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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 223 OF 2016
AND
NOTICE OF MOTION NO. 2037 OF 2015
IN
SUIT NO. 1038 OF 2015

Siddhi Vinayak Knots & Prints Pvt Ltd & Anr ... Plaintiffs
Versus
Amazon India & Anr ...Defendants

CHAMBER SUMMONS NO. 226 OF 2016
AND
NOTICE OF MOTION NO. 1997 OF 2015
IN
SUIT NO. 1014 OF 2015

Siddhi Vinayak Knots & Prints Pvt Ltd & Anr ... Plaintiffs
Versus
E-Bay India Pvt Ltd & Ors ...Defendants

CHAMBER SUMMONS NO. 236 OF 2016
AND
NOTICE OF MOTION NO. 1996 OF 2015
IN
SUIT NO. 1005 OF 2015

Siddhi Vinayak Knots & Prints Pvt Ltd & Anr ... Plaintiffs
Versus
Amazon India & Anr ...Defendants

CHAMBER SUMMONS NO. 238 OF 2016

AND

NOTICE OF MOTION NO. 220 OF 2016

IN

SUIT NO. 1041 OF 2015

Siddhi Vinayak Knots & Prints Pvt Ltd & Anr ... Plaintiffs
Versus
Flipkart.Com & Ors ...Defendants

CHAMBER SUMMONS NO. 239 OF 2016

AND

NOTICE OF MOTION NO. 370 OF 2016

IN

SUIT NO. 1076 OF 2015

Siddhi Vinayak Knots & Prints Pvt Ltd & Anr ... Plaintiffs
Versus
Flipkart.Com & Ors ...Defendants

Ms Farzana Khan, i/b Bhushan Mahadik for Plaintiffs / Applicants
in all Chamber Summonses.

Mr Rashmin Khandekar, with Sanjeet Kadam, Sayalee Rajpurkar
i/b Kadam and Company for Defendant No.1.

CORAM: G.S. PATEL, J
DATED: 1st February 2017

PC:-

1. This common order will dispose of all these Chamber Summonses. All the Chamber Summonses are for amendment to the Plaint and to the Notice of Motion. The Plaintiffs have also tendered draft amendments to the Suit and to the Notice of Motion.

2. I have on several occasions previously pointed out that the prayers that are been sought are over-broad especially in relation to the intermediaries which have been joined in Suit Nos. 1038 of 2015, 1014 of 2015, 1005 of 2015, 1041 of 2015 and 1076 of 2015. In effect, the reliefs sought proceed on the footing that these intermediaries — Amazon, E-Bay Flipkart and others — all of which provide online marketplaces are themselves guilty of acts of design or copyright infringement because third party sellers have placed their products for sale on these online market places. I do not think it is possible any longer to approach these matters in this fashion. It is not demonstrated before me that any of these intermediaries have been uncooperative in providing information when sought. The address of the 2nd Defendants, those who have actually allegedly copied the Plaintiffs' designs or copyright, are known to these intermediaries. These intermediaries have in the past and will in the future disclose this information upon an appropriate request being made. Before me an allegation is made that this information is not provided for several days after the request is made and that by this time considerable damage is done. I am not able to understand how I could possibly compel any of these intermediaries to give this information to the Plaintiffs overnight. There may be hundreds of others in the same position as the Plaintiffs. These intermediaries may have routinely deal with any number of such complaints. They must surely be afforded some time in which to do so.

3. In any case this question of liability of intermediaries is the subject of an extremely instructive recent decision of a Division Bench of the Delhi High Court in *Myspace Inc v Super Cassettes Industries Ltd.*¹ Writing for the Bench, S Ravindra Bhat J said that Section 79 of the Information Technology Act 2000 grants a measured privilege to an intermediary — and Myspace, the appellant before that court was as facially an intermediary as the 1st Defendants are before me — but this does not mean that rights under the Copyright Act are curtailed. Importantly, as to the question of notice, the Division Bench referenced the Supreme Court decision in *Shreya Singhal v Union of India*² to hold actual knowledge (in this context, of an infringement), means a court order. The question of intermediary liability was also addressed. I believe I must cite paragraph 76 of this decision for its trenchant observations on the approach to be adopted in cases like this:

79. Despite its lengthy analysis and reasoning, a fundamental aspect overlooked by the learned Single Judge is the peculiarity of the Internet intermediary industry. The Internet industry is often described as “fastest growing industry” enabling access and innovations at an exponential rate. In cases like these, the Court has to appreciate that relief should be sound and practical, not far-reaching and momentous in regard to policy and growth of trade or information dissemination. Such care is warranted where interim orders in respect of liabilities that are yet to be ascertained and claims tried. Whilst in other areas of law like property or contracts, enforcement mechanism has

1 2016 SCC Online Del 6382, per S Ravindra Bhat and Deepa Sharma JJ. Paragraphs 34, 40, 41, 43., 44, 45, 47, 49, 50, 51, 63 to 69 and 73 to 76. are especially relevant.

2 (2015) 5 SCC 1.

remained relatively unchanged, enforcement under the technology regime, because its nature is different. It is these considerations, which the court has to keep in mind while granting relief.

4. I am in respectful agreement with that decision. Its ratio and principles apply to the cases before me too. It is true that the Plaintiffs have written to the Amazon India and other intermediaries, but it is not possible for any of these intermediaries to merely respond on the notice like this. There must first be a case made out for the grant of relief. The difficulty in the Plaintiffs' way is that the reliefs are so over-ambitious even in the drafts tendered today that it is impossible to grant them. For instance, even in the slightly amended prayer tendered in Suit No. 1038 of 2015, I find that there is still the pursuit of a relief of the appointment of a Court Receiver to prevent the 2nd Defendant from — although I confess I have no idea how — putting up any products on amazon.in. As against Amazon a direction is sought to remove infringing images from its web property.

5. This is not a relief that I can readily grant without a *prima facie* finding that there is in fact infringement in the first place. For that to be done the 2nd Defendant, the infringer must be served. Even that has not been done, and for this there is now a Chamber Order seeking substituted service.

6. The long and short of this is that without serving the actual alleged wrongdoer the Plaintiffs seek to get an order subjecting Amazon, Flipkart, E-Bay and others to take-down orders. That may

in a given case be possible, but this is sought to be coupled with a relief holding these intermediaries liable.

7. I am not inclined to grant these Chamber Summonses in this fashion and certainly not with draft amendments tendered today. All these Chamber Summonses are dismissed as withdrawn with liberty to file fresh Chamber Summonses incorporating a more appropriate set of prayers.

8. As regards the chamber orders for substituted service, these are simply deferred and they will be taken up by the Court (and not by the Registry) after the fresh Chamber Summonses are filed. The fresh Chamber Summonses are to be filed, lodged and placed for directions including as to service on 22nd February 2017.

(G. S. PATEL, J.)