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

Date of decision: 19th February, 2020

+ **CM (M) 223/2019**

VASUNDHARA PRAKASH

..... Petitioner

Through: Mr. Rahul Ajatshatru, Ms. Prachi Nirwan and Mr. Pranjal Shekhar, Advocates. (M:9811811712)

versus

HALF BAKED BEANS LITERATURE

PVT. LTD. & ORS.

..... Respondents

Through: Ms. Sugandha Khaitan, Advocate for R-1. (M:8826748101)

Ms. Savni Endlaw, Mr. Sidharth Chopra and Mr. Devvrat Joshi, Advocates for R-3. (M:9810621272)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the impugned order dated 3rd January, 2019 by which Respondent No.3/Defendant No.3 i.e., Amazon Seller Services Pvt. Ltd. (*hereinafter*, “ASSPL”) has been deleted from the array of parties.

2. A suit for infringement of copyright was filed by the Petitioner/Plaintiff - Ms. Vasundhara Prakash (*hereinafter*, “Plaintiff”) seeking an injunction against the publisher i.e., Respondent No.1/Defendant No.1 - Half Baked Beans Literature Pvt. Ltd. (*hereinafter*, “Defendant No.1”), the printer i.e., Respondent No.2/Defendant No.2 – DE Unique Printers (*hereinafter*, “Defendant No.2”) and ASSPL. The injunctions sought were for restraining the infringement of the Plaintiff’s copyright and

for taking down the alleged infringing copy of the book from Amazon platforms. Along with the suit, an application for interim injunction was also filed by the Plaintiff.

3. The case of the Plaintiff in the suit is that the Plaintiff and Defendant No.1 had entered into a Publishing Agreement dated 4th December, 2017. The book had graphic and written content. After the book was written and finalised, disputes arose between the Plaintiff and Defendant No.1 as various defects which had been pointed out by the Plaintiff had not been addressed by Defendant No.1. On 11th April, 2018, the Plaintiff revoked her authorization to Defendant No.1 to publish the book.

4. On 11th April, 2018, an email was addressed by the Plaintiff to amazon.co.in (ASSPL) stating that a copy of the book was found listed on the platform and calling upon ASSPL not to deal in or list the book. The said email was replied to by ASSPL on 12th April, 2018 assuring the Plaintiff that the book would be removed from the website. According to the Plaintiff, despite the said assurance being given, the book was not removed, leading to the filing of the suit for infringement in May, 2018.

5. The contention of ASSPL is that it had already deleted the listing from its portal and since it is only an intermediary, deletion from the array of parties was also sought by means of an application under Order I Rule 10 CPC.

6. Ld. counsel for the Plaintiff submits that in the meantime, the book has been converted into digital form and was made available on global platforms i.e., www.amazon.com and www.amazon.uk. In view of this, the Plaintiff moved an application under Order VI Rule 17 CPC for amending the plaint as well as an application under Order I Rule 10 CPC for

impleadment of Amazon.com, Inc. and Amazon EU SARL i.e., the entities which were making the said book available in digital form, as Defendants. Notices are stated to have been issued in the said applications and the same are pending. However, vide the impugned order dated 3rd January, 2019, ASSPL's application under Order I Rule 10 CPC for deletion from the array of parties was taken up and allowed.

7. The grievance of the Plaintiff is that the role of ASSPL is significant in this matter as there are two violations by ASSPL. Firstly, ASSPL did not take down the listing within the mandatory period of 72 hours from receipt of the notice and secondly, it is claimed that ASSPL had passed the book to its global group companies for listing the same in its digital version on Kindle devices. Accordingly, Id. counsel for the Plaintiff submits that the deletion was erroneous and, in any case, the entire matter ought to have been adjudicated along with the Plaintiff's applications under Order I Rule 10 CPC and Order VI Rule 17 CPC. Further, the emails exchanged between the parties are relied on to argue that despite assurance being given by ASSPL, it failed to take down the listing and hence, ASSPL has violated the Information Technology (Intermediaries guidelines) Rules, 2011 (*hereinafter, "Intermediary Guidelines"*).

8. On the other hand, Id. Counsel for ASSPL submits that the role of intermediaries like Amazon is very clear. As per the Intermediary Guidelines the obligation on intermediaries is limited to taking down the listing and nothing more. Id. counsel relies upon the clarification dated 18th March, 2013 issued by the Ministry of Communications and Information Technology to submit that intermediaries are only required to acknowledge the complaint within 36 hours and redressal can take place within a period of

one month. It is her submission that the suit was filed before the completion of a month and hence, the allegation that the Intermediary Guidelines have been violated is not made out in the present case.

9. On a question being put as to the role of ASSPL in making the digital copies of the book available to www.amazon.com and www.amazon.uk, ld. counsel for ASSPL submits that ASSPL had not given www.amazon.com and www.amazon.uk access to the book and that a categorical statement to this effect has been made in ASSPL's rejoinder in its application under Order I Rule 10 CPC. Ld. counsel for ASSPL further urges that the application under Order I Rule 10 CPC would not affect the outcome of the application under Order VI Rule 17 CPC.

10. She submits that the role of ASSPL is merely of assisting/aiding and there was no access given to the book. The two platforms – www.amazon.com and www.amazon.uk being independent entities, ASSPL has no role to play in the digital version of the book being made available on these platforms. This contention is disputed by the Plaintiff on the ground that it was ASSPL which first listed the book on its website and it was ASSPL which gave access to the book to www.amazon.com and www.amazon.uk.

11. The Court has considered the rival contentions of the parties, as also the impugned order dated 3rd January, 2019. The Trial Court has taken up the matter in a piecemeal manner. A mere statement by ASSPL that it did not make the digital version of the book available to its global platforms cannot be straight away accepted. The fact that the digital version of the book was made available on the Kindle platform shows that a deeper enquiry would be required. The same would be a question of trial. During

the pendency of the application under Order VI Rule 17 CPC and the application under Order I Rule 10 CPC seeking impleadment of the global platforms, deletion of ASSPL has been directed by holding that ASSPL had not ‘conspired’, ‘abetted’, ‘aided’ or ‘induced’ the listing of the book on amazon.com and amazon.uk. Such a finding could not have been arrived at in a premature manner in as much as the platforms fall under the same umbrella of Amazon.com, Inc., though they are different juristic entities.

12. The Trial Court has observed that though the Plaintiff has placed on record some screenshots to allege that the book is being sold through www.amazon.com and www.amazon.uk, there are no allegations in the Plaintiff’s application under Order I Rule 10 CPC that the book has been made available on ASSPL’s e-portal.

13. The relevant pleadings in the Plaintiff’s reply to ASSPL’s Order I Rule 10 CPC application and the rejoinder in respect of the global listings are set out herein below:

Plaintiff’s Reply to ASSPL’s application u/O I Rule 10 CPC

*“4. It has come to the knowledge of the Plaintiff that Defendant No. 1 has either acting on its own or in collusion / collaboration with Defendant No. 3 made the infringing version of the Plaintiffs work available for hire and sale across the world on several jurisdiction(s) and at least in the United States of America on the website www.amazon.com which is owned by Amazon.com, Inc., having its address at P.O. Box 81226, Seattle, WA 98108-1226, United States of America, and in the United Kingdom through the website www.amazon.co.uk owned and controlled by **Amazon EU SARL**, UK Branch; having its office at 1 Principal Place, London, Worship Street, EC2A 2FA,*

United Kingdom. It is also pertinent to mention that Amazon.com Inc, owns its widely popular electronic reader-software Kindle. Defendant No. 3 has, along with Amazon.com, Inc., digitized the Plaintiffs work into its digital e-book / Kindle format(s) and has offered the same across the world either singularly at various price points (\$1.01 in the US and £1.49 in the UK, respectively) and have also bundled the same in their collective bundled library offered/called as "Kindle Unlimited". The Screenshot(s) in relation to Plaintiffs work on website www.amazon.com is being filed in the present proceeding and is marked and annexed hereto as "**Annexure B1**". The corresponding terms and conditions form the website www.amazon.com as available therein is being filed in the present proceeding and is marked and annexed hereto as "**Annexure B2**". The Screenshot(s). in relation to Plaintiffs work on website www.amazon.com is being filed in the present proceeding and is marked and annexed hereto as "**Annexure C**" and the corresponding terms and conditions form the website www.amazon.co.uk as available therein is being filed in the present proceeding and is marked and annexed hereto as "**Annexure C2**". The various Amazon companies have, converted the Plaintiffs work into their digital format and stored it at their server(s), which is without permission of the Plaintiff, and tantamount to infringement of Plaintiff's copyright. Also, they have offered Plaintiff's work for sale or limited reading (as the case may be), therefore the Plaintiff is entitled rendition of their accounts disclosing the number of sales made and revenue generated, by respective website and such other reliefs as available to the Plaintiff under the law."

ASSPL's Rejoinder in its application u/O I Rule 10 CPC

“4. The contents of paragraph 4 are denied for being false. It is denied that the Defendant No. 3 colluded/ collaborated with the Defendant No. 1 to make the Impugned Book available for hire and sale across the world. It is vehemently denied that the Defendant No. 3 has converted the Impugned book into a digital format and that the Defendant No. 3 is storing the same on its server without the permission of the Plaintiff, and that the Defendant No. 3 has offered for sale or limited reading the Impugned Book. It is reiterated that the e-format of the Impugned Book is listed on the Defendant No. 3's website by a third party. Insofar as paragraph 4 pertains to Amazon.com, Inc and Amazon EU SARL, it is submitted that the Defendant No. 3 is an independent legal entity that is not involved in the day-to-day activities of Amazon.com, Inc and Amazon EU SARL. As such, the contents of paragraph 4 pertaining to these entities are denied as they pertain to third party information. Reliance is placed on paragraph 4 of the Preliminary Objections above.”

14. A perusal of the pleadings above shows that there are extremely contested factual issues. It is extremely early in the proceedings for the trial court to conclude that the two global platforms being distinct and separate legal entities, ASSPL cannot be held liable for their day to day functions and would therefore not be required to continue appearing in the matter. The ideal course of action that the Trial Court ought to have followed would have been to consider the allegations in the Plaintiff's reply to the Order I Rule 10 CPC application that ASSPL had assisted/aided the global platforms with their digital copies as also the responses to these allegations. The question as to whether ASSPL had provided the digital copy of the book to the two global platforms would be considered as part of the said two applications.

15. Under these circumstances, this Court is of the opinion that this matter deserves to be remanded back to the Trial Court and the application ought to be adjudicated afresh. It is, accordingly, directed that the two applications under Order I Rule 10 CPC and Order VI Rule 17 CPC be heard together by the Trial Court. All the applications shall be heard together and the issues raised shall be comprehensively decided. This Court, at this stage, is not commenting on whether ASSPL had fulfilled its obligation(s) or not, inasmuch as there are various factual issues which have been raised by both the parties.

16. The impugned order is, accordingly, set aside and the matter/application is remanded back to the Trial Court for fresh adjudication, as directed above. It is clarified that the observations made in the impugned order or in the present order would not affect the adjudication of the said applications by the Trial Court. Let a copy of this order be sent to ADJ-05, South East, District Saket Court, New Delhi in TM No.80/18 titled *Vasundhara Prakash v. Half Baked Beans Literature Private Ltd. & Ors.*

17. The petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 19, 2020

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(corrected and released on 3rd March, 2020)