

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 483/2019 & IAs No.12910/2019 (u/O XXXIX R-1&2 CPC), 12912/2019 (u/O VII R-14(3) CPC), 14226/2019 (of D-5 u/O XXXIX R-4 CPC), 15586/2019 (u/O I R-10(2) CPC), 15952/2019 (u/S 151 CPC), 15953/2019 (u/O XXXIX R-4 CPC), 16035/2019 (of D-6 u/O XXXIX R-4 CPC), 16036/2019 (u/O I R-8A CPC), 16037/2019 (u/S 151 CPC), 16745/2019 (of D-6 u/O I R-10 CPC), 18355/2019 (for direction), 786/2020 (for condonation of delay in filing reply), 1554/2020 (for condonation of 30 days delay in filing replication) & 1555/2020 (for condonation of 30 days delay in filing reply)

SUBODH GUPTA

..... Plaintiff

Through: Mr. Sandeep Sethi, Sr. Adv. with Ms. Neoma Vasdev Gupta, Mr. Siddharth Garg & Mr. Samarth Khanna, Advs.

Versus

HERDSCENEAND & ORS.

..... Defendants

Through: Mr. Akhil Sibal, Sr. Adv. with Mr. Abhik Chimni, Ms. Sonali Malik & Mr. Mayank Goyal, Advs. for D-1.

Mr. Udit Mendiratta, Ms. Nayantara Narayan & Mr. Dhruv Bhatnagar, Advs. for D-2.

Mr. Parag P. Tripathi, Sr. Adv. with Mr. Tejas Warriar, Mr. Ajit Warriar, Ms. Richa Srivastava & Mr. Shijo George, Advs. for D-3.

Mr. Arvind Nigam, Sr. Adv. with Mr. Neel Mason & Mr. Vihan Dang, Adv. for D-5.

Mr. Akhil Anand, Adv. for D-6.

Mr. Ritin Rai, Sr. Adv. with Ms. Amritawanda Chakravorty, Ms. Shreya Munoth, Ms. Kritika Bhardwaj, Ms. Amala Dasarthi & Ms. Devdutta Mukhopadhyaya, Advs. for applicant Indian Journalist Union.

Ms. Tejaswi Shetty, Adv. for applicant in IA No.16036/2019.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.02.2020

1. This order is in continuation of the earlier order dated 4th February, 2020.
2. The counsel for defendant no.1 Herdsceneand states that defendant no.1 Herdsceneand withdraws the impugned posts and allegations therein and expresses regret for the same. It is further stated that the defendant no.1 'Herdsceneand' agrees to the suit being decreed against it in terms of prayers 'A' and 'B' of paragraph 45 of the plaint dated 16th September, 2019.
3. The senior counsel for the plaintiff, on instructions states that the plaintiff agrees that the identity of defendant no.1 Herdsceneand remains anonymous and does not press the other prayers against defendant no.1 Herdsceneand.
4. The order dated 22nd January, 2020 records that the defendant no.1 Herdsceneand though had sought anonymity qua particulars of the person whose statement was published by the defendant no.1 and which is alleged to be defamatory, but was not representing that person. I have enquired from the senior counsels for the plaintiff and defendant no.1 Herdsceneand, the need for making any clarification in this respect.
5. Both state that there is no need in this regard.
6. The senior counsel for the applicant in IA No.15586/2019 viz. Indian Journalists Union (IJU) has contended that the compromise between the plaintiff and the defendant no.1 Herdsceneand cannot affect the rights of the applicant IJU to write or report on the story which had appeared on the platform of defendant no.2 Instagram LLC from the handle of defendant no.1 Herdsceneand. It is contended that the injunction in terms of prayer paragraphs 'A' and 'B' of paragraph 45 of the plaint would affect the rights of the members of the applicant and the same cannot be permitted in terms of dicta of the Supreme Court in *Shreya Singhal Vs. Union of India* (2015) 5 SCC 1.

6. I have enquired from the senior counsel for the applicant IJU, the name of the journalist who wants to write or who has written or whose rights are being agitated.
7. Not a single name has been cited inspite of repeated asking.
8. Once the defendant no.1 Herdsceneand from whose handle on Instagram the story emanated has made the statement aforesaid and expressed regret for the same, the members of the applicant IJU cannot claim any right to interfere in the compromise arrived at between the plaintiff and the defendant no.1 Herdsceneand. If any member of the IJU, notwithstanding the aforesaid, claims right to publish or continue publishing the story attributed to defendant no.1 Herdsceneand, he / she cannot do so without making himself / herself liable for any action therefor, by disclosing identity and removing the cloak of IJU, wearing which such statements are being made. Moreover, the applicant IJU is not even a party to the present suit and has merely applied for impleadment / intervention and which application is pending. No person has come forward to claim any right qua the story which emanated from the handle of defendant no.1 Herdsceneand and which the defendant no.1 Herdsceneand itself has withdrawn. Moreover, if the right of any person or journalist is affected, it is for such journalist to take independent remedies therefor and cannot convert this lis into a public interest litigation.
9. The senior counsel for IJU next contends that the action has been instituted as a John Doe / Ashok Kumar and thus the applicant IJU has a right to participate.
10. On enquiry, who is the John Doe / Ashok Kumar, it is stated that it is for the plaintiff to implead and the applicant IJU is only objecting to the compromise.
11. Though the plaintiff, while instituting suit against the six defendants, had kept the option open to seek the same relief against others, if any cause of action were to accrue against them, but the suit is being compromised with defendant no.1 Herdsceneand, before exercising such option and the applicant IJU, on said

ground cannot seek continuation of the suit when the plaintiff is not desirous thereof. I reiterate that the decree sought being against defendant no.1 Herdsceneand, if any other journalist claims any right, would be free to exercise the same and the plaintiff, if aggrieved therefrom will have his remedies thereagainst.

12. The senior counsel for the defendants no.2 and 3 viz. Instagram LLC and Facebook Inc. and the senior counsel for the defendant no.5 Google Inc. have contended that a decree in terms of prayer paragraph 'A' and 'B' of paragraph 45 of the plaint will affect their rights inasmuch as web links qua which orders are sought are not only of defendant no.1 Herdsceneand but of several other entities viz. Economic Times, Business Standard, etc. and who are not parties to the suit.

13. The senior counsel for the defendant no.5 Google Inc. has also contended that defendant no.5 Google Inc. is merely one of the search engines and the impugned content is sought to be removed from the index of defendant no.5 Google Inc. only and not from the index of other search engines where also it continues to be hosted on the host website of those publications.

14. The senior counsel for the plaintiff states that under the decree sought in terms of prayer paragraph 45 'A' and 'B', no further removals than what have already been effected pursuant to orders dated 18th September, 2019 and 30th September, 2019 will be sought.

15. The senior counsel for defendant no.5 Google Inc. has contended that the question, whether in such cases defendant no.5 Google Inc. is a necessary party or not and whether any action against defendant no.5 Google Inc. can be initiated without impleading the host websites whose content the defendant no.5 Google Inc. is merely indexing and making available on search being undertaken by any individual, be left open for consideration in another appropriate case.

16. Allowed.

17. Accordingly, the suit is disposed of passing a decree in favour of the plaintiff, and against the defendant no.1, in terms of prayer paragraph 45 'A' and 'B' of the plaint dated 16th September, 2019 read with above and leaving the parties to bear their own costs.

Decree sheet be drawn up.

No costs.

RAJIV SAHAI ENDLAW, J

FEBRUARY 11, 2020

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