

\$~50

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) (COMM) 97/2018 & CAV 428/2018 & CM APPL. 18679-18682/2018**

BLUEBERRY BOOKS & ORS

..... Appellants

Through: Mr. Rajshekhar Rao with Mr. Ashwin Kumar D.S., Mr. Varun Tikmani & Ms. Gauri Puri, Advs.

versus

GOOGLE INDIA PVT LTD & ORS

..... Respondents

Through: Mr. Rajeev Virmani, Sr. Adv. with Ms. Mamta Jha, Mr. Pranav Narain, Mr. Rishabh Bhargav & Ms. Shruttima Ehersa, Advs. for R-1. Mr. Sajan Poovayya, Sr. Adv. with Mr. Priyadarshi Bannerjee, Mr. Saransh Kumar, Mr. Saransh Jain & Mr. Madhavam Sharma, Advs. for R-2. Mr. Sidharth Chopra with Ms. Sneha Jain, Advs. for R-8.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

%

07.05.2018

We have heard counsel for the parties.

The appellant questions the dismissal of the suit as far as the respondents/defendants i.e. Google India Pvt. Ltd., Google Inc., Blackberry India Pvt. Ltd., Blackberry Limited, Microsoft Corporation India Pvt. Ltd., Microsoft Corporation, AppBrain and Amazon.com, Inc. are concerned as regards the applicability of

Section 79(3) of the Information Technology Act, 2000 (hereafter referred to as ‘the I.T. Act’).

It was urged that the learned Single Judge fell into error in overlooking the fact that specific issues were cast and even amended in the past orders of the Court pertaining to the applicability of Section 79(3) of the I.T. Act to the said defendants and as to whether they could justly claim the exemption from liability on that score.

Learned counsel highlighted that the Single Judge fell into error in holding that the averments regarding appropriate knowledge, required under Section 79(3)(a) or (b) had not been fulfilled. He relied upon the averments made in Paras 20 and 21 of the plaint. It was further submitted that the question of attributing the liability on account of conscious knowledge [fraud, conspiracy, etc. – alluded to in Section 79(3)(a)] would have arisen only if the suit had proceeded with the respondents who were ultimately deleted from the array of parties.

The Single Judge had relied upon a previous decision in *Kent RO Systems Ltd. v. Amit Kotak* 240 (2017) DLT 3. In the present case, the plaintiff had not averred that a “take down notice” required by the Information Technology Act and Rules framed under it, was ever issued. The further circumstance that the contesting respondents – who were deleted from the array of parties – did take down the offending content is also not disputed.

In these circumstances, the Court is of the opinion that the Single Judge’s decision holding that no liability could attach to the

said respondents/defendants, cannot be faulted. The plaintiff is, however, given the right to approach the Court if it chances upon or comes across specific information, which enables it to show conscious knowledge on the part of the said defendants (who were directed to be deleted from the array of parties) during the pendency of the proceedings at a later stage, by moving an appropriate application. If the Court is satisfied that the information is specific in that regard, it may proceed to decide the said application or request in accordance with law.

The appeal is dismissed subject to the above observations. All the pending applications too are disposed of accordingly.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 07, 2018
kks