

Sahara India Real Estate Corpn. Ltd. v. SEBI, (2012) 10 SCC 603

Press and Media Laws

Postponement Orders

Coverage of court proceedings - Matters sub judice - Postponement of reporting of, by judicial order - (1) Purpose of postponement, held, is fair and dispassionate judicial consideration untainted by media hype - (2) Parameters for passing postponement order, held, are (i) real and substantial risk of prejudice to fairness of the trial or to the proper administration of justice, (ii) necessity, and (iii) proportionality - Order of postponement will only be appropriate in cases where the balancing test i.e. Public right to know through media is to be balanced with litigating party's right to have cool-minded judicial verdict, otherwise favours postponement of publication for a limited period - (3) Mechanism of postponement and courts competent to entertain postponement application - Mechanism of postponement, held, is by invocation of inherent powers of writ courts under Arts. 129 and 215 of Constitution - Other options are change of venue or postponement of trial, and only if these are not adequate measures, subject to the above parameters, Supreme Court or High Courts alone can under their inherent powers under Arts. 129 and 215 of Constitution pass orders of postponement for a limited period suo motu or on being approached or on report being filed before it by a subordinate court - (4) Stage at which postponement order may be passed - Actual and not planned publication must create the real and substantial risk of prejudice - So postponement orders operate on the actual publication - Hence, before passing postponement orders, the courts should look at content of offending publication (as alleged) and its effect - Further held, postponement should be ordered without disturbing content of publication - (5) Burden to establish a case for postponement order - Held, is on party which seeks postponement - Real and substantial risk of prejudice in the case by media publicity has to be proved - Further, party seeking postponement must displace presumption of open justice - (6) Nature of postponement order - A preventive measure - Held, postponement order though having its genesis in contempt law, is really not punitive - Its function is to prevent possible contempt - (7) Width and extent of postponement order - Held, order may include direction for non-disclosure of identity of victim, witness or complainant - Publishing of evidence of a witness may also be barred - Public right to know through media is to be balanced with litigating party's right to have cool-minded judicial verdict - However, such orders of postponement should be ordered without disturbing the content of the publication - (8) Period for which postponement order may be issued - Held, postponement order can only be for a limited period or short period - (9) Postponement order vis--vis open justice system - Held, open justice promotes transparency and public confidence but openness is not an absolute requirement for every case - Exceptions can be created where core function of judicial system, namely, to render unbiased decisions, has to be preserved - (10) Privacy and confidentiality - Right to negotiate in private - Avoidance of media gaze - Such right can be equated to right of accused in a criminal trial - (11) Scope of these Guidelines - Guidelines for reporting, held, cannot be framed across the board - What is an offending publication has to be decided on a case-to-case basis - It would require the courts in each case to see content and context of offending publication - (12) Remedy against postponement order - Held, postponement order is open to challenge in appropriate court - (13) Fair and accurate reporting - Fair reporting privilege is based on presumption of "open justice" in courts - Media by virtue of S. 4 of Contempt of Courts Act, 1971 entitled to publish fair and accurate report - (14) Justifications for and sources of power for passing postponement orders - Arts. 129 and 215 of Constitution declare Supreme Court and High Courts as courts of record and having constitutional power to punish for their contempt - Constitution also preserves common law powers of superior courts - Art. 19(2) of Constitution permits reasonable restrictions on freedom of expression for avoiding contempt of court - Temporary postponement order, held, is a reasonable restriction - Art. 21 of Constitution conferring right to fair trial - Unwanted media coverage may affect this right - Justification as a test under Arts. 14 and 21 of Constitution - Postponement order, held, satisfies this requirement also, (2012) 10 SCC 603-A

Criminal Trial

Fair and Speedy Trial

Postponement of media reporting - Fair and accurate reporting of a trial, held, can be temporarily prohibited if there is substantial risk of prejudice in later or connected trials, (2012) 10 SCC 603-B

Constitution of India

Pt. III - Constitutional scheme - Composite mechanism to sustain democratic set-up - One right does not override the other - No single right taken individually is absolute - Court's duty to strike a proper balance in a given situation where one right competes with other - Temporary deferment of one right so as to avoid conflict with other - Reasonableness as hallmark of State action - Freedom of expression vis--vis right to have a trial uninfluenced by media publicity - Temporary restraint on media coverage of judicial proceedings - Postponement order - Underlying basis - Balancing of two

competing rights, namely, public right to know through media under Art. 19(1)(a), against individual right under Art. 21 to protect one's liberty or privacy, (2012) 10 SCC 603-C

Constitution of India

Arts. 19(1)(a) & 19(2) and Preamble - Freedom of expression - Meaning and content - Reasonable restrictions - Right to freedom of expression, a most cherished value forming basis of democratic society - Various facets of said right - Informed citizenry - Availability of different shades of opinion including radical ones - Widest dissemination of information by different sources - Discussion forums enabling exchange of ideas - Media as an instrument of free expression - Right to freedom of expression, however, not absolute and subject to reasonable restrictions under Art. 19(2) so as to ensure orderly conduct of democratic society - [Ed.: It is interesting to consider that the Preamble secures to all citizens "liberty of thought, expression belief, faith and worship" unfettered by a reasonable restriction clause like Art. 19(2).], (2012) 10 SCC 603-D

Constitution of India

Arts. 129, 215, 142(2) and 19(2) - Contempt jurisdiction and media freedom - Widest amplitude of expression "in relation to contempt of court" occurring in Art. 19(2) - Inherent power of Supreme Court and High Courts under Arts. 129 and 215 being courts of record - Rationale behind contempt power - Proper administration of justice - Court, held, can regulate its proceedings in interest of justice - Contempt, therefore, a sui generis common law offence - Comparative power of contempt under Arts. 129/215 and Art. 142(2) - Held, Art. 142(2) operates in a limited field while powers under Arts. 129 and 215 are wider - Ambit of powers under Arts. 129 and 215 - Superior courts (Supreme Court and High Courts), held, being courts of record, have inherent powers even to punish for contempt of lower courts, (2012) 10 SCC 603-E

Constitution of India

Arts. 19(1)(a) & (2) and Preamble - Freedom of speech and expression - Comparative position in different jurisdictions - Freedom of expression and postponement of media publicity of court proceedings - Held, in USA, right to freedom of expression is absolute and therefore courts there, in order to prevent media interference, have to devise techniques other than media restrictions - Clash model of USA, further held, is the product of absolute freedom of expression recognised in USA - Position, however, is different in India where reasonable restrictions on media are permitted by Constitution itself - Postponement order can be passed in India to ensure that conducting of fair and dispassionate trial by court is not usurped by media - Law relating to freedom of expression in other jurisdictions, namely, Canada, UK, European continent, Australia and New Zealand also reviewed while determining contours of Indian law, (2012) 10 SCC 603-F

Contempt of Court

Contempt of Courts Act, 1971

Ss. 7, 4 and 13 - Relative scope - Court proceedings in chambers or in camera - Divulging of information by media - Contempt under S. 7 - Reason for treating such disclosure differently from fair and accurate reporting under S. 4 - Held, S. 7 refers to leakage of information whereas S. 4 refers to reporting of court proceedings - Leakage defeats very purpose of hearing in chambers or in camera - Hence, it is treated as contempt of court - S. 4 on the other hand supports open justice system - Effect of S. 13 - For imposing sentence under S. 13, held, interference with due course of justice is the primary consideration, (2012) 10 SCC 603-G

Constitution of India

Arts. 141, 32, 136 and 226 - Determination of law through judicial interpretation - Permissibility - Open-textured expressions in Constitution/legislation to which definite meaning ought to be assigned - Such exercise, held, is a

legitimate judicial function - Media reporting of court proceedings - Broad contours of law laid down by Court with reference to constitutional and other legal provisions - Held, Court by doing this, has only crystallised law flowing from open-textured expressions like "law in relation to contempt of court", "freedom of speech and expression", "administration of justice", and combined reading of Arts. 19(1)(a), 19(2), 21, 129, 215 and S. 2(c) of Contempt of Courts Act, 1971 - Court by virtue of its function under Art. 141, is entitled to give definite shape to law where so warranted, (2012) 10 SCC 603-H

Constitution of India

Art. 141 - Law declared by Supreme Court - Existence of lis - On facts, held, lis existed - Negotiations for settlement going on between appellant, a private party and respondent, a statutory body (SEBI) - Unsolicited media publicity bringing the matter to public domain and thus invading their privacy - Both parties inviting Court to define law at least for future guidance - Held, there was an issue before Court, requiring declaration of law, (2012) 10 SCC 603-I

Constitution of India

Arts. 32, 226 and 136 - Practice and Procedure - Collateral issue arising during pendency of main matter before Court - Court, if can resolve such issue, (2012) 10 SCC 603-J

Constitution of India

Art. 141 - Precedents - Utility - Understanding bases of law - Held, Indian precedents as well as comparative law from foreign jurisdictions, assist in determining contents and contours of rights, (2012) 10 SCC 603-K