

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.10.2016
CORAM
The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE R.MAHADEVAN

O.S.A. No.213 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 ... Appellants/D1 & D3

Vs

1. M/s.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.
2. MarupakkamSeithigalMarupakkamSeithigal
Author/Uploader of Video titled Lebara Foundation
C/o. YouTube LLC.
901, Cherry Avenue, San Bruno
California - 94066
United States of America. ... Respondents/Plaintiff &

D2

PRAYER: Appeal under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 29.8.2016 passed by the learned Single Judge in A.No.2880 of 2016 in O.A.Nos.418 and 419 of 2016 in C.S.No.286 of 2016.

Application praying that this Hon'ble Court be pleased to modify /vary or clarify the order dated 13.05.2016 in OA.NO.418/2016 in C.S.NO.286/2016 passed by this Hon'ble Court by contining to specific videos on you Tube as identified by their URLS and accordingly vacate, the interim injunctioin qua Defendant Nos.1 & 3.

For Appellants : Mr.P.S.Raman, Sr. Counsel
for M/s.Poovayya & Co.

For Respondents : Mr.P.H.Aravind Pandian
Senior Counsel
for M/s.Fox Mandal &
Associates
for 1st respondent

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The appellants, who are portal providers, are caught in the crossfire between the two respondents in a defamation suit filed by the first respondent against the second respondent.

2. The learned Single Judge on the Original Side of this Court found the allegations in the plaint and the interlocutory application sufficient to pass an interim order of restraint, with which the appellants have already complied. Next step is to serve the second respondent against whom the defamation proceedings have been take out and for that purposes the appellants were asked to disclose the address at which the second respondent could be served.

3. The appellants have moved an application seeking modification of that order dated 13.5.2016 to the extent it called for a disclosure from them. This application has been rejected by the impugned order dated 29.8.2016.

4. A perusal of the impugned order shows that the learned Single Judge has taken into consideration the dual submission of the learned Senior Counsel for the appellants before us, i.e., that the appellant is only a facilitator and the furnishing of information may expose the appellants to legal proceedings, as it possibly may amount to breach of the privacy agreement between the appellants and the second respondent. Link to the second aspect is the plea that there is a process which must be followed for obtaining such information.

5. We may note at this stage that the interim relief is in the nature of a John Doe order, as the actual identify and location of the second respondent is not known.

6. The learned Single Judge has noticed, and in our view rightly so, that it is not some secret information affecting such personal rights of the undisclosed second respondent which are sought to be made available in pursuance of the directions of the Court, but only the identity and address so that the Court can take appropriate process to determine the rights inter se the two respondents. Once the appellants provide the platform to the second respondent, we are of the view, that the minimal which is required to be done when the portal is used for material which is prima facie offensive is to disclose the identity and address in pursuance of the directions passed by the Court of competent jurisdiction. Instead, the appellants want the first respondent to go through a circuitous route, which is not necessary in our view.

7. The learned Senior Counsel for the appellants strenuously contended that even exchange of government to government or government to private information is through a Court process. In principle he is right. But then in the present case, it is through a Court process that the appellants are being called upon to disclose the identity and the address of the person for purposes of continuation of legal proceedings and determination of the claim of the first respondent.

8. In our view, the appellants are being unnecessarily apprehensive about possibilities of legal proceedings being initiated against them vis-a-vis the undisclosed second respondent, as certainly their privacy agreement does not contain a term that there would be no disclosure of information even if directed by the Court, a position accepted by the learned Senior Counsel for the appellant. That being the position, we see no reason for any apprehension of the appellants of they being liable in any legal proceedings qua the second respondent.

9. The learned Single Judge has considered the various judicial pronouncements and relying on the same passed a direction keeping in mind the principle that the appellants having provided the portal and the platform to the second respondent, this is a minimal assistance which is required for mitigating the civil wrong vis-a-vis the first respondent/plaintiff by use of the website.

10. We are, thus, not inclined to interfere with the order of the learned Single Judge.

11. The appeal is dismissed. No costs. Consequently, C.M.P.No.16824 of 2016 is closed.

We may note that the time period prescribed by the learned Single Judge has already expired and, thus, we grant two weeks further time for compliance of the order.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

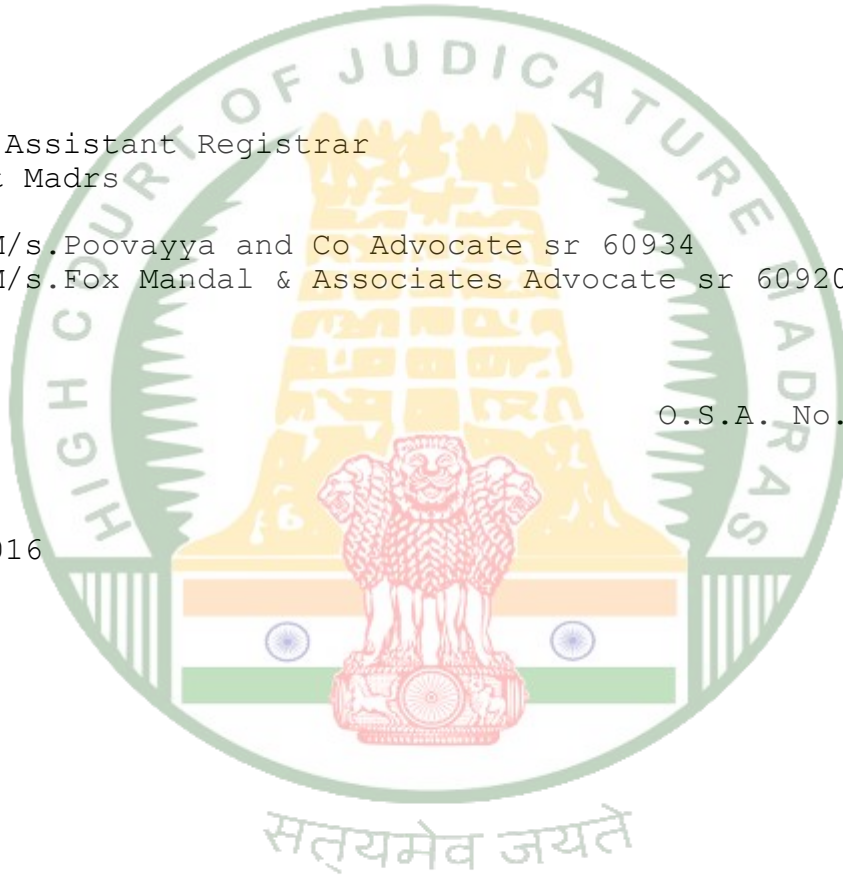
sasi
To

1.The Sub Assistant Registrar
High Court Madrs

+1 cc to M/s.Poovayya and Co Advocate sr 60934
+1 cc to M/s.Fox Mandal & Associates Advocate sr 60920

O.S.A. No.213 of 2016

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