



WEB COPY



A. No.628 of 2022

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in
C.S. (COMM. DIV.) No.32 of 2021

ABDUL QUDDHOSE, J.

This application has been filed by the second defendant in the suit. This application has been filed for removal /deletion of the name of the applicant second defendant from the array of party defendants in the suit. The applicant / second defendant claims that they are only an intermediary and they are no way connected with the dispute between the first respondent / plaintiff and the second respondent / first defendant.

2. In paragraph 8 of the affidavit filed in support of this application, they have stated as follows :-

8. Without prejudice to the aforesaid, it is submitted that as an intermediary, under Section 79(3)(b), the applicant is statutorily obligated to take down any content specifically identified to it as infringing and supported by a court order, even if it is not a party to the instant suit. Thus, the applicant, without prejudice to its contentions available under law and equity, undertakes that in the event this Hon'ble Court finds in favour of the Respondent no.1, it shall take down any allegedly infringing product listings of Defendant No.2, that the respondent No.1 identifies and intimates to the applicant, in accordance with the directions that this Hon'ble Court may pass. The applicant will be bound to comply with such a direction as per extant laws, even if it is not a party to the suit.



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3. As seen from the aforementioned paragraphs, it is clear that the applicant / defendant No.2 has undertaken to abide by any orders passed by this Court with regard to the taking down of the alleged infringed material.

4. No prejudice would be caused to any of the parties to the dispute if the undertaking given by the applicant / second defendant as found in paragraph No.8 of the affidavit filed in support of this application is recorded by this Court and this application filed by the applicant is allowed as prayed for.

5. The learned counsel for the first respondent / plaintiff has also not raised any serious objection, if such an order is passed by this Court. Accordingly, this application is allowed as prayed for after recording the undertaking given by the applicant / second defendant which is found in paragraph No.8 of the affidavit filed in support of this application which has been extracted supra that the applicant / second defendant shall abide by any orders passed by this Court with regard to the dispute between the first respondent / plaintiff and the second respondent / first defendant, which is the subject matter of the suit C.S. (COMM. DIV.) No.32 of 2021.

6. The applicant / second defendant is therefore removed from the array of party defendants in the suit C.S. (COMM. DIV.) No.32 of 2021 and the learned counsel for the first respondent / plaintiff is directed to carry out amendment accordingly.

Post the matter on 16.11.2023.

20.10.2023

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20.10.2023