Neutral Citation Number: [2022] EWHC 1604 (QB)

Case No: QB-2021-002682

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 June 2022

Before :

Deputy Master Toogood QC

- -

Between :

MR ANEEL MUSSARAT **Claimant**

- and -

WORLDVIEW MEDIA NETWORK LIMITED **Defendant**

- -
- -

William McCormick QC (instructed by **Preston & Co**) for the **Claimant**
The Defendant did not appear and was not represented

Hearing date: 21 June 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and released to the National Archives. The date and time for hand-down is deemed to be 10.00 am on 27 June 2022.

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DEPUTY MASTER TOOGOOD QC

Deputy Master Toogood QC:

1. This is an application for judgment in default of acknowledgement of service pursuant to CPR 12 and summary disposal pursuant to sections 8 and 9 of the Defamation Act 1996. The Defendant is neither present nor represented and I have received no representations on its behalf. I have been assisted by the submissions, both written and oral, of Mr William McCormick QC who appears on behalf of the Claimant.

Factual and procedural background

2. The action is brought by Mr Aneel Mussarat, a British citizen of Pakistani heritage, who was born in the United Kingdom and has lived and worked in the United Kingdom all his life. As set out in his witness statement dated 4 October 2021, he has achieved a degree of success in the fields of property investment, property management and property development and is the founder and Chief Executive Officer of MCR Property Group. He has set up a charitable foundation which supports charitable works in the UK, Pakistan and Bangladesh. He states at paragraph 8 of his witness statement that he has established a reputation for honest and professional conduct which he values and wishes to protect and I have no reason whatsoever to doubt this.

3. The Defendant is a registered company which holds a licence with Ofcom to broadcast a television channel called "Republic Bharat", which until 5 May 2021 was shown on Sky Channel 708.

4. On 22 July 2020 a programme was broadcast on this channel which referred to the Claimant. I have viewed three excerpts from the programme and it is in the first of these that the allegedly defamatory statements occur. The allegations are set out in full in the Particulars of Claim but as examples, the Claimant is referred to as an *"ISI*

stooge" and a photograph of the Claimant is shown to coincide with an interviewee stating *"I don't think freedom of expression extends to fraternising with people who are clearly involved in sending terrorists across into India"*. Photographs of the Claimant are also displayed next to the captions (which are also read in a voiceover) *"Should Bollywood declare any links to pro-Pakistan, pro-terror, anti-India individuals and groups?"* and *"Should Bollywood renounce any links with Pakistanis who take a pro-terrorist line?"*.

5. The Claimant's solicitors initially corresponded with the company in India responsible for making the programme but sent a Letter of Claim to the Defendant on 25 February 2021. No response was received and further letters were sent to the Defendant's directors at the time, Mr Malhotra, Mr Bahl and Mr Shah. Shortly afterwards Mr Malhotra and Mr Bahl resigned from their positions as directors of the company and both informed the Claimant's solicitors that they were no longer involved with the company. No response has been received from Mr Shah.

6. These proceedings were issued on 9 July 2021 and were served on the Defendant's registered office by first class post and recorded delivery on 15 July 2021. No response was received and the service was repeated by hand delivery to the registered office on 16 August 2021. Again, there was no response.

7. This application was issued on 5 October 2021 and was hand delivered to the Defendant's current registered office on 20 January 2022 together with the notice of this hearing, the draft order and the Claimant's witness statement in support. A further reminder was sent on 9 June 2022, enclosing the hearing bundle. I have been shown proof of delivery from the Royal Mail that this was delivered on 13 June 2022 and I have also seen documents indicating that the statement of costs was delivered on 17

June 2022 and the skeleton argument and revised draft order was delivered yesterday. There has still been no response from the Defendant.

Proceeding in the absence of the Defendant

8. Before I considered the substantive application, I considered whether I should proceed in the absence of the Defendant. In *Pirtek (UK) Limited v Robert Jackson* [2017] EWHC 2834 (QB) Warby J, as he then was, observed that proceeding in the absence of the respondent

> "19. … is permissible in principle, but the court has a discretion: CPR 23.11 . The Court must exercise its power to proceed in the absence of a party in a way that is compatible with the overriding objective. I had to consider this issue in somewhat similar circumstances two years ago, in *Sloutsker v Romanova* [2015] EWHC 545 (QB) [2015] EMLR 27 (July 2015) and again in *Brett Wilson LLP v Persons Unknown* [2015] EWHC 2628 (QB) [2016] EMLR 2 [14]-[16] (September 2015). Both were applications for default judgment where the defendant was a litigant in person who had failed to appear without giving a reason, and the relief sought fell within the scope of s.12(2) of the Human Rights Act 1998 .
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> 20. I took a two-stage approach, considering (1) whether the defendant had received proper notice of the hearing and the matters to be considered at the hearing; (2) if so, whether the available evidence as to the reasons for the litigant's non-appearance supplied a reason for adjourning the hearing. I considered it necessary to bear in mind that the effect of s.12(2) is to prohibit the Court from granting relief that 'if granted, might affect the exercise of the Convention right to freedom of expression' unless the respondent is present or represented or the Court is satisfied that '(a) the applicant has taken all reasonable steps to notify the respondent; or (b) that there are compelling reasons why the respondent should not be notified.' I adopt the same approach in this case."

9. In *Pirtek* , Warby J concluded that the hearing should proceed in the absence of the respondent and noted that he would hand down judgment in written form, which he would direct to be served on the respondent with the resulting order.

10. I am satisfied that the Defendant has had proper notice of this application and this hearing. Documents have been sent to the Defendant's registered office on numerous occasions but it appears that a deliberate decision has been taken to make no response.

I consider that the Claimant has taken all reasonable steps to notify the Defendant. There is nothing before me to suggest that I ought to adjourn this hearing or that it would be unfair to proceed in the Defendant's absence.

11. However I will direct that a copy of this judgment be sent to the Defendant together with the order.

Judgment in default

12. The Claimant has made an application for default judgment pursuant to CPR 23, as required by CPR 12.4(2), this being a type of claim in which default judgment cannot be obtained by filing a request pursuant to CPR 12.4(1).

13. CPR 12.3(1) provides:

> "The claimant may obtain judgment in default of an acknowledgment of service only if –
>
> (a) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
>
> (b) the relevant time for doing so has expired."

14. In accordance with Practice Direction 12, para 4.1

> "… on an application for default judgment the court must be satisfied that –
>
> (1) the particulars of claim have been served on the defendant (a certificate of service on the court file will be sufficient evidence),
>
> (2) either the defendant has not filed an acknowledgment of service or has not filed a defence and that in either case the relevant period for doing so has expired,
>
> (3) the defendant has not satisfied the claim, and
>
> (4) the defendant has not returned an admission to the claimant under rule 14.4 or filed an admission with the court under rule 14.6."

15. I am satisfied that the conditions for granting default judgment are met. The Particulars of Claim have been served and the Defendant has not acknowledged service, filed a defence, satisfied the claim or returned or filed an admission.

Jurisdiction

16. Mr McCormick QC has appropriately brought section 10 of the Defamation Act 2013 to my attention, which states that:

> "(1) A court does not have jurisdiction to hear and determine an action for defamation brought against a person who was not the author, editor or publisher of the statement complained of unless the court is satisfied that it is not reasonably practicable for an action to be brought against the author, editor or publisher."

17. Section 10(2) of the 2013 Act confirms that publisher has the same meaning as in section 1 of the Defamation Act 1996, which defines 'publisher' as 'a commercial publisher, that is, a person whose business is issuing material to the public, or a section of the public, who issues material containing the statement in the course of that business'. However a person shall not be considered a publisher of a statement if he is only involved 'as the broadcaster of a live programme containing the statement in circumstances in which he has no effective control over the maker of the statement' (section 1(3)(d)).

18. In this case, the programme was broadcast as live, but the evidence of the Claimant confirms that there was a delay of some two hours between the original broadcast in India and the broadcast on the Defendant's channel in the UK. This is consistent with the information contained within the decision of Ofcom dated 22 December 2020 when the Defendant was fined for breaches of the Ofcom Broadcasting Code in connection with a programme broadcast on 6 September 2019. The Defendant made written representations to Ofcom including an assurance that there were pre-broadcast

checks to assess and ensure the suitability of content, by placing a delay of several hours between the original production of the programme and broadcast on Republic Bharat (paragraph 58 of the Ofcom decision).

19. I am therefore satisfied that the court has jurisdiction in this case.

Conclusion regarding judgment in default

20. As Warby J stated in *Pirtek* at [26]:

> "On such an application, the Court will enter 'such judgment as it appears to the court that the claimant is entitled to on his statement of case': CPR 23.11(1). This enables the Court to proceed on the basis of the claimant's unchallenged particulars of claim, which is normally the right approach, as evidential examination of the merits will usually involve unnecessary expenditure of time and resources and hence be contrary to the overriding objective: *Sloutsker v Romanova* [84], *Brett Wilson v Persons Unknown* [18]. Both those judgments contain some discussion of the possibility of departing from that normal approach. But I see no reason to do so here."

21. I am satisfied that the meaning of the words contended for in paragraph 5 of the Particulars of Claim is neither extravagant nor unreal. The programme contained serious allegations against the Claimant, who was identified by both his image and his name. I also accept that, for the purposes of section 1 of the Defamation Act 2013, the publication of the matters complained of 'has caused or is likely to cause serious harm to the reputation of the claimant.'

22. The Claimant is therefore entitled to default judgment for libel for damages to be assessed.

Remedies

23. The application notice sought the following Order:

    i) An award of damages (in such sum assessed by the Court) to reflect the injury done to the Claimant by the publications sued upon;

ii) An injunction:

a) To restrain the Defendant from repeating the same or similar statements concerning the Claimant; and

b) Requiring that it take all possible steps available to it to remove the materials presently accessible at the internet links identified within paragraph 3 of the Particulars of Claim;

iii) An order that the Defendant publish a summary of the judgment of the Court (pursuant to section 12 of the Defamation Act 2013)

iv) An order that the operator of any website on which the defamatory materials are posted must remove them and that any person who is not the author, editor or publisher must not distribute, sell or exhibit materials containing those statements, pursuant to section 13 Defamation Act 2013;

v) An order that the Defendant pay the costs of this claim.

24. In paragraph 6 of the Claimant's witness statement, the Claimant stated that he was also seeking two further orders:

i) A declaration that the words complained of were false and defamatory pursuant to sections 8 and 9 of the Defamation Act 1996;

ii) An order that the Defendant publish or cause to be published a suitable correction and apology, pursuant to sections 8 and 9 of the Defamation Act 1996.

25. Although these additional orders were not included in the application notice or draft order, the Claimant's witness statement was served on the Defendant in January of this year and, in the light of the Defendant's failure to engage at any stage of the process, I consider that there is no prejudice in considering whether these reliefs should be granted.

26. The Claimant provided a revised draft order prior to the hearing, in which the claims for a mandatory injunction (paragraph ii(b) above) and order (paragraph (iv)) were dropped as the offending material is no longer available. The revised draft order included the claims that the Defendant should publish a summary of the judgment and a suitable correction and apology however these claims were not pursued at the hearing, purely on a pragmatic basis that there was no reasonable and proportionate method of enforcing them.

27. The Claimant does pursue a declaration of falsity, a remedy which is not available at common law and is only available pursuant to the summary relief available pursuant to sections 8 and 9 of the Defamation Act 1996. At the hearing, the Claimant confirmed that he wished to be granted summary relief in accordance with the 1996 Act.

28. As set out in *Pirtek*, the jurisdiction to grant summary relief is available after the court has entered default judgment. I am satisfied that there is no defence with a realistic prospect of success and that there is no reason why the issue of damages should go to a trial.

29. As set out in section 9(1) of the 1996 Act, *"summary relief"* means such of the following as may be appropriate:

a) A declaration that the statement was false and defamatory of the plaintiff;

b) An order that the defendant publish or cause to be published a suitable correction and apology;

c) Damages not exceeding £10,000 or such other amount as may be prescribed by order of the Lord Chancellor;

d) An order restraining the defendant from publishing or further publishing the matter complained of.

30. The Claimant does not seek an order pursuant to sub-paragraph (b) but does seek orders pursuant to (a), (c) and (d).

31. With regard to (d), I note that although the channel is not currently broadcasting, the Defendant retains a broadcasting license. Taking into account the very serious nature of the allegations, I consider that there is a sufficient risk of repetition to justify the order prohibiting further publication of the matters complained of in paragraph 4 of the Particulars of Claim or any similar statements defamatory of the Claimant.

32. With regard to the claim for damages, I have no hesitation in concluding that the Claimant would be entitled to an award substantially in excess of the maximum permissible under 9(1)(c) but his decision to limit his claim is pragmatic in the light of the Defendant's failure to engage and the dim prospects of recovering any of the damages awarded. I note the decision of Collins-Rice J in *Sahota v Middlesex Broadcasting Corp Ltd* [2021] EWHC 3363 (QB) in which she awarded £60,000 for a broadcast of an allegation that the claimant risked involving Sikhs in terrorism and observed *'The authorities have always been unanimous that any allegation of*

terrorism is to be regarded as extremely serious and highly damaging, and that has been recognised in awards of general damages well into six figures.'

33. In his witness statement, the Claimant observed that the making of the award is more important to him than the actual sum and he was aware that the judgment is unlikely to be satisfied. However I award the maximum sum of £10,000 that is permissible pursuant to the summary procedure.

34. Finally, I am asked to make a declaration of falsity pursuant to section 9(1)(a) of the 1996 Act. In *Pirtek*, Warby J stated that he was aware of only one other case in which such a declaration was made (*Bin Mahfouz v Ehrenfeld)* and noted that the function of the court in a defamation case was to resolve disputes between the parties, not to conduct a public inquiry. He decided to issue a Press Summary instead of making such a declaration.

35. In this case, my attention has been drawn to the cases of *Easeman v Ford* [2016] EWHC 1576 (QB) and *Jon Richard Limited v Gornall* [2013] EWHC 1357 (QB), in which declarations of falsity were made pursuant to section 9(1)(a) of the Defamation Act 1996. I also note the view of Morland J in *Mawdsley v Guardian Newspapers Ltd* [2002] EWHC 1780 (QB) at paragraph 15 that *"in determining whether the summary relief is adequate, in my judgment the Court has to consider its cumulative powers under section 9. It is a package. In this case, I must judge whether (a) a declaration; (b) an apology; (c) damages, not exceeding £10,000 and (d) a restraining order, if appropriate, will provide adequate compensation for the wrong that the claimant has suffered."* (my underlining)

36. In this case, the Claimant has pragmatically accepted that there is no realistic prospect of the Defendant providing an apology. As noted above, the Claimant's entitlement to

damages substantially exceeds the maximum permissible under the summary procedure but he has recognised that the time and costs involved in seeking a higher award would be futile and I consider that this approach is in accordance with the overriding objective.

37. Although I make my decision based on the Claimant's evidence alone, I note that the programme contained no evidence whatsoever to support its assertions that the Claimant was engaged in anti-India activities including assisting in terrorism against India and the other matters set out in paragraphs 4 and 5 of the Particulars of Claim. The Defendant has chosen not to submit any evidence in defence of this claim. The Claimant's witness statement strongly refutes the allegations and I do not consider that he would be adequately vindicated by the award of £10,000 alone. I therefore grant a declaration that the allegations made against the Claimant by the Defendant in the meaning set out at paragraph 5 of the Particulars of Claim are false and defamatory.

Costs

38. The Claimant is entitled to his costs of this action, as he is the successful party. I have a statement of costs which I consider is largely reasonable, save for Mr McCormick's brief fee for the hearing of £17,500 which I consider to be excessive despite his valuable assistance to the court and the claim for his solicitors' attendance at court for 5 hours when the hearing took place remotely and lasted 1 hour. I summarily assess the Claimant's costs in the total sum of £37,500.