

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

% **Date of decision: 9th October, 2019**

+ **CS(OS) 518/2019**

RITESH PROPERTIES & INDUSTRIES LTD Plaintiff

Through: Mr. Gaurav Varma, Mr. Sujoy
Datta and Mr. Surekh Baxy,
Advts.

Versus

YOUTUBE LLC & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.13961/2019 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CS(OS) 518/2019 & IAs No.13959/2019 (u/O XXXIX R-1&2 CPC)
& 13960/2019 & 13962/2019 (both u/S 151 CPC)

3. The plaintiff Ritesh Properties and Industries Limited has instituted this suit against (i) YouTube LLC, (ii) Google LLC and against unknown defendants impleaded as John Doe/Ashok, for (a) 'permanent injunction' directing YouTube LLC and Google LLC to take down, remove and/or block/restrict access to the video/URLs/web links mentioned in paragraphs 8 and 10 of the plaint and claimed to have been uploaded by unknown defendants and alleged to be having content defamatory of the plaintiff; (b) permanent injunction and mandatory injunction directing the defendants to block/remove the impugned videos from their websites, from time to time, on receipt of complaint from the plaintiff; (c) permanent and mandatory injunction

directing the defendants no.1 and 2 YouTube LLC and Google LLC, to delete all accounts maintained by the unknown defendants with the defendants No.1&2; (d) permanent and mandatory injunction restraining the unknown defendants from issuing any further material defamatory of the plaintiff; and, (e) for recovery of damages.

4. It is *inter alia* the case of the plaintiff, (i) that the plaintiff is carrying on business of real estate and fashion retail and majority of its clients are situated at Delhi; (ii) that the plaintiff has been developing an industrial park in the name and style of “Hampton Business Park” in Ludhiana, Punjab, after acquiring land from Government of India; (iii) that it has come to the knowledge of the plaintiff that a video has been uploaded on 10th July, 2019 through the user account “mundian khurd”, by the unknown defendants, on the video-hosting platform provided by defendants No.1&2; (iv) that it is alleged in the said video that Hampton Homes Ludhiana is a fraud; it does not own the land; Hampton Homes is run by a gang of fraudsters including Ritesh Properties and Industries Limited; no money should be paid to them and they have shown fake photos and videos; (v) that it is evident from the content of the video that it conveys a false and defamatory message to the general public, and the statements therein are untrue and baseless; and, (vi) that a similar video was also uploaded sometime in 2018 and notwithstanding the complaint by the plaintiff, identity of the uploader thereof was not disclosed.

5. A perusal of the documents filed by the plaintiff before this Court shows the video published in July, 2019 to, besides containing the aforesaid, content, also making statements of fact, (a) that the

allotment of land earlier obtained in the name of Ritesh Industries Limited was cancelled by the High Court on 17th April, 1998 vide orders in Civil Writ Petition No.6003/1995; (b) that Ritesh Industries Limited appealed but could not regain the allotment and LPA Nos.289, 283 to 285, 275, 286 and 347 of 1998 were dismissed on 18th May, 1999; (c) that having lost the land allotment in the year 1998, Ritesh Industries Limited changed its name on 4th April, 2007 to Ritesh Properties and Industries Limited; (d) that now the land is owned by the Government of Punjab and others; (e) that Ritesh Industries Limited and Ritesh Properties and Industries Limited are the result of fraudulent activities; (f) that Ritesh Industries Limited does not exist; (g) that the Real Estate Regulatory Authority (RERA), Punjab registration number given by the plaintiff, is inappropriate and fraudulently obtained and request has been made to the Secretary, RERA for cancelation of the registration in the name of Hampton Homes and Flinton Homes, and which request is pending consideration; and, (h) that Hampton Homes are going to be built in an industrial area and building residences therein will be a health risk to the occupants thereof.

6. The plaintiff, in the plaint, has not disclosed the impugned video to be containing the aforesaid averments of facts, obviously in an attempt to obtain an *ex-parte* order from the Court, if the Court were not to go through each and every document filed by the plaintiff and were to believe the plaintiff to have made complete disclosure in the plaint. It is a clear case of misrepresentation of facts in the plaint.

7. I have, in ***Raj Kishore Vs. Delhi Development Authority*** 2013 SCC Online Del 2508, ***Mool Chand Sharma Vs. Delhi Prantiya Raigar Mandir*** 2017 SCC OnLine Del 12042, ***Huntsman International (India) Private Limited Vs. Abiss Textile Solutions Private Limited*** 2018 SCC Online Del 7545 and ***Vijay Abbot Vs. Super Cassettes Industries Private Limited*** 2019 SCC Online Del 9458 held that a plaintiff, specially when claiming *ex parte* relief, owes a duty to the Court to make a complete disclosure in the plaint, of all facts / material relevant to the grant / non-grant of *ex parte* relief. It was further held that lip service to such duty owed to the Court cannot be paid, by smuggling in a document amongst the documents filed with the plaint. It was reasoned, that it is not possible for the Judges to, before or at the time of hearing, go through each and every page of the paper book, considering the large number of matters listed before this Court. Alas, the plaintiff, notwithstanding the judgments, has chosen to conceal from the plaint, the legal proceedings and orders therein mentioned in the allegedly defamatory video in support of the claim therein against the plaintiff. The only inference is that the plaintiff, in the hope that the Court will not go into each and every page of the documents and believing the averments in the impugned video to be vague and without any basis, grant *ex parte* order in favour of plaintiff, wanted to steal a march over the defendants. Needless to state, the plaint is accompanied with an application for *ex parte* interim relief directing defendants no.1 and 2 to block access to impugned video. The plaintiff feared, that if discloses in the plaint the legal proceedings and orders therein for

cancellation of land allotment in favour of plaintiff, the Court may not grant *ex parte* relief.

8. Such conduct of the plaintiff amounts to abuse of process of Court.

9. The suit is liable to be summarily dismissed on this ground alone.

10. Not only so, the plaintiff, in the plaint, has not even pleaded that the contents in the impugned video, with respect to cancellation of allotment of land pursuant to court orders, are not correct. In the absence of the plaintiff controverting the contents of the impugned video and which are specific, and without the plaintiff pleading the facts with respect to the Writ Petition and LPA referred to therein and the status with respect to the RERA permission for the project, no case for the plaintiff to be entitled to any relief as is sought, of taking down of the impugned content can be granted to the plaintiff.

11. The case of the plaintiff cannot be equated to other cases coming up before this Court of character assassination without the complainant / accuser disclosing own identity even. Generally such accusations are of sexual harassment / misconduct. In such cases, suits have been entertained and *ex parte* orders issued to social networking sites, for taking down the impugned content and to disclose particulars of the uploader of such content. The reason which prevailed was, none can be condemned publically, without having an opportunity to defend him/her self. It was felt that the accuser, in the matter of own complaint / grievance, cannot also be the judge and pronounce the accused guilty publically. However while it is not

possible for a person who is accused of sexual harassment / misconduct, to prove the negative, that he/she is not guilty of what he/she is accused of in public domain by unknown persons who want to hide behind the veil of an electronic identity, when a person in the market, selling real estate professing good title thereto is accused in public domain of doing so without having any title and particulars of legal cases given in support of the allegations, for such person to make out a case for defamation, it is essential to satisfy the Court of falsity of the allegations and which can easily be done by producing documents of Court cases referred to and showing good title to the real estate being offered for sale. When no effort even in this respect is made, the only inference is that the allegations are not controverted. The Court would not injunct a defendant from publishing the truth. The effect of the injunction, if granted, would be to allow the plaintiff to continue selling / offering for sale, real estate, without having a good marketable title thereto, thereby cheating gullible buyers.

12. Thus, the plaint does not disclose the cause of action for the reliefs claimed and is liable to be rejected.

13. The counsel for the plaintiff seeks to withdraw the suit with liberty to file afresh.

14. The suit is dismissed with liberty sought, subject to the condition that the plaintiff, along with the fresh proceedings if any initiated, files a copy of this order and prominently mentions this order in the body of the plaint, so that it comes to the immediate notice of anyone going through the plaint, even if does not go through the documents filed therewith.

15. The plaintiff, if files a fresh suit, to also come prepared to address the Court on the aspect of territorial jurisdiction, inasmuch as considering the nature of the allegations, it appears that an enquiry into the title claimed by the plaintiff, will have to be undertaken and which is the domain only of the Court within whose territorial jurisdiction the property is situated.

16. The plaintiff to, in the fresh proceedings if any, also make a categorical statement with respect to receipt of each and every permission required for the project, defamation whereof is claimed, along with supporting documents.

17. The counsel for the plaintiff seeks refund of court fees paid.

18. A certificate entitling the plaintiff to refund of court fees paid less Rs.50,000/- be issued and handed over to the counsel for the plaintiff.

RAJIV SAHAI ENDLAW, J.

OCTOBER 09, 2019

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