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Court-Anwar

COURT ALLOWS SUN MEDIA TO PROCEED ON PRELIMINARY ISSUES

KUALA LUMPUR, May 20 (Bernama) -- Sun Media Corporation Sdn Bhd was allowed by the High Court here today to have three issues including qualified privilege tried as preliminary issues before the trial of other issues raised in the RM100 million defamation suit brought against the company by Datuk Seri Anwar Ibrahim.

Justice Datuk Dr R.K Nathan granted leave to the company to file an application to have the three issues tried as preliminary issues after hearing submissions from counsel for both parties and after reading further written submissions by them.

Datuk V.K. Lingam acted for Sun Media while Karpal Singh represented Anwar.

In his 11-page judgment, Justice Nathan said the issue which the Sun Media wanted the court to decide on are as follows:

- + if the said publication complained of was protected by qualified privilege at common law;

- + whether the said publication was published upon an occasion of statutory qualified privilege by virtue of the provision of Section 12 of the Defamation Act 1957 and Paragraph 5 of Part II of the Schedule to the Defamation Act; and

- + whether the words complained of were published upon an occasion of qualified privilege because they were or formed part of a reply to an attack.

"At this stage, all I have to decide is whether the defendant has shown a sufficient case to allow me to give the defendant an opportunity to argue the issue raised by it which it says would put an end to what might be a long and protracted trial," Justice Nathan said.

He said the company had submitted fully on the issues of qualified privilege, statutory qualified privilege and qualified privilege as a reply to an attack.

"If I decide on these issues at this stage, based on the submissions of both parties, then I am pre-empting the actual application that ought to be made to decide these issues," he said.

The judge said Anwar had raised the issue of malice on the company's part and had touched on the defendant's claim of fair comment.

"Both sides have submitted fully on these respective issues," he said.

He said he had deliberately refused to make a ruling on any of these issues raised by the parties at this stage. "Parties must realise that once I made a decision on their present submissions, they can be precluded from raising the same issues on the hearing of the application proper," he said.

Justice Nathan said he also would have to give Anwar a full opportunity to argue his case of malice and which would then support his case for a full trial.

The research done by both counsel should not go to waste, he said.

Earlier, Justice Nathan also gave his grounds for dismissing Anwar's preliminary objection that the summons was served out of time.

He said he agreed with Lingam's view that the company rest its case on Order 32 Rule 3 of the Rules of the High Court and the fact that the company had served the summons well within time.

"The submission that the defendant ought to know that it was the affidavit the plaintiff was objecting to, is an argument that is a non-sequitur," he said.

Justice Nathan said he must also take into consideration the fact that the said affidavit was indeed sworn by a solicitor and not by his client.

Sun Media, the publisher of The Sun newspaper, in its summons-in-chambers, sought a court ruling on several issues relating to the question of qualified privilege as pleaded in its defence against Anwar's suit.

The summons-in-chambers was supported by the affidavit of its company director, Tan Sri Abdul Rahim Din, who said it was appropriate for the court to try the issues as preliminary issues in the interest of justice, judicial expediency and considering the costs involved.

In his affidavit-in-reply, Govind Singh Deo, the former Deputy Prime Minister's other counsel, said the prayers sought by the Sun Media in the application were misconceived and it would not be appropriate for them to resolve the matter as preliminary issues.

Govind Singh said Anwar was entitled to a full trial, having regard to his contention that the defence of qualified privilege was not open to Sun Media.

Anwar, 51, is suing Sun Media for alleged libel by publishing an article under the heading "Anwar's Behavior Is Despicable: PM" on Sept 23, last year. He claimed that Sun Media had published defamatory words against him without verifying the fact with him before publication.

He said The Sun had republished the said words on Jan 28, this year under the heading "Reports On Sodomy And Masturbation" after the issue of the writ, thereby, making profit from the sale.

In his suit, Anwar is also seeking an injunction to restrain Sun Media, formally known as Sun Media Group Sdn Bhd, by its director, servants, and/or agents from further publishing the said or any similar libel on him.

He is also seeking interest, costs and any other reliefs deemed fit and proper by the court.

Sun Media, in its statement of defence, admitted publishing the words but contended that it did so upon an occasion of qualified privilege.

The company said it was its legal, moral and social duty to publish the said words to readers of its newspaper, The Sun, who had a legitimate interest to receive the information.

The statement of defence also included the full text of what Prime Minister Datuk Seri Dr Mahathir Mohamad had said at a news conference held on Sept 22, last year and also questions he was asked by journalists.

The company claimed that it was Dr Mahathir's public duty to explain to the general public the dismissal of Anwar from his posts and it was the duty of the media to convey the explanation to the general public as the general public had a corresponding interest to hear the explanation.

In his reply, Anwar claimed that Sun Media had failed to exercise reasonable caution in publishing the words despite his earlier denial of any sexual misconduct.

He said the plea of qualified privilege therefore, was not open to Sun Media.

Alternatively, Anwar said the plea of qualified privilege must fail because Sun Media was "actuated by malice" when publishing the offending words.

After the judge delivered his judgment, Lingam informed the court that he would file the proper application to have the matters tried as preliminary issues as soon as possible.

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