

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 29TH DAY OF AUGUST 2016

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

A.NO.2880 of 2016
in
O.A.Nos.418 AND 419 OF 2016
in
C.S.No.286 of 2016

Lebara Foundation,
Having its registered office at,
Lebara Tower,
No.327, Anna Salai,
Teynampet, Chennai-600 006
Rep. by its Authorized Signatory
Ms.Padmapriya TS

..Applicant/Plaintiff
(O.A.No.418 AND 419 OF 2016)

vs

1.YouTube LLC.,
901, Cherry Avenue,
San Bruno,
California-94066
United States of America

2.Marupakkam Seithigal Marupakkam Seithigal,
Author/Uploader of video titled Lebara Foundation,
C/o.YouTube LLC.,
901 Cherry Avenue,
San Bruno,
California-94066
United States of America

3.Google Inc.,
1600, Amphitheatre Parkway,
Mountain View,
California 94043
United States of America.

..Respondents/Defendants
(O.A.No.418 AND 419 OF 2016)

A.No.2880 of 2016:-

1.YouTube LLC.,
901, Cherry Avenue,
San Bruno,
California-94066
United States of America

2.Google Inc.,
1600, Amphitheatre Parkway,
Mountain View,
California 94043
United States of America.

..Applicants Respondents 1 & 3/
Defendants 1 & 3

Vs

1.Lebara Foundation,
Having its registered office at,
Lebara Tower,
No.327, Anna Salai,
Teynampet, Chennai-600 006
Rep. by its Authorized Signatory
Ms.Padmapriya TS

..Respondnet No.1
Applicant/Plaintiff

2.Marupakkam Seithigal Marupakkam Seithigal,
Author/Uploader of video titled Lebara Foundation,
C/o.YouTube LLC.,
901 Cherry Avenue,
San Bruno,
California-94066
United States of America.

..Respondent No.2/
Respondent No.2/ Defendant No.2

Application praying that this Hon'ble Court be
pleased to Modify/vary or clarify the order dated
13.05.2016 in O.A.No.418 of 2016 in C.S.no.286 of 2016

passed by this Hon'ble Court by confining to specific videos on YouTube as identified by their URLs and accordingly vacate the interim injunction qua Defendant Nos.1 and 3;

These Original Application along with application coming on this day before this court for hearing the court made the following order:

O.A. Nos. 418 and 419 of 2016 have been filed by the plaintiff seeking ad-interim injunction and mandatory ad-interim direction. Upon hearing the parties, this Court, on 28.06.2016, has passed the following order:

"6. Considering the same, Original Application No.419 of 2016 stands ordered by directing respondents 1 and 3/defendants 1 and 3 to furnish the details including the IP address, identity and description of the second respondent/ second defendant as available with them, to the applicant/plaintiff, within a period of ten days from the date of receipt of a copy of this order.

7. In so far as the other applications are concerned, the Indian domain has been closed, meaning thereby, the alleged defamatory video cannot be accessed anywhere from India, however, the other issue namely the availability of the said domain outside the country exhibiting the very same alleged defamatory video, will be

considered after the impleadment of the second respondent/second defendant with the correct IP address, which is to be furnished by respondents 1 and 3/defendants 1 and 3. Accordingly, the interim order granted would continue to the effect that the status quo as on today shall be continued. Thus, it is hereby clarified that the blocking of Indian domain by preventing any one from this country to see the alleged defamatory video would be continued by respondents/1 and 3/defendants 1 and 3. In the same way, this order cannot be construed to cover the availability of the site, showing the alleged defamatory video outside this country."

2. Application No. 2880 of 2016 has been filed by the applicants/defendants 1 and 3 seeking clarification of the order passed on 13.05.2016 in O.A. No. 418 of 2016. The relief sought for in this application was taken note of when the subsequent order was passed on 28.6.2016.

3. It is not in dispute, as recorded by this Court in the order dated 28.06.2016, that the defamatory video, the URL (Uniform Resource Locator) of the offending video, has been dealt with by the applicant/defendants 1 and 3 by

blocking the access to the defamatory video within the country. Therefore, the major part of the order passed by this Court has been complied with. However, the direction issued to furnish the correct IP address along with the name of the author of the offending URL outside the country has not been furnished with. This order was passed as the offending video was available in the website of the YouTube, which could be accessed by any one outside the country. Hence, the first respondent/plaintiff wants to have the IP address so as to proceed against those persons, who are responsible for the same. Now, the present application has been filed by the applicants/defendants 1 and 3 seeking to modify the order dated 13.05.2016.

4. Though the present application is filed seeking to modify the order aforesaid dated 13.05.2016, it only seeks to modify the subsequent order passed on 28.06.2016 as could be seen from the arguments made by the learned Senior counsel appearing for the applicants/defendants 1 and 3.

5. The learned Senior Counsel appearing for the applicants/defendants 1 and 3 made two primary submissions. The first submission is that the applicants/defendants 1 and 3 being only a facilitator, no direction can be sought for

against them. The second submission is that furnishing the information as sought for by the first respondent/plaintiff would expose the applicants/defendants 1 and 3 to the rigour of any law that would be available in other countries. In support of the contentions, the learned Senior Counsel has made reliance upon the You Tube, Google Privacy and also Community Guidelines. Incidentally one more submission has been made by the learned Senior Counsel for the applicants/defendants 1 and 3 that though in a given case this Court can issue suitable direction, the party, who gets such an order has to get the relief from the applicants/defendants 1 and 3 only by following the due procedure by routing it through the statutory authorities of this country as well as the country in which the Speaker does the alleged act. Reliance has been made on the judgment of the Delhi High Court in **NISCHINT TECHNOLOGIES LTD & ORS. V. RAGHUNATH SESHADRI & ORS.** (C.S(OS).No.1015 of 2015 dated 22.03.2016.

6. The learned Senior Counsel appearing for the first respondent/plaintiff submits that even as per the documents aforesaid, as relied upon by the applicants/defendants 1 and 3, the first respondent/ plaintiff is entitled for the benefit of the order passed already. It is not, as if, any other

classified information is sought to be furnished by the applicants/defendants 1 and 3. What is required is only IP address of the third party. Such a requirement is to be furnished only for the purpose of enabling the first respondent/plaintiff to proceed against the said party for defamation. Since, the applicants/defendants 1 and 3 have already taken action for having access to the defamatory video within the country, it is not open to them to contend to the contrary. To buttress his submissions, reliance has been made on the decision of the Delhi High Court in **TATA SKY LTD., V. YOUTUBE LLC & ORS. (CS (COMM) 223/2016 DATED 10.08.2016).**

7. In pursuant to the order passed by this Court on 28.06.2016, a communication was sent by the second applicant in O.A. No. 2880 of 2016 to the counsel for the applicants/defendants 1 and 3. It was replied by e-mail dated 25.07.2016 in the following manner.

"Google Inc. cannot give legal advice. However, there are a variety of options you can explore to obtain the information requested. For instance, you may wish to follow the process outlined in Section 1782 of Title 28 of the United States Code, which is a federal statute that allows a litigant (party) to a legal proceeding outside the

United States to apply to an American court to obtain evidence for use in the non-US proceeding. You may be able to learn the identity of a Google Inc. subscriber by filing a "John Doe" lawsuit in Santa Clara County, California; or even invoke diplomatic procedures such as Hague Evidence Convention, which provides a mechanism for non-U.S. Persons and entities who wish to obtain evidence in the U.S. to do so through the U.S. Department of Justice, Office of International Judicial Assistance in Washington, DC. Additionally, you can find more information about the Office of International Judicial Assistance at <http://www.justice.gov/civil/office-international-judicial-assistance-3>.

If you choose to utilize any of the above mentioned means to obtain such information, please let us know and we will preserve the information for 90 days.

This completes our response under the Order."

8. Thus three different stands were taken in the aforesaid letter. In order to appreciate the stand of the applicants/defendants 1 and 3, let us see the relevant provisions governing the issue sought to be raised.

9. Sub Section b of Section 1782 of Title 28 of United States Code is as follows:

"(b) This chapter does not preclude a person within the United States from voluntarily giving his testimony or statement, or producing a document or other thing, for use in a proceeding in a foreign or international tribunal before any person and in any manner acceptable to him."

10. Similarly, the issue pertaining to a 'John Doe' Law Suit is dealt with in Clause 2 in the following manner.

"2. FILING 'JOHN DOE' LAW SUIT IN SANTA CLARA COUNTY, CALIFORNIA.

A John Doe law suit is filed if the true identity of the defrauder is unknown. A civil suit is filed using a John Doe for the Defendant's name. It is necessary to provide all emails, letters wire transfers

etc., that show that the identity or location of the Defendant are not known. The purpose of such a suit is to obtain a subpoena of the unknown fraudster in order to obtain the person's name and address in order to file a civil suit."

11. A perusal of the abovesaid proceeding would show that there is no absolute bar for the applicant/defendants 1 to 3 to furnish the information sought for. In fact, it is not, as if, the first respondent/plaintiff is seeking a testimony or a statement or any other information available with the applicants/defendants 1 and 3 qua the defendant No.2. It is not an evidential information *inter se* parties. As the applicants/defendants 1 and 3 merely provide for the platform, such a platform cannot be allowed to be misused by any other third party. To that extent, the responsibility lies on the applicants/ defendants 1 and 3 to produce the information when sought for against the Speaker, who is involved in the said act. We are dealing with the unknown offender or a tortfeasor. If a person is aggrieved by the offending video uploaded by an unknown Phantom, then the identity will have to be made known or

else there will not be any remedy in the eye of law. Therefore, a reading of the aforesaid provision makes it very clear that in a given case, the applicants/defendants 1 and 3 have to furnish such an information like IP address.

12. Coming to the privacy policy governing the applicants/ defendants 1 and 3, the following provision would be apposite.

"For legal reasons:

We will share personal information with companies, organizations or individuals outside of Google if we have a good-faith belief that access, use, preservation or disclosure of the information is reasonably necessary to:

. meet any applicable law, regulation, legal process or enforceable governmental request.

. enforce applicable Terms of Service, including investigation of potential violations.

. detect, prevent, or otherwise address fraud, security or technical issues....."

"Legal process or enforceable governmental request"

Like other technology and communications companies, Google regularly receives requests from Governments and Courts around the world to hand over user data. Our legal team reviews each and every request, regardless of type, and we frequently push back when the requests appear to be overly broad or don't follow the correct process."

13. From the abovesaid provisions, it is very clear that when the Court of Law is of the view that the information sought for is required to be furnished, then the applicants/defendants 1 and 3 are liable to produce the same. The terms of service stipulates in specific terms that You tube shall not be liable for the contents being defamatory, offensive or illegal conduct of any third party. A perusal of the transparency report of the applicants/defendants 1 and 3 also indicates the necessity to be transparent when an injury is caused to a party. The following provision would be apposite in this regard.

"On a voluntary basis we may provide user data in response to valid legal process

from non-U.S. Government agencies, if those requests are consistent with international norms, U.S. Law, Google's policies and the law of the requesting country."

14. In the judgment rendered in **TATA SKY LTD., V. YOUTUBE LLC & ORS. (CS (COMM) 223/2016 DATED 10.08.2016)** by the High Court of Delhi, the issue qua the liability of the applicant has been dealt with in the following manner:

22. The Community Guidelines are meant to guide a person uploading content on what should not be uploaded. It is understandable that with the huge volume of uploads it is not practical for YouTube to be viewing each upload in order to decide whether it is objectionable from the point of view of its Community Guidelines. However, when a specific instance of possible violation is drawn to its attention, its review team will have to view the content and take a call on whether it requires to be taken down. The response time as well as the response

itself are both critical for a complainant. In the present case Tata Sky's specific complaint was that the video was "giving step by step instructions on possible hacking" of its STBs in order to receive to receive High Definition content, free of cost. Tata Sky pointed out that this was violative of its rights and of broadcasters who own the HD content broadcast through Tata Sky Platform and was an offence under [Section 66](#) of the IT Act. In terms of Rule 3 (1) (e) of the ITIG, YouTube is obliged not to host content that violates any law for the time being in force. In determining it to be a complaint regarding 'circumvention of technological measures' which is defined as an offence under [Section 65 A](#) of the Copyright Act, YouTube's review team appears to have got into a bind about correctly 'categorising' it instead of actually taking a call on whether the nature of the content required taking down. If it had focused on the latter

aspect the need for Tata Sky to have approached this Court for relief could have been avoided.

24. With the URLs of the offending video in the instant case having been taken down by YouTube, and with its statement that those URLs will not hereafter be permitted to continue on the website of YouTube LLC, the interim injunction granted by the Court has worked itself out as far as YouTube is concerned. It is clarified that the said injunction order was directed at it not because YouTube had violated any trademark of Tata Sky but because its website hosted the offending URLs which required to be taken down. It was for that purpose alone that YouTube was a necessary and proper party without whose compliance the injunction order would have not been able to be implemented. With YouTube assuring

that if there is any further complaint of a similar nature by the Plaintiff, YouTube LLC will not be found wanting in responding immediately to take down any such similar offensive material consistent with the interim injunction issued by the Court on 27th August 2015, the Court does not consider it necessary to dwell on the issue further. The interim injunction is made absolute against all other 'unknown' defendants.

15. A perusal of the abovesaid decision would clearly establish the fact that the applicants/defendants 1 and 3 have to act in a responsible manner by acting fairly to mitigate the civil wrong being committed by a Speaker by using its website. Thus, this Court does not find any merit in this application, more so, when what is required to be furnished by the applicants/defendants 1 and 3 is only IP address of a Speaker against whom an act of defamation is alleged by the first respondent/plaintiff, interference of this Court is not warranted. Accordingly, A.No.2880 of

2016 is dismissed. The applicants/ defendants 1 and 3 shall comply with the order passed on 28.06.2016 within a period of four weeks from the date of receipt of a copy of this order.

sd/.M.M.S.J

29.08.2016

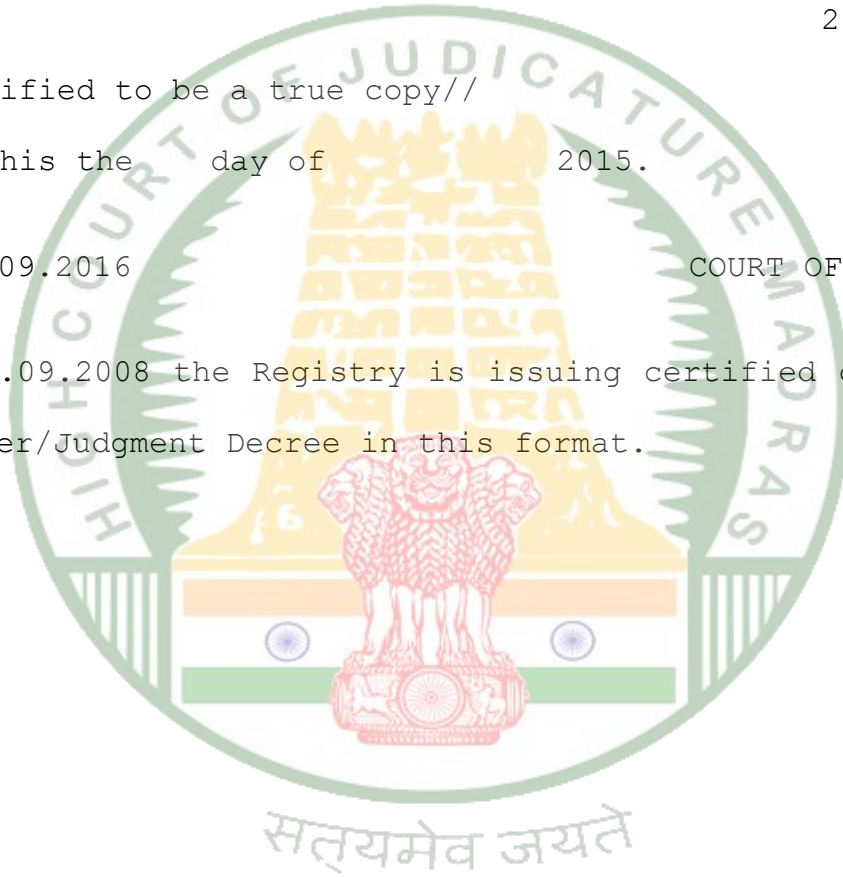
//Certified to be a true copy//

Dated this the day of 2015.

S.s/20.09.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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