



WEB COPY



A.No.248 of 2022
in
C.S.(Comm.Div.) No.111 of 2021

SENTHILKUMAR RAMAMOORTHY, J

The third defendant has filed this application to delete the said defendant from the array of parties in the suit.

2. The principal contention of the third defendant is that it is an intermediary and is, consequently, entitled to protection under Section 79 of the Information Technology Act, 2000. The third defendant further asserts that an intermediary does not have control over information hosted on the website. The applicant relies upon the judgment of the Hon'ble Supreme Court in *Shreya Singhal vs. Union of India (2015) 5 SCC 1* and contends that it would be under an obligation to take down information or data only pursuant to an order of Court. In these circumstances, it is contended that the intermediary is not a necessary or proper party to the suit.

3. The plaintiffs contest the application on the ground that prayer (h) is directed at the third defendant. In view thereof, the plaintiffs assert that the third defendant is a necessary party to the suit.



WEB COPY

4. The third defendant has filed an affidavit setting out an undertaking in paragraph-16 thereof. Since the said undertaking is of particular significance to this application, the same is set out below:

“16. I state that however, the 3rd Respondent/Defendant is willing to take down the impugned product from any specific URLs as directed by this Hon'ble Court pertaining to the Defendant No.1 in present case from the portal of the 3rd Respondent/Defendant, within a week of such direction/order along with the URLs being communicated by the Plaintiff to the 3rd Respondent/Defendant. I state that the present submission is without prejudice to any of the rights, contentions and claim of the 3rd Defendant herein in the above application and the suit.”

5. On the basis of the above undertaking, the third defendant contends that its presence is not necessary for adjudicating the issues arising out of the suit. The plaintiffs contend that the relief prayed for in prayer (h) is wider than the undertaking provided by the third defendant but that the present application may be disposed of by issuing suitable directions to the third

defendant.



6. By the undertaking extracted above, the third defendant has declared that it is willing to take down the impugned product from any specific URLs as directed by the Court within one week of such direction. Consequently, the plaintiffs are in a position to point out any acts of infringement by the contesting defendants and subject to the objections of the contesting defendants, the Court would be in a position to rule thereon. Upon such ruling, as per the undertaking, the third defendant states that it will take down such content. In light of the undertaking, the presence of the third defendant is not necessary for purposes of adjudicating the suit. Accordingly, by recording the undertaking of the third defendant, A.No.248 of 2022 is allowed by deleting the third defendant from the array of parties in the suit.

22.03.2022

kal

(½)



WEB COPY



SENTHILKUMAR RAMAMOORTHY, J

kal

A.No.248 of 2022
in
C.S.(Comm.Div.) No.111 of 2021

22.03.2022