

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (ST.) No. 3954 OF 2018
WITH
CIVIL APPLICATION (ST.) No. 3952 OF 2018
IN
APPEAL FROM ORDER (ST.) No. 3951 OF 2018

Kanwar B. Singh ... Applicant
Vs.
The Himalaya Club & Ors. ... Respondents

Mr. Jacob K. a/w. Manmohan A. Amonkar, Advocate for the applicant.
Mr. Shyam Kapadia a/w. Jinal Gogri, Jigisha Vadodaria i/b. Negandhi Shah and Himayatullah, Advocate for respondent No. 1.
Mr. Vaibhav Singh and Gaurav Mohanty i/b. Shardul Amarchand Mangaldas & Co., Advocate for respondent nos. 2, 3 and 4.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 9th February, 2018.

P.C.:

Three orders are challenged in one Appeal. Other two orders against which prayers are made, cannot be entertained as there is delay. Only one order passed on 30th January, 2018 in St. No. 11222 of 2017 in Suit No. 214/2018 is a subject matter of today's hearing. The respondent no.1 is a registered society whose object is trekking in Himalayas. The issue pertains to deletion of the names of administrators from the Facebook group of which the appellant claims that he is a creator of the group in the year 2008. The Facebook group whether is an independent group started by the

appellant or is an official activity of respondent No. 1 started through the appellant. The deletion of the names of the administrators from the Facebook group, who are office bearers of respondent No. 1- Society is legal or not or it was really hacked by some other person, it is to be decided at the time of hearing of Notice of Motion or at the time of trying the suit.

2. The learned counsel for the appellant has submitted that some hacker has deleted the names of the administrators and the order of the trial Court to restore the situation is illegal and technically not possible because while restoring the situation by adding the office bearers of respondent No. 1 as administrators, it is necessary for the appellant to add them as friends in the Facebook, and it is not possible.

3. Per contra, the learned counsel for respondent No. 1 submitted that the Facebook group was admittedly started by the appellant in 2008 but it was started for respondent No. 1, the registered Society, for its cause. It is contended that all the administrators who are deleted from the Facebook group, initially were having the key of this group where photographs, materials, contents related to activity of

respondent No. 1 are posted. In the group there are 400000 members. It is further submitted that after deletion of the names of administrator, the appellant only is having the key of the Facebook group and therefore, respondent No. 1 may suffer loss of valuable contents and materials.

4. Heard the submissions. Perused the impugned order. It appears that earlier, interim orders passed by the trial Court were not obeyed and therefore, the trial Court has directed the appellant to restore the situation as it is.

5. There may be issue whether Facebook is intellectual property or not and that be decided by the trial Court, as the issue under section 9A is raised and pending before the Court. However, the trial Court has every power to pass interim order of injunction when the issue of jurisdiction is pending before it. On perusal of the order, I am of the view that there is no illegality in the order. The technical difficulties which are expressed by the learned counsel for the appellant are not the real technical difficulties but they are very superficial. Hence, Appeal from Order to that extent is rejected.

6. The learned counsel for the appellant submitted that the appellant is not aware of the names of administrators whose names were deleted.

7. The learned counsel for respondent No. 1 is directed to furnish the names of the administrators, who were deleted, today by sending e-mail to the advocate for the appellant.

8. The learned counsel for the appellant submitted that the appellant at present is in Dudhwa Tiger Reserve at Western Uttar Pradesh, therefore, no communication is possible. He will be back on 12th February, 2018 (afternoon). Hence, the appellant to comply with the orders of the trial Court and this Court on or before 8 a.m. of 13th February, 2018. The trial Court is directed to keep this matter on 12th February, 2018 as per the schedule and to adjourn it on the next day, i.e., 13th February, 2018 to verify the compliance.

9. Civil Applications are accordingly disposed of.

(MRIDULA BHATKAR, J.)