appellant's name was removed.

22. It is stated that the Appellant had voluntarily shared her work/thesis with the Respondent, which was returned by the Respondent as mentioned in the mail dated 05.05.2011.



### **ANALYSIS & FINDINGS**

23. The Court has heard the learned counsel for the parties and has perused the paper book with their able guidance.

24. In the present appeal, the primary prayer sought by the Appellant is that the suit be heard in accordance with the law. Initially, the suit was instituted seeking a decree of permanent injunction to restrain the Respondent from using, utilising, referring to, or in any other manner associating with the Appellant's work on the Polish Refugees during the Second World War. In addition, the Appellant sought damages to the tune of Rs. 30,00,000/- and a declaration that the Defendant's use of her work in connection with the Polish Refugees in India was unauthorised, along with a direction to expunge the same from the record.

25. It is a matter of record that the Appellant has given up the relief of permanent injunction, as noted in the impugned judgment. Therefore, the sole question that arises for consideration is whether the learned Single Judge was justified in not putting the suit to trial for the relief of damages as claimed by the Appellant.

26. In the Judgment of ***Organo Chemical Industries v. Union of India***<sup>2</sup>, the Hon'ble Supreme Court has defined the meaning of damages. The relevant extract is set out hereinbelow:

*"38. What do we mean by "damages"? The expression "damages" is neither vague nor over-wide. It has more than one signification but the precise import in a given context is not difficult to discern. A plurality of variants stemming out of a core concept is seen in*

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<sup>2</sup>(1979) 4 SCC 573



*such words as actual damages, civil damages, compensatory damages, consequential damages, contingent damages, continuing damages, double damages, excessive damages, exemplary damages, general damages, irreparable damages, pecuniary damages, prospective damages, special damages, speculative damages, substantial damages, unliquidated damages. But the essentials are (a) detriment to one by the wrongdoing of another, (b) reparation awarded to the injured through legal remedies, and (c) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often, not always, a punitive addition as a deterrent-cum-denunciation by the law. For instance, “exemplary damages” are damages on an increased scale, awarded to the plaintiff ever and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behavior or to make an example of him, for which reason they are also called “punitive” or “punitory” damages or “vindictive” damages, and (vulgarly) “smart-money”. [ See Black's Law Dictionary, 4th Edn., pp. 467-648] It is sufficient for our present purpose to state that the power conferred to award damages is delimited by the content and contour of the concept itself and if the Court finds the Commissioner travelling beyond, the blow will fall. Section 14-B is good for these reasons.”*

The above-referred judgment delineates three essentials for damages; (a) a person is harmed or suffers because of someone else's wrongful act, (b) the injured person gets compensation in monetary terms or otherwise through the legal system, and (c) such amount of compensation to be granted shall provide a bifurcated value within its contours; *firstly*, a sum of money to cover the actual loss caused or damages suffered, and, *secondly*, an additional amount imposed to penalize the offender.

27. It is a settled principle of law that the burden of proving damages and loss lies upon the plaintiff. The plaintiff is *prima facie* required to establish that he holds a legal right which was infringed by



the defendant, thereby causing loss and damage. Such a burden can be discharged only when the plaintiff is afforded an opportunity to lead cogent and reliable evidence in support thereof. The grant of damages is always subject to proof of loss and/or profit.

28. The impugned judgment records that the relief of permanent injunction does not survive, as the documentary produced by the Respondent does not incorporate any portion of the Appellant's work. At the cost of repetition, the counsel of the Appellant has conceded to the afore-stated position. However, the claim for damages arises not merely from inclusion or otherwise of the material in the said documentary but extends beyond it.

29. The Appellant has specifically contended that the Respondent derived benefit by using her name and association to secure funding and institutional support from the Government for the said documentary, thereby gaining commercial and reputational advantage at her expense. The said aspect required proper adjudication by affording an opportunity to lead evidence to the Appellant.

30. It was not appropriate for the learned Single Judge to record a finding against the Appellant/Plaintiff without giving her an opportunity to lead evidence. Under the CPC, a suit is required to be decided after identifying the issues that necessitate adjudication and calling upon the parties to lead evidence in support of their respective assertions and averments made in their respective pleadings. As per Order VI Rule 2 of CPC, only the material facts are required to be



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stated in concise form. The parties are not expected to incorporate their evidence in their pleadings.

31. Upon framing of the issues, the procedure of permitting the parties to lead evidence is a fundamental step in civil adjudication. Therefore, providing an appropriate opportunity to lead evidence is of utmost importance. In the absence of such an opportunity, any finding recorded by the Court effectively deprives the parties of their right to substantiate their case. This not only contravenes the procedural mandate of the CPC but also violates the principles of natural justice, particularly when Order VI Rule 2 of the CPC specifically debars the parties from incorporating evidence in their pleadings.

32. We are of the considered view that the Appellant was not allowed to prove her claim for damages, which, *inter alia*, infringes the principles of natural justice. It was incumbent upon the Court to permit the parties to adduce evidence for the determination of entitlement and quantification of damages.

33. In view of the aforesaid discussion, we are of the opinion that this appeal shall succeed. The suit is reinstituted to its original number before the *Roster Bench* and be put to trial for the relief of damages.

34. The present appeal is disposed of in the aforesaid terms.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**  
**NOVEMBER 04, 2025<sup>sp/er</sup>**