

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Sandip Kumar De

F.M.A. No. 1036 of 2025
+
CAN 1 of 2025

Arpit Mangal and Another

-Versus-

Emami Limited and Others

For the appellants	:	Ms. Urmila Chakraborty, Mr. Diganta Paul, Ms. Payel Dasgupta, ... Advs.
For the respondent no. 1	:	Mr. Ranjan Bachwat, Sr. Adv., Mr. Debnath Ghosh, Sr. Adv., Mr. Biswaroop Mukherjee, Mr. Soumyajit Mishra, ... Advs.
For the Google LLC	:	Ms. Priyanka Bhattacharya, Mr. Udit Tewari, Ms. Surabhi Kathre, ... Advs.
Heard on	:	11.08.2026, 18.08.2026, 25.08.2026, & 01.09.2026
Reserved on	:	01.09.2026
Judgment on	:	22.09.2026

Sabyasachi Bhattacharyya, J.:-

1. The defendant nos. 1 and 2 in a suit for disparagement and slander of the product of plaintiffs/respondent no. 1, namely “Zandu Ashwagandha Gold Plus”, have preferred the present appeal.
2. By the impugned order dated May 3, 2025, the learned Trial Judge granted *ex parte* ad interim injunction restraining the defendant nos. 1 and 2/appellants from displaying, airing in any manner an impugned video or publishing in writing or speaking or in any other form any statement with regard to the product “Zandu Ashwagandha Gold Plus” of the plaintiffs in any manner in any media including electronic media.
3. Learned counsel for the appellants argues that the learned Trial Judge overlooked the appellants’ defence of truth and fair comment while granting the injunction. It is submitted that the appellant no. 1, a social media influencer, is a sports science nutritionist certified from K11 School of Fitness Science and also a personal trainer certified from the American Council of Exercise, which credentials have been judicially recognized in a judgment of the Delhi High Court in *San Nutrition Private Ltd. v. Arpit Mangal and Others*, reported at 2025 SCC OnLine Del 2701.
4. The appellant no. 2 is a company established by the appellant no. 1.
5. The appellants seek to ensure quality and safety of health products of supplements through rigorous laboratory testing, assessing label accuracy and conducting tests for the presence of heavy metals, chemicals and other adulterations, in order to protect consumers from fraudulent manufacturers

and adulterated products, which can cause severe health ramifications on the consumers. To that end, the appellants test products anonymously to maintain the integrity of the testing process and lists both products that pass and fail scientific tests, offering consumers transparency in a market filled with non-regulated products, thus performing a vital function of public interest to ensure accountability and transparency.

- 6.** The testing process of the appellants undergoes several stages. First, the product is identified for testing based on polls conducted on its website as well as on the basis of complaints and requests received from consumers and also on the basis of the requests received from manufacturers to audit their products. Thereafter, blind testing is conducted. To ensure integrity of the process, all products are ordered in sets of two using pseudonyms, screen recording the entire process of ordering, which recording is thereafter stored for verification or legal scrutiny. At the time of delivery of the product, the process of unboxing is also recorded to ensure that the product that was ordered is the one that is delivered and to match the batch number of the received product.
- 7.** Sealed products are submitted for testing with accredited and well-reputed testing laboratories, which confirm in each report that the product is received in its original trade pack, complete with batch number and manufacturing data.
- 8.** The appellants, being result agnostic, report on the findings of the scientific laboratory testing conducted by third party laboratories on its website and also on its YouTube channel. Upon receiving the sample results, as a

matter of abundant caution, those are communicated to the manufacturing company of the tested product via e-mail, seeking the manufacturer's comments on the results obtained. As per their policy, the appellants wait for a period of 24 hours following the despatch of e-mail for the response of the manufacturer. If no response is received within the said timeline, the results are uploaded on the social media platforms. However, if the manufacturer provides a response within the specified time period, their comments are duly incorporated into the video before it is published.

- 9.** The appellants also have a dedicated tab on their website to enable any manufacturer to challenge the results and reports relied on by the appellants in their videos or publications. If such a challenge is thrown by the manufacturer, the appellants, as a matter of policy, conduct retest using either another sample of the same product from the same batch or the excess sample stored by the laboratory at the time of initial testing. If considerable deviation is found from the first report, the appellants update the results on all its sources.
- 10.** The above testing model was adopted in the present case and on requests from consumers, the product of the plaintiffs/respondent no. 1, namely "Zandu Ashwagandha Gold Plus", was short-listed for audit/laboratory testing. The product was tested by Eurofins Analytical Services India Private Limited, which is an FSSAI Notified NABL and IAS accredited laboratory, for testing of the content of Withanolide, which is an essential component of Ashwagandha, and heavy metals in the product of respondent no. 1. It is submitted that the primary active of Ashwagandha is

Withanolide, which is supposed to help in insomnia and boost energy, provided that in an Ashwagandha dosage of 300-600 mg, at least 5% Withanolide is present to reap greatest health benefits and advantages.

- 11.** The concerned product was tested on two levels – first level testing was done to determine the content of Withanolide and the second level of testing was done to determine the content of heavy metals used in the product.
- 12.** The test reports revealed that the product contains only 0.60g of Withanolide per 100g. Hence, the content of Withanolide in the product falls significantly short of the levels expected in a standard Ashwagandha product.
- 13.** The test reports issued by Eurofins Analytical Services India Private Limited after level-2 testing revealed an even more alarming aspect of the product, being that the contents of two heavy metals, namely lead and mercury, were found to be well in excess of the permissible limits as per the Ayurvedic Pharmacopeia of India (for short, “the API”), Part-II (Formulations), Volume-II, which is issued by the Central Government Ministry of Health and Family Welfare, Department of Ayurveda, Yoga, Naturopathy, Unani, Siddha and Homoeopathy, supposed to be applicable to the formulations.
- 14.** The product was re-tested specifically for level-2 heavy metal analysis using the same sample. The re-testing report re-affirmed the findings of the initial test. Whereas the permissible limit as per API, Part-II, Volume-II for lead is 10mg/kg, and for mercury it is 1mg/kg, in the product of respondent no. 1, as per the first report, it was 69% in excess in respect of lead and 628% in respect of mercury, whereas in the second test, the values were respectively

45% and 745% in excess of the permissible limits for lead and mercury. On the basis of the double verification process indicated above and the laboratory reports, the YouTube video-in-question was made by the appellants and uploaded on March 26, 2025, after waiting for 24 hours upon sending an e-mail on March 25, 2025, asking for the plaintiffs' explanations, as high level of heavy metals were found in the said product. No response had been received from the plaintiffs, nor was there any challenge or exception to the test reports in the appellants' website. Thus, the video was duly uploaded.

- 15.** The plaintiffs/respondent no. 1 issued a legal notice on April 17, 2025, claiming its product to be an Ayurvedic medicine manufactured under drug licence as per the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the 1940 Act").
- 16.** In the said notice, the plaintiffs admitted that its product is a "formulation", which is a proprietary and herbo-metallic and mineral formulation with various herbs, metallic and mineral compounds. It was also alleged that the appellants' video is defamatory and is in violation of the relevant guidelines issued by the Advertising Standard Council of India (ASCI), also referred as the 'ASCI Code for influencers', which requires a person to be qualified with a medical degree or be a qualified nurse.
- 17.** The appellant replied to the said notice on April 22, 2025, describing the entire process of testing.

- 18.** Hence, since the claims made in the appellants' video are backed by double tests from duly accredited third party laboratories and in terms of the API, the defence of truth is available to the appellants.
- 19.** Learned counsel for the appellants next argues that the appellants' freedom of speech and expression, guaranteed under Article 19(1)(a) of the Constitution of India, cannot be gagged or restrained unreasonably without affording the appellants an opportunity of hearing on the injunction application. The learned Trial Judge did not consider the defence of truth, it is submitted.
- 20.** It is next submitted that in view of the admission of the respondent no. 1 in its legal notice dated April 17, 2025 that the product-in-question is a "formulation", the correct parameters, as provided in Part-II, Volume-II of API, were applied by the appellants in the testing process. Even the purported expert opinions produced by the plaintiff/respondent no. 1 in support of its contentions admit that the product is a "formulation". Thus, Part-I, Volume-X, API, sought to be relied on by the respondent no.1, is not applicable, as the said Volume deals with raw single drugs, as opposed to formulations.
- 21.** Thirdly, it is argued that the alleged offending video contains a disclaimer, which was apparently suppressed by the plaintiffs while obtaining the *ex parte* ad interim injunction order.
- 22.** Learned counsel for the appellants further contends that the credentials of appellant no. 1 are beyond doubt and recognized in *San Nutrition Private Ltd.*

(*supra*)¹. Moreover, since there is no commercial motive behind the video, which was prompted entirely in public interest, there is complete absence of malice on the part of the appellants, thus ruling out the applicability of the ASCI Guidelines as well as any intent of disparagement or defamation.

23. Learned counsel for the appellants further argues that the learned Trial Judge failed to apply the 'Bonnard Test', which governs the grant of injunctions in defamation proceedings, as per which the Court has to be satisfied that the defence of truth is bound to fail before granting an injunction.
24. Such principle, it is submitted, was reiterated in *Bloomberg Television Production Services India Pvt. Ltd. & Ors. v. Zee Entertainment Enterprises Ltd.*, reported at (2025) 1 SCC 741, following the English Decisions of *Bonnard v. Perryman*, reported at (1891) 2 CH 269 (CA), and followed in *Fraser v. Evans*, reported at (1969) 1 QB 349 = (1968) 2 WLR 1172 (CA). The said principle was further recognized in *San Nutrition Private Ltd. (supra)*² as well as *Khushwant Singh v. Maneka Gandhi*, reported at 2001 SCC OnLine Del 1030.
25. By relying on the above judgments, learned counsel stresses that reasonable and constructive criticism and fair comment are good defences against a claim of defamation. Such defence is directly connected with the right to free speech, guaranteed by the Constitution of India.
26. Learned senior counsel for the plaintiff/respondent no. 1, the primary contesting party, argues that the appellants have taken multiple

¹ *San Nutrition Private Ltd. v. Arpit Mangal and Others*, reported at 2025 SCC OnLine Del 2701

² *San Nutrition Private Ltd. v. Arpit Mangal and Others*, reported at 2025 SCC OnLine Del 2701

adjournments in the Trial Court to file their written objection to the injunction application, thereby delaying the hearing of the same and protracting litigation.

- 27.** It is argued that an appeal against an ad interim injunction cannot be converted to a mini-trial on merits. The Appellate Court is not to reassess the materials available on record and come to a different conclusion merely because another view is possible, if the Trial Court exercised its judicial discretion. In support of such proposition, learned senior counsel cites *Wander Ltd. and another v. Antox India (P) Ltd.*, reported at 1990 (Supp) SCC 727.
- 28.** Learned senior counsel next argues that the plaintiff/respondent no.1 has a valid and subsisting drug licence in respect of the product-in-question, which is an Ayurvedic proprietary medicine under Section 3(h) of the 1940 Act. The said licence has not been challenged by the appellants. The same, it is submitted, is also backed by experts' opinions to the effect that the product is a herbo-metallic preparation, formulated in accordance with authoritative Ayurvedic texts. Rule 157 of the Drugs Rules, 1945 prescribes checks and measures to be followed before grant of a drug licence. Thus, the said licence creates a presumption that all due and legal checks were conducted before the issuance of the licence. In the absence of any challenge thereto, the appellants cannot be permitted to malign the plaintiff's product.
- 29.** Learned senior counsel appearing for the respondent no. 1 argues that the appellant no. 1 is a social media influencer and the appellant no. 2 is his

company, neither of them having any expertise in the field of Ayurveda or health and nutrition. The appellant no. 1 solicits subscribers, even in the impugned video, and, thus, would have a financial advantage in that regard. The appellant no. 2 is a commercial channel, commonly known as “Trustified”.

- 30.** Learned senior counsel submits that no basis for the “limits” for lead, mercury or other metals have been disclosed in the offending video. Thus, the appellants’ reliance on such limits in the video cannot be justified by the defence of truth.
- 31.** In the appellants’ reply dated April 22, 2025 to the cease-and-desist notice of April 17, 2025, the appellants relied on Part-II, Volume-II of the API, alleging a different set of arithmetical limits than applicable to the plaintiff’s product. The appellants, it is submitted, are unsure of the legitimacy of their allegations since they sought clarifications from the plaintiff and threatened to publish subsequent videos incorporating the plaintiff’s comments. It is submitted that the parameters applied by the appellants for their purported tests are not applicable to herbo-metallic preparations such as Swarna Bhasma and Yashad Bhasma, where metallic elements (lead, mercury, etc.) naturally occur. Such Bhasmas have been mentioned in the drug licence of the plaintiff’s product as ingredients thereof, on the basis of authoritative texts, as indicated in the re-joinder given by the plaintiff to the appellants’ reply to the legal notice.

- 32.** It is argued that the tests conducted by the appellants are relatable to food products, to conform with FSSAI norms, and do not pertain to Ayurvedic Proprietary Drugs.
- 33.** The respondent no. 1 next contends that the laboratory results furnished by the appellants are based on tests placing the plaintiff's product under incorrect groups, such as 'nutritional supplements' and 'residues and contaminants in food and agricultural products'.
- 34.** The limits mentioned in the appellants' reply to the legal notice differ from those posted in the video. Moreover, the plaintiff's product has been specifically identified as "Zandu Ashwagandha Gold Plus" and disparaging terms such "poison in a bottle" and "cancerous" have been used in the impugned video to qualify the same, warning that such product should not be consumed but discarded. E-mail reactions of consumers and YouTube comments furnished before the Trial Court demonstrate real world impact of the disparaging and alarmist video.
- 35.** It is argued that the defence of truth cannot be considered at this stage without the appellants filing their pleadings in the injunction application, which they have chosen not to file by way of any written objection, despite getting multiple opportunities.
- 36.** It is next argued that the test reports furnished by the appellants are discrepant and flawed, thus demolishing any presumption of truth in the appellants' favour. There are no brand names, batch numbers or sampling details in The Eureka Laboratory report. There is no brand name in the

Eurofins report as well. Thus, it cannot be asserted that the reports pertain to the plaintiff's product.

37. In the latter report, the product has been placed under the category of "Food and Agricultural Products", which is incorrect. Also, there is gross mismatch in the values of the two results.

38. Learned senior counsel cites *National Sugar Mills Ltd. v. Ashutosh Mukherjee*, reported 1960 SCC OnLine Cal 74, and *Reckitt & Colman of India Ltd. v. Jyothi Laboratories Ltd. & Ors.*, reported at 1999 SCC OnLine Cal 155, to argue that the Bonnard principle is not applicable in Indian jurisprudence, since in India, it is the Trial Judge who decides and there is no Jury system.

39. Hence, it is argued that the appeal ought to be dismissed on merits.

40. Two cardinal issues are to be adverted to for a complete adjudication of the present appeal, which are as follows:

- (i) Applicability of the Bonnard principle;
- (ii) Merits.

41. The above questions are dealt with as follows:

- (i) Applicability of the Bonnard principle

42. The Bonnard principle was first mooted by the Court of Appeal (England and Wales) in *Bonnard v. Perryman* (*supra*)³ and was reiterated by the Court of Appeal in *Fraser v. Evans* (*supra*)⁴.

³ *Bonnard v. Perryman*, reported at (1891) 2 CH 269 (CA)

- 43.** In *Bonnard (supra)*³, it was held that the subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech, it was held, is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Unless it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.
- 44.** In *Fraser (supra)*⁵, it was held that the Court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest.
- 45.** The said principle has been consistently followed by Indian Courts, recently in *Bloomberg Television Production Services India Pvt. Ltd. (supra)*⁶, where a Three-Judge Bench of the Hon'ble Supreme Court reiterated the said standard as an additional test, over and above the three usual tests for grant of injunction, in defamation suits.

⁴ *Fraser v. Evans*, reported at (1969) 1 QB 349 = (1968) 2 WLR 1172 (CA)

⁵ *Fraser v. Evans*, reported at (1969) 1 QB 349 = (1968) 2 WLR 1172 (CA)

⁶ *Bloomberg Television Production Services India Pvt. Ltd. & Ors. v. Zee Entertainment Enterprises Ltd.*, reported at (2025) 1 SCC 741

46. The Hon'ble Supreme Court accepted the said principle to be applicable in defamation suits as an additional consideration of balancing the fundamental right to free speech with the right to reputation and privacy.
47. It was held in *Bloomberg Television Production Services India Pvt. Ltd. (supra)*⁷ that an injunction, particularly *ex parte*, should not be granted without establishing that the content sought to be restricted is "malicious" or "palpably false" and granting interim injunctions, before the trial commences, in a cavalier manner results in the stifling of public debate; in other words, courts should not grant *ex parte* injunctions except in exceptional cases where the defence advanced by the respondent would undoubtedly fail at trial. In all other cases, injunctions against the publication of material should be granted only after a full-fledged trial is conducted or in exceptional cases, after the respondent is given a chance to make their submissions.
48. Thus, contrary to the contention of the plaintiff/respondent no. 1 in the present case, the Bonnard principle was upheld, and not discarded, in *Bloomberg Television (supra)*⁸.
49. The respondent no. 1 cites *National Sugar Mills Ltd. (supra)*⁹ to make a point that the Bonnard principle is not applicable in India, since the basis of the English decisions on such proposition was that the trial of questions in libel actions in England were to be conducted by a jury, whereas in Indian Courts, it is the Court which decides the matters.

⁷ *Bloomberg Television Production Services India Pvt. Ltd. & Ors. v. Zee Entertainment Enterprises Ltd.*, reported at (2025) 1 SCC 741

⁸ *Bloomberg Television Production Services India Pvt. Ltd. & Ors. v. Zee Entertainment Enterprises Ltd.*, reported at (2025) 1 SCC 741

⁹ *National Sugar Mills Ltd. v. Ashutosh Mukherjee*, reported 1960 SCC OnLine Cal 74

- 50.** However, apart from the fact that the said judgment was rendered by a learned Single Judge of this Court which is not otherwise binding on a Division Bench, with utmost respect, *National Sugar Mills Ltd. (supra)*⁹ did not lay down the correct proposition of law and proceeded on an erroneous construction of the English judgments propounding the Bonnard principle, which will be evident from the interpretation of *Bonnard (supra)*¹⁰ and *Fraser (supra)*¹¹ in *Bloomberg Television (supra)*¹². In the latter judgment, the Hon'ble Supreme Court categorically observed that the reasons sometimes given for application of the Bonnard principle by the English Courts is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a Judge; but a better reason is the importance in the public interest that the truth should be out.
- 51.** Taking a cue from the said observation in *Bloomberg Television (supra)*¹³, interpreting *Bonnard (supra)*¹⁴ and *Fraser (supra)*¹⁵, the premise of enunciating the Bonnard principle was not merely that the trial was to be held before a jury but a more important reason was that the truth should be out in the public interest, and free speech should be left unfettered, which is the stronger reason in cases of libel to proceed most cautiously and warily when granting interim injunctions. Thus, the line of distinction drawn between Indian and English jurisprudence in *National Sugar Mills Ltd.*

¹⁰ *Bonnard v. Perryman*, reported at (1891) 2 CH 269 (CA)

¹¹ *Fraser v. Evans*, reported at (1969) 1 QB 349 = (1968) 2 WLR 1172 (CA)

¹² *Bloomberg Television Production Services India Pvt. Ltd. & Ors. v. Zee Entertainment Enterprises Ltd.*, reported at (2025) 1 SCC 741

¹³ *Bloomberg Television Production Services India Pvt. Ltd. & Ors. v. Zee Entertainment Enterprises Ltd.*, reported at (2025) 1 SCC 741

¹⁴ *Bonnard v. Perryman*, reported at (1891) 2 CH 269 (CA)

¹⁵ *Fraser v. Evans*, reported at (1969) 1 QB 349 = (1968) 2 WLR 1172 (CA)

(*supra*)⁹, insofar as the Bonnard principle is concerned, is not borne out by the said English decisions, as interpreted in *Bloomberg Television (supra)*¹⁶.

52. Paragraph Nos. 6 to 9 of the aforesaid judgment, being germane in the context, are reproduced below:

"6. Significantly, in suits concerning defamation by media platforms and/or journalists, an additional consideration of balancing the fundamental right to free speech with the right to reputation and privacy must be borne in mind [R. Rajagopal v. State of T.N., (1994) 6 SCC 632] . The constitutional mandate of protecting journalistic expression cannot be understated, and courts must tread cautiously while granting pre-trial interim injunctions. The standard to be followed may be borrowed from the decision in Bonnard v. Perryman [Bonnard v. Perryman, (1891) 2 Ch 269 (CA)] . This standard, christened the "Bonnard standard", laid down by the Court of Appeal (England and Wales), has acquired the status of a common law principle for the grant of interim injunctions in defamation suits [Holley v. Smyth, 1998 QB 726 (CA)] . The Court of Appeal in Bonnard [Bonnard v. Perryman, (1891) 2 Ch 269 (CA)] held as follows : (Ch p. 284)

"... But it is obvious that the subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions."

7. In Fraser v. Evans [Fraser v. Evans, (1969) 1 QB 349 : (1968) 3 WLR 1172 (CA)] , the Court of Appeal followed the Bonnard principle and held as follows : (QB p. 360)

"... insofar as the article will be defamatory of Mr Fraser, it is clear he cannot get an injunction. The Court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since (Bonnard v. Perryman [Bonnard v. Perryman, (1891) 2 Ch 269 (CA)]). The reason some times given is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a Judge. But a better reason is the importance in the public interest that the truth should out. ..."

8. In essence, the grant of a pre-trial injunction against the publication of an article may have severe ramifications on the right to freedom of speech of the author and the public's right to know. An injunction, particularly ex parte, should not be granted without establishing that the content sought to be restricted is "malicious" or "palpably false". Granting interim injunctions, before the trial commences, in a cavalier manner results in the stifling of public debate. In other words, courts should not grant ex parte injunctions except in exceptional cases where the defence advanced by the respondent would undoubtedly fail at trial. In all

¹⁶ ***Bloomberg Television Production Services India Pvt. Ltd. & Ors. v. Zee Entertainment Enterprises Ltd., reported at (2025) 1 SCC 741***

other cases, injunctions against the publication of material should be granted only after a full-fledged trial is conducted or in exceptional cases, after the respondent is given a chance to make their submissions.

9. Increasingly, across various jurisdictions, the concept of “SLAPP suits” has been recognised either by statute or by courts. The term “SLAPP” stands for “Strategic Litigation against Public Participation” and is an umbrella term used to refer to litigation predominantly initiated by entities that wield immense economic power against members of the media or civil society, to prevent the public from knowing about or participating in important affairs in the public interest [Donson, F.J.L., *Legal Intimidation : A SLAPP in the Face of Democracy* (London, New York : Free Association Books, 2000).] . We must be cognizant of the realities of prolonged trials. The grant of an interim injunction, before the trial commences, often acts as a “death sentence” to the material sought to be published, well before the allegations have been proven. While granting ad interim injunctions in defamation suits, the potential of using prolonged litigation to prevent free speech and public participation must also be kept in mind by courts.

- 53.** A co-ordinate Bench of this Court, in *Reckitt & Colman of India Ltd. (supra)*¹⁷, placed reliance on *National Sugar Mills Ltd. (supra)*¹⁸. However, conspicuously, the Division Bench did not conclusively decide the issue of applicability of the English law, as also stated in the case of *Bestobell Paints Ltd. v. Bigg*, reported at 1975 FSPLR 421 by a learned Single Judge of the High Court in England, inasmuch as Indian jurisprudence is concerned.
- 54.** In the words of the Division Bench in *Reckitt & Colman of India Ltd. (supra)*¹⁹, “it is debatable whether this is in fact the law”. The proposition laid down in *National Sugar Mills Ltd. (supra)*²⁰ was quoted and it was held that it is “not unreasonable to assume” that English law, even if it is as stated in *Bestobell’s*²¹ case, “might not” be applicable in this country. However, it was left to the learned Single Judge in the said case to consider

¹⁷ *Reckitt & Colman of India Ltd. v. Jyothi Laboratories Ltd. & Ors.*, reported at 1999 SCC OnLine Cal 155

¹⁸ *National Sugar Mills Ltd. v. Ashutosh Mukherjee*, reported 1960 SCC OnLine Cal 74

¹⁹ *Reckitt & Colman of India Ltd. v. Jyothi Laboratories Ltd. & Ors.*, reported at 1999 SCC OnLine Cal 155

²⁰ *National Sugar Mills Ltd. v. Ashutosh Mukherjee*, reported 1960 SCC OnLine Cal 74

²¹ *Bestobell Paints Ltd. v. Bigg*, reported at 1975 FSPLR 421

and determine such question, the Division Bench stopping short of determining the question definitively by observing that it can at least be said that the appellant had an arguable case on such proposition.

55. Thus, *Reckitt & Colman (supra)*²² did not lay down any proposition of law worth being considered to be *ratio decidendi* on the issue at hand.
56. In any event, since the Bonnard principle was reiterated and held to be applicable in Indian jurisprudence in *Bloomberg Television (supra)*²³ by the Hon'ble Supreme Court, by necessary implication, the proposition laid down in *National Sugar Mills Ltd. (supra)*²⁴ and adverted to in *Reckitt & Colman (supra)*²⁵ was overruled.
57. Hence, the Bonnard principle is squarely applicable in Indian jurisprudence as per the authoritative dictum laid down in *Bloomberg Television (supra)*²⁶, thus, a guiding light in the instant case as well.
58. Accordingly, this issue is held in favour of the appellants.

(ii) Merits

59. The first question which arises while adjudicating the appeal on merits is whether the correct parameters were applied by the appellants in assessing the product of the plaintiff/respondent no. 1 for the purpose of uploading the impugned video clip.

²² *Reckitt & Colman of India Ltd. v. Jyothi Laboratories Ltd. & Ors.*, reported at 1999 SCC OnLine Cal 155

²³ *Bloomberg Television Production Services India Pvt. Ltd. & Ors. v. Zee Entertainment Enterprises Ltd.*, reported at (2025) 1 SCC 741

²⁴ *National Sugar Mills Ltd. v. Ashutosh Mukherjee*, reported 1960 SCC OnLine Cal 74

²⁵ *Reckitt & Colman of India Ltd. v. Jyothi Laboratories Ltd. & Ors.*, reported at 1999 SCC OnLine Cal 155

²⁶ *Bloomberg Television Production Services India Pvt. Ltd. & Ors. v. Zee Entertainment Enterprises Ltd.*, reported at (2025) 1 SCC 741

- 60.** Part-II of the API deals with ‘Formulations’. Although in the cease-and-desist notice dated April 17, 2025 issued by the plaintiff and the expert opinions relied on by it, it has been admitted that the product is a ‘formulation’, at the same time, the amount/percentage of the heavy metals Lead and Mercury in the product, which have been flagged in the appellants’ video, have not been denied by the plaintiff.
- 61.** The plinth of the plaint case is that the product is an Ayurvedic proprietary medicine having a valid and subsisting drug license and is a herbo-metallic preparation, coming under Part-I of the API. However, in principle, the three categories – ‘Ayurvedic proprietary medicine’, ‘herbo-metallic preparation’ and ‘formulation’ – are not mutually exclusive and a product may very well come under all three categories at the same time, as in the present case. If so, the lowest ceiling limits for heavy metals out of the three categories, permitted under the API, has to be satisfied by the product. If there is an overlap of categories under which a particular product comes, there is no conceivable reason as to why the limits prescribed for one of such categories would only be adhered to in preference to the others.
- 62.** Although the plaintiffs’ product is touted as an “Ayurvedic medicine”, it is not claimed by the plaintiff/respondent no.1 that the same is designed to cure any one or more particular diseases; rather, by its very nature, the product is meant to act as a health supplement. We must take note of the fact that in such context, the existence of a drug license is not the sole determinant of whether the product satisfies the yardsticks stipulated in the API. While a valid drug license raises a presumption of the product

satisfying the pre-requisites of an approved drug/medicine, such fact does not necessarily mean that the same ticks the right boxes as far as the other API categories are concerned.

- 63.** In its reply to the cease-and-desist notice, the appellants have categorically relied on Part-II, Volume-II of the API, pertaining to 'formulations'. Under the head "Legal Notices" in Volume-II, it is indicated that it is a book of official standards for compound formulations.
- 64.** Under the head "General Notices", it is stipulated that formulations prepared from individual ingredients are to comply with the requirements of those individual ingredients for which monographs are provided in the different Volumes of Part-I of the API.
- 65.** Therefore, in respect of formulations in the nature of compounds prepared from several individual ingredients, as in the present case, the requirements under Part-I for the individual ingredients and the limits under Part-II for the end-product formulation are both to be complied with by the product.
- 66.** In Appendix-I of Volume-II, pertaining to "Apparatus for Tests and Assays", Clause 2.3 provides the Limit Tests. Under Table-4 thereof, the permissible limits of heavy metals have been prescribed. The upper limit for Lead is 10 PPM (Parts Per Million), whereas that for Mercury is 1 PPM, which are in consonance with the limits cited by the appellants.
- 67.** The plaintiff/respondent no. 1 seeks to assail the contents of the laboratory reports furnished by the appellants in support of their justification of truth for the video. However, no specific challenge has been thrown by the plaintiff to the credentials of the concerned laboratories, namely Eurofins and

Eureka, and/or the existence/authenticity of the reports themselves. It is contended by the plaintiff that the categories mentioned in the reports for the product concerned do not align with the correct classification of the product.

- 68.** However, the nomenclature of categories used in the laboratory reports to describe the samples of the disputed product is immaterial, since, by itself, such nomenclature is not a determinant of API standards. What is germane is the contents of lead and mercury, both heavy metals, in the product, which are sufficiently borne out by the reports. Tested on the anvil of API standards independently, the contents of lead and mercury in the product-in-question fail to meet the API standards for ‘formulations’.
- 69.** The absence of the name of any particular brand or batch number in the reports, *per se*, does not vitiate the laboratory reports, in view of the appellants’ claim that the samples were sent anonymously under pseudonyms to ensure that the tests were neutral and unbiased. If any question is raised as to whether the samples in respect of which the reports were furnished were of the plaintiff’s product, the same would be a factual dispute, which is a matter of trial upon leading full-fledged evidence. For the purpose of *ex parte* ad interim injunction, it is only to be ascertained as to whether the justification for defence of truth is available to the defendants/appellants in the context of the Bonnard test. The plaintiff further argues that the appellant no. 1, a social media influencer, is bound to follow the ASCI guidelines but does not qualify on such count. The

credentials of the defendant/appellant no. 1 to certify the plaintiff's product has also been disputed.

- 70.** However, on a composite perusal of all the documents coming from the end of the appellants, including the video-in-question, it is evident that the defendant/appellant no. 1 claims to be a sports science nutritionist certified from K11 School of Fitness Science, as well as a personal trainer certified from the American Council of Exercise. We find such qualifications to be judicially recognized in the judgment of the Delhi High Court in *San Nutrition Private Ltd. (supra)*²⁷.
- 71.** From the ASCI guidelines for influencer advertising in digital media, relied on by the plaintiff/respondent no. 1, it is found that under the head of "Guidelines", Clause 1 stipulates that all advertisements published in social media by influencers or their representatives on such influencers' accounts must carry a disclosure label that clearly identifies it as an advertisement. Clause 1.1 thereof stipulates the criteria used to determine if disclosure is required. Under sub-clause (a) thereof, disclosure is required if there is any "material connection" between the "advertiser" and the influencer. Sub-clause (c) provides that disclosures are required even if the evaluations are unbiased or fully originated by the influencer, so long as there is a "material connection" between the advertiser and influencer. As per sub-clause (d), if there is no "material connection" and the influencer is telling people about a product or service they bought and happen to like, that is not considered to be an advertisement and no disclosure is required on such posts.

²⁷ *San Nutrition Private Ltd. v. Arpit Mangal and Others*, reported at 2025 SCC OnLine Del 2701

- 72.** “Material connection” has been defined in the Guidelines as “any connection between an advertiser and influencer that may affect the weight or credibility of the representation made by the influencer”.
- 73.** Thus, the entire paradigm of disclosure under the said guidelines revolves around “material connection” between an “advertiser” and the influencer and pertains to “advertisements” and is not applicable to any every publication or video, unless the same partakes of the character of an ‘advertisement’.
- 74.** Under Clause 2 of the Guidelines, applicable to ‘Due Diligence’, the influencers are advised to review and satisfy themselves that the advertiser is in a position to substantiate the claims made in the advertisement. In the Addendum-II, dated August 17, 2023 to the Guidelines, provisions have been incorporated for health and financial influencers. Influencers in these two categories, under the said provision, are necessarily to be qualified to provide advice and these qualifications are to be stated upfront in their posts.
- 75.** Influencers providing advice and/or commenting on the merits or demerits on aspects related to commercial goods and services in the fields of BFSI and Health and Nutrition must have the necessary qualifications and certifications in order to provide such information and advice to consumers.
- 76.** Under Clause 2, for tests related to health and nutrition, the influencer must have relevant qualifications, illustrations regarding which have been given therein, which include “nutritionists” and “physiotherapists”.

- 77.** In the present case, as discussed above, the advice given in the video and the remarks made therein relate to the aspect of health and nutrition, for which the appellant no. 1, and by necessary extension, his channel, the appellant no. 2, is sufficiently qualified as certified nutritionist and physiotherapist (broadly including a certified personal trainer as well).
- 78.** Thus, the challenge to the credentials of the appellant in the capacity a social media influencer to comment on the health and nutritional aspects of the product cannot be sustained, at least at the *prima facie* level.
- 79.** Even otherwise, in view of the impugned video not being an “advertisement”, the Guidelines do not apply at all. No commercially driven agenda of the appellants has been made out in the plaint, nor has it been substantiated even *prima facie* that the impugned video is sponsored by any competitor of the plaintiff/respondent no. 1 or any other business. There is not even any specific allegation to that effect within the four corners of the plaint or the injunction application.
- 80.** Mere solicitation of subscribers to a YouTube channel is not even germane in the context, in the absence of any *prima facie* evidence that the video is sponsored by any advertiser.
- 81.** Moreover, the aspect of alleged underlying commercial benefit of the appellants is negated by the transparent process of advertising claimed by the appellants. As per the justification sought to be provided by the appellants, they do not provide platform for advertisement to any particular product unless they pass the laboratory tests from accredited institutes. Upon all products being subjected by the appellants to uniform tests from

the same laboratories, those which come out successful become qualified for advertising on the website of the appellants, whereas those which fail the test, do not. Thus, there is no pre-sponsored element in the videos uploaded by the appellants. Only the successful products on the anvil of the self-same tests applied to are all eligible for being advertised on the appellants' channels. Thus, it cannot be said that there is any material connection or ingredient of advertisement in the impugned video which merely flagged the content of lead and mercury being alarmingly high in the product-in-question.

- 82.** None of the expert reports produced by the plaintiff/respondent no. 1 denies the content of lead and mercury in the product as claimed by the appellants. They merely seek to justify the presence by indicating that such metals are the residue of Swarna Bhasma and Yashad Bhasma, which are necessary ingredients of the product. However, even if we proceed on such premise, fact remains that the content of lead and mercury in the plaintiff's product, as corroborated by the appellants' laboratory reports, are alarmingly high compared to the permissible upper limits for such heavy metals under the API guidelines for formulations.
- 83.** Thus, there are sufficient *prima facie* materials on record to hold that the justification of defence of truth is available to the plaintiffs.
- 84.** The Bonnard test demands stricter standards of *prima facie* proof in grant of injunction in defamation cases. The burden of proof is somewhat reversed inasmuch as it is for the plaintiffs to show that the defence of truth is certain to fail on trial. It is not sufficient for the plaintiffs to make out a

prima facie case but, even if there is an act of defamation, it is to be established beyond doubt that the defence of truth can be ruled out altogether.

- 85.** Contrary to such proposition, in the present case, we find sufficient substance in the defence of truth raised by the defendants/appellants, which is evident even at the ex parte stage from the materials annexed to the plaint and injunction application themselves.
- 86.** Moreover, the impugned video, by its very nature, is motivated more by the need to educate the public as to the ill effects which the existence of heavy metals like lead and mercury in the plaintiff's product might have than commercial interest. It is precisely such free speech in public interest which is sought to be protected by the Bonnard principle.
- 87.** In the instant case, the learned Trial Judge completely overlooked the Bonnard standard in granting ad interim injunction mechanically, which is in the nature of a gag order stifling such free speech in the larger interest of the public.
- 88.** The use of the expression "Poison in a bottle", qualifying the plaintiff's product, in the assailed video is followed by several question marks, thus stimulating independent inquiry in the mind of the public as to the adverse effects which the excessive presence of lead and mercury in the product might have on the health of the common citizen who purchases it. The term "Cancerous" has been used in proper context, not to demean the product for the sake of it but to make the people at large aware of the carcinogenic risk associated with consuming excessive lead and mercury.

- 89.** The expert reports produced by the plaintiff/respondent no.1 do not deny the presence of the quantities of lead and mercury as flagged by the appellants but seeks to justify the same as the collateral residues of Swarna Bhasma and Yashad Bhasma. However, it is not clear from the experts' opinions as to whether the said two 'Bhasma's neutralize the dangerous effect of consuming excessive lead and mercury on the human body, as sought to be portrayed during arguments on behalf of the plaintiff/respondent no.1.
- 90.** In any event, on a comprehensive perusal of the materials brought on record by the plaintiff itself, it cannot be said by any stretch of imagination that the defendants/appellants are certain to fail on the justification of defence by truth, which standard is to be met as per the Bonnard test in grant of injunctions in defamation suits.
- 91.** In *Bloomberg Television (supra)*²⁸, the Hon'ble Supreme Court reiterated that even apart from the Bonnard test, the tests laid down in *Morgan Stanley Mutual Fund v. Kartick Das*, reported at (1994) 4 SCC 225, must also be satisfied.
- 92.** We do not find such tests being satisfied by the impugned order.
- 93.** Hence, the said order cannot be sustained even on merits.

CONCLUSION

- 94.** Accordingly, FMA No. 1036 of 2025 is allowed on contest, thereby setting aside the impugned order of *ex parte* ad interim injunction, bearing Order

²⁸ *Bloomberg Television Production Services India Pvt. Ltd. & Ors. v. Zee Entertainment Enterprises Ltd.*, reported at (2025) 1 SCC 741

No. 02 dated May 3, 2025, passed by the learned Civil Judge (Senior Division), Fourth Court at Alipore, District – South 24 Parganas in Title Suit No. 632 of 2025.

- 95. Consequentially, CAN 1 of 2025 is also disposed of.
- 96. There will be no order as to costs.
- 97. We make it clear that the above observations are tentative in nature and shall not unduly influence the learned Trial Judge at any further stage of the injunction application or the suit.
- 98. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)

Later

After the above judgment is delivered, a prayer is made by the plaintiff/respondent no. 1 for stay of operation of the same.

However, since the order impugned in the appeal, which has been set aside by the above judgment, is in the nature of a gag order stifling freedom of speech, and the effect of a stay would be to revive the same, thereby depriving the public at large from having vital knowledge about the

plaintiff's product (sought to be disseminated through the impugned video), we decline to grant stay.

Accordingly, the prayer for stay is refused.

(Sandip Kumar De, J.)

(Sabyasachi Bhattacharyya, J.)