CHAPTER 13

Remedies in Civil Proceedings

IN GENERAL, the remedy sought for defamation in a civil action is damages. Occasionally, an injunction may be sought to prevent repetition of the libel. Of late, a few other remedies for defamation have been introduced in the legal system, or their introduction suggested.

Damages

In an action for defamation, the wrongful act is damaging to the reputation of the plaintiff. According to the Bombay High Court, the injuries that the plaintiff sustains may be classified under two heads: (*i*) the consequences of the attitude adopted towards the plaintiff by other persons, as a result of the diminution of the esteem in which they hold him, being a consequence of the publication of the defamatory statement; and (*ii*) the grief or annoyance caused by the defamatory statement to the plaintiff himself. Damages under the second head may be aggravated by the manner in which, or the motive with which, the statement was made or persisted in. The presence of the plaintiff in the witness box gives the court an opportunity (which the appellate court does not have) of forming a view of the personality of the plaintiff, whether he is a particularly sensitive man and so on and of assessing the grief and annoyance which the statement may cause him as a sort of person the court thought him to be.[1] However, where the trial court has awarded exemplary damages in circumstances in which they ought not to have been awarded, the appellate court has power and duty to interfere with the award.[2]

Cost of the litigation cannot be included in the damages to be awarded for the injury caused by a defamatory statement. Defamation is a tort, and a party suing in tort can seek only compensation for the injury sustained as a result of a tort and not cost of the action.[3]

Remedies

In recent times, considerable thought has been devoted to the question of remedies for defamation. But not many concrete points have ultimately

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1. *R.K. Karanjia* v. *K.M.D. Thackersey*, A.I.R. 1970 Bom. 424, following *McCarey* v. *Associated Newspapers Ltd.*, (1964) 3 All E.R. 947.
2. *R.K. Karanjia* v. *K.M.D. Thackersey*, *id.* at 436, para 43.
3. *Id.* at 437, para 46.

emerged from these discussions. Only one particular point, *viz.*, right of reply, deserves notice and may now be dealt with.

Right of Reply

On the question, the right of reply, the Second Press Commission's observations were as under :

> The law of defamation in India, in common with the law of England, awards damages to redress the wrong done. It makes no use of *recompense* (droit de response) or the "right of reply" which is an important remedy in the Continental legal systems. We suggest elsewhere (in the Chapter on the Press as a Public Utility) a limited right of reply and its enforcement through the Press Council.[4]

In the chapter on "Press as a Public Utility", the Second Press Commission, by a majority (with H.K. Paranjape dissenting), recommended that for the present, the right of reply be recognised as a convention, as a part of professional ethics and a complaint alleging a denial of the right be looked into by the Press Council, as it is already doing.

It is unnecessary to go beyond what the Press Commission has recommended, at least, for the present in India. But some comparative glimpses may be useful.

In West Germany the Hamburg Press Law has the following provision regarding the right of reply which would be of interest :

> 11. (1) The responsible editor and publisher of a . . . printed work are obliged to publish the reply of a person or body concerned in a factual statement made in the work. This obligation extends to all subsidiary editions of the work in which the statement has appeared.
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> (2) The obligation to publish a reply does not apply if the reply is disproportionate in extent. If the reply does not exceed the length of the text complained of, then it is counts as proportionate. The reply must be limited to factual statements and must contain no matter contrary to law. It must be in writing and must be signed by the person concerned or his legal representative. The person concerned or his legal representative can only demand the right to reply if the reply is sent to the responsible editor immediately and at least within three months of the publication.
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> (3) The reply must be published in the next available issue after receipt which is not yet otherwise completely ready for printing. It

4. *Report of the Second Press Commission*, vol. 1, p. 47, para 79 (1982).
5. *Id.* at 162-163, paras 118-121. See also *id.*, Appendix X-19.
6. Hamburg Press Law, paragraph 11 (29 January 1965): see Urs Schwarz, *Press Law for Our Times* 106-107 (1966, I.P.I. Zurich).

must appear in the same section of the work and in the same type as the text complained of and without any interpolations or omissions. It may not appear in the form of a reader's letter. Publication of the reply is free unless the text complained of appeared as an advertisement. Any comment on the reply in the same issue must be restricted to factual statements.

(4) Regular legal channels are available to enforce the right to reply. On the application of the person concerned the Court may order the responsible editor and publisher to publish a reply in the form of section 3. The corresponding provisions of the Code of Civil Procedure on obtaining an interim injunction shall apply to this court procedure. It is not necessary to prove that the right has been endangered.

(5) Sections 1 to 4 do not apply to fair and accurate reports of open sessions of legislative or deliberating bodies of the Federation, the States and communities, or courts.

(6) Sections 1 to 5 apply as appropriate to the transmissions of North German Radio. The right to reply concerns the person who originated the broadcast complained of. The reply must be immediately broadcast to the same receiving area and at an equivalent transmission time to the broadcast complained of.