



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 28.06.2023

PRONOUNCED ON : 09.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.No.153 of 2021

Suki Sivam

... Applicant/Plaintiff

vs

1.You Tube

Google LLC,

1600 Amphitheatre Parkway,

Mountain view,

C.A.94043, United States.

E.mail: Support-in@ google.com

2.WhatsApp INC,

1601, Willow Road,

Menlo Park,

California, U.S.A.

3. Facebook India Online Services private Ltd.,

Unit Nos.1203 and 1204,

Level 12, Building No.20,

Cyberabad, Madhapur,

Raheja Mindspace,

Hi-Tech City

Hyderabad – 500 081.

4.Meta Platforms Inc.,

1601, Willow Road, Menlo Park,

C.A.94052, United States.

(4th defendant impleaded as per order dated

01.12.2021 in A.No4401 of 2021)

... Defendants/Respondents



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Prayer: Civil Suit is filed under Order IV Rule 1 of Original Side Rules with Sections 55 and 62 of the Copy Right Act, 1957 and Section 7 of Commercial Court, Commercial Division and Commercial Appellate Division of the High Courts Act, 2016, praying to,

(a) Granting a permanent injunction restraining the defendants 1 to 3, their servants, agents, partners, employees, assignees, distributors, licensees and dealers from infringing, exploiting, uploading in their respective Social Media Channel, any of the Plaintiff's audio-visual works more specifically described in the Annexure "A" to the plaint, unless it is uploaded by the plaintiff or anyone authorised by the plaintiff in writing to do so;

(b) Granting a permanent injunction restraining the defendants 4, represented by John Doe/s @ Ashok Kumar/s, being unknown and undisclosed persons, their servants, agents, partners, employees, assignees, distributors, licensees and dealers from infringing, exploiting,



uploading in defendants 1 to 3 or on any other social media and in any other electronic media, the plaintiff's audio-visual works more specifically described in the Annexure "A" to the plaint, except under a written authority from the plaintiff authorising them to do so;

(c) Pass such other order or orders as this Court may deem fit in the circumstances of the case.

For Plaintiff	: Mr.K.Ravi Senior Advocate for M/s.Rugan and Arya
For Respondents	:Mr.G.Balasubramanian for M/s.Leela and Company for D1 Mr.Tejas Karia Mr.Sheshank Mr.Allwin Godwin Ms.Shivika Sing for D2 Ms.Swathi Agarwal Mr.Akhil Shandilya Ms.Vani Kanshik Ms.Akhila for D3 Mr.Varun Pathak Mr.Shyamal Anand Mr.Thejesh Rajendran Ms.Niranjana Pandian for D4

J U D G M E N T



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The present suit has been laid seeking permanent injunction restraining the defendants 1 to 3 from infringing, exploiting, uploading any of the plaintiff's audio-visual works more fully described in the annexure "A" to the plaint unless it is uploaded by the plaintiff or any person authorized by the plaintiff in writing. The plaintiff also seeks an injunction restraining the 4th defendant represented by John Doe/s @ Ashok Kumar/s (now deleted and replaced by Meta Platforms International) from infringing exploiting, uploading the plaintiff's audio-visual more fully described in Annexure "A" to the plaint except under written authority from the plaintiff.

2. According to the plaintiff, he is an eminent speaker and has millions of fans all over the world. He authored several books and also has given speeches in Tamil, on variety of subjects. He has addressed hundreds of public meetings and most of his speeches have been video graphed, the same were marketed under the banner "OM Audios" by the plaintiff. A list of such speeches made by the plaintiff is enclosed along with the plaint as Annexure "A".



2.2. The plaintiff started a concern under the name and title of “Sukisivam Expressions”. The plaintiff's daughter is the sole proprietor of the same. He permitted her to publish the video recordings of his speeches and authorized her to publish the such video recording on “you tube” and all other social media. There has been a constant flow of good revenue through such publications in the “You tube”.

2.3 The plaintiff was surprised to find several recordings of his speeches were posted by several unknown persons, unauthorizedly, on You tube, Face Book and Whatsapp. The said unknown persons are mischievously publishing select portions of his speeches under defamatory captions with an ulterior motive to defame the plaintiff and create unwarranted animosity towards the plaintiff in the minds of a section of society. The said activity also resulted in diminishing the revenue to the plaintiff.

2.4. As a speaker, the plaintiff is the author of his speeches and as such he is the first owner of the copy right in all his speeches. As a first owner of the copy right in respect of his speeches,



the plaintiff has got exclusive right to communicate the same through any means to the general public. No other person has got any right to communicate the same to the general public without authorization or licence from the plaintiff. Any reproduction of plaintiff's speech or portions thereof in any medium by any person without authority from plaintiff would constitute an infringement of copy right within the meaning of Section 51 of the copy rights Act.

2.5. It is also averred by the plaintiff that number of unknown and unidentifiable persons, are posting speeches of the plaintiff in You-tube, Face book, WhatsApp and other social media and those persons are untraceable. Therefore, the plaintiff is constrained to approach this Court, seeking a restraint order against the respondents from posting such infringing materials in their platform. On these pleadings, the plaintiff laid the suit for the above said relief.

Averments found in the written statement of the first defendant:



3.1. The suit is liable to be dismissed as the plaintiff

failed to provide any documents to establish that he is the copy right holder or owner of the list of works enumerated in Annexure “A” to the plaint. The plaintiff failed to join the alleged uploaders/infringers of the infringing contents. Therefore, the suit is bad for non-joinder of necessary parties. The plaintiff failed to identify any specific 3rd party contents uploaded on the You-tube platform by the specific URL's.

3.2. The first defendant is only a platform provider or an intermediary in law and hence it is not a necessary or proper party to the suit. There is no cause of action to maintain the suit prayer against the 1st defendant. The plaint has been filed on the assumption that the first defendant is liable to monitor and remove all infringing contents relating to plaintiff, allegedly uploaded by a 3rd party on its platform, without any Court order and without any notice of such infringement from the plaintiff. Under law, intermediaries like the first defendant have got immunity from any liability as per Section 79(1) of Information Technology Act 2000 read with the provisions of copy right Act in relation to any 3rd party content. As per law laid down by the Apex Court, the



intermediaries are liable to remove the infringing contents uploaded by the 3rd parties only upon receiving actual knowledge from the Court Order or from the Government Agency.

3.3. The first defendant further averred that unless the specific infringement works are identified by Uniform Resources Locator (URL) it will not constitute knowledge for the purpose of Section 51 (a) (ii) of Copy Right Act. Therefore, any blanket injunction restraining the 1st defendant from preventing 3rd parties from uploading any infringing content in its platform without actual knowledge is neither sustainable nor permissible under law. If the copy right owner identifies and provides specific URL's of all the alleged infringing contents, the first defendant will review and take appropriate action in accordance with law, subject to any order to be passed by this Court.

3.4. The first defendant as an intermediary cannot act as an protector of 3rd party claims actively monitor or filter the content uploaded by the 3rd parties using its platform. Any content uploaded in the platform of the first defendant is attributable to the person who



uploaded the content and not to the platform provider. As an intermediary the first defendant is not involved in the creation, modification or felicitation of any content on its platform.

3.5. The 1st defendant has a complaint mechanism whereby any copyright owner can report of grievance relating to infringement of copy right. The plaintiff has not made any such requests to the 1st defendant. On these pleadings, the 1st defendant sought for dismissal of the suit.

Written statement filed by the second defendant:

4.1. The 2nd defendant provides a messaging service that allow users to exchange messages and the communications on whatsapp service which is secured with end to end encryption. It means any 3rd party or even whatsapp cannot read or listen to them.

4.2. The 2nd defendant is an intermediary within the meaning of Information Technology Act and consequently, immuned from liability for making available or hosting any content circulated on



whatsapp service unless it has “actual knowledge” that specific content is unlawful and then fails to expeditiously remove or disable access of such contents. In the case on hand, the 2nd defendant does not have actual knowledge as the plaintiff failed to identify any specific content allegedly shared on whatsapp service. Further the end to end encryption system precludes whatsapp from reading or listening to messages sent over whatsapp service. An intermediary receives actual knowledge of unlawful content only from a valid Court Order or by an order from appropriate Government. Hence, in the case on hand, whatsapp has not received actual knowledge of any unlawful content.

4.3 As per the provisions of Information Technology Act, the 2nd defendant has no duty to monitor or screen messages on its platform for its unlawful content. Even if the second respondent is required to monitor or screen the content it is precluded from doing so by its end to end encryption protocol. On these pleadings, the 2nd defendant sought for dismissal of the suit.

The written statement filed by the 3rd defendant:



5.1. The 3rd defendant is neither necessary nor the proper party to the suit, as it does not operate or control face book service and hence cannot provide any relief requested by the plaintiff. The Face book Inc is the relevant data controller for users of the Facebook service in India, a company incorporated under Laws of United States. The 3rd defendant is not responsible for hosting the content appears on Face book service. The High Courts of Delhi, Punjab and Haryana already held 3rd defendant does not control any content of Face book service.

5.2. It was further averred by the 3rd defendant that even assuming it controlled contents uploaded in Face book service, it can only be treated as an intermediary and hence immune from liability under Information Technology Act. The Face book is only a platform, wherein, the 3rd parties may upload content. Therefore, the 3rd defendant can only be treated as an intermediary within the meaning of Information Technology Act. As per the law settled by the Apex Court, the liability of intermediary arises only upon receiving actual knowledge of the infringing content by a Court order or upon the notification by appropriate Government.



5.3. Even, if the 3rd defendant controlled Face book services (which it does not) Face book would be an intermediary it does not have duty to pro-actively monitor their platforms for unlawful content. Further, the plaintiff failed to identify the infringing contents by specifying the URL's of the unlawful content. On these pleadings, the 3rd defendant sought for dismissal of the suit.

Written Statement filed by the 4th defendant:

6.1. The plaintiff failed to identify any hosted content allegedly available on Face book service that is provided by the 4th defendant by mentioning Uniform Resource Locator (URL). Therefore, the suit is liable to be dismissed. It is further averred in the written statement that the 4th defendant is only an intermediary within the meaning of Section 2(1) (w) of Information Technology Act and therefore immune from liability under Section 79 of Information Technology Act for 3rd party content posted on Face book service. The 4th defendant is only providing a platform for the 3rd parties to upload their contents. The 4th defendant is neither the author nor the publisher of any content hosted by the 3rd parties. The 4th defendant has no role in initiating, transmitting,



selecting the receivers of the transmission etc. Therefore, the suit is not maintainable against the 4th defendant.

6.2. As an intermediary, the 4th defendant has no legal duty to pro-actively monitor its platform for unlawful content. The 4th defendant is liable to take action against unlawful content only upon receiving actual knowledge, that is the Court order or order by Government sufficiently identifying the unlawful content. On these pleadings, the 4th defendant sought for dismissal of the suit.

7. On the basis of pleadings of the respective parties, this Court formulated for following issues for trial on 12.08.2022.

(i) Whether the suit is liable to be dismissed for non-joinder of the alleged infringers?;

(ii) whether the defendants are exempted from liability in terms of Section 79 of the Information Technology Act, 2000?;

(iii) Whether any of the defendants infringed the copyright of the plaintiff?;



(iv) Whether the plaintiff is entitled to the relief prayed

for against any of the defendants?;

(v) Whether the parties are entitled to any other relief?

Arguments of the learned counsel for the plaintiff:

8.1. The learned counsel for the plaintiff by taking this Court to Sections 14,17, and 51 of Copy Rights Act submitted that the plaintiff is the first owner of the copy right in respect of the speeches delivered by him. It is the submission of the learned counsel that when the defendants allow uploading of the plaintiff's speeches without his authorization, his copy right in respect of his speech gets violated. It is the specific contention of the learned counsel that the works identified under Section 51(a) (ii) of Copy Rights Act would not only be physical space but it includes virtual space and therefore uploading of speeches delivered by plaintiff without his authorization in the platform provided by the defendants would amount to infringement of his copy right. The learned counsel further submitted that by filing the suit, the plaintiff has put the defendant on notice of his copy right and its infringement and therefore the defendants must act on the complaint made by the plaintiff



by giving undertaking not to permit infringement or otherwise suffer a decree for injunction.

8.2. The learned counsel by referring to the defense made by the defendants in the written statement based on the observations of the Apex Court in *Shreya Singhal Vs. Union of India in (2015) 5 SCC 1* submitted that the observations made by the Court in that case law was in the context of a challenge made to contents in Section 66(a) of Information Technology Act and therefore, the said observations must be confined to the context of said section.

8.3. The learned counsel further submitted that the defendants being the intermediaries within the meaning of Information Technology Act cannot shy away from exercising due diligence as mandated in 79(2) (c) of Information Technology Act 2000 and exercise of due diligence is a condition precedent to claim exemption from liability under Section 79(1) of Information Technology Act. It is also submitted that under Section 79(1) of Information Technology Act grants exemption only from liability for a 3rd party post and it cannot be used as a shield by



the intermediaries like the defendants in any Civil action or Criminal action for infringement. It cannot be stretched beyond to insulate the defendants against the preventive relief restraining them from allowing continued posting of infringed materials.

8.4. In support of his contentions, the learned counsel for the defendants relied on the following judgments:

S.N	CASE NAME
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1	Shreya Singhal Vs. Union of India (2015) 5 SCC 1
2	Amazon Seller Services Pvt Ltd Vs. Amway India Enterprises Pvt Ltd & Ors FAO (OS) 133/2019
3	Kent RO Systems Ltd Vs. Amit Kotak (2017) 240 DLT 3
4	Myspac Ins. Vs. Super Cassettles Industries Ltd 2016 SCC Online Del 6382
5	Order dated 19 July, 2019 in Kamadhenu Ltd Vs. JSPL (C.S. COMM NO.1229/2018) and Shyam Steel Industries Ltd Vs. First Construction Council (C.S.COMM. 8/2019)
6	Order dated 28 November, 2019 in Kamadhenu Ltd Vs. JSPL (C.S. COMM NO.1229/2018) and Shyam Steel Industries Ltd Vs. First Construction Council (C.S.COMM. NO.8/2019)



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7	Order dated 13 February ,2019 in Delhi International Airport Ltd Vs.Facebook Inc & Ors (C.S.(O.S.) 669/2018)
8	Order dated 24 October, 2019 in Delhi International Airport Ltd Vs.Facebook Inc & Ors (C.S.(O.S.) 669/2018)
9	Order dated 01 June, 2021 in Zee Entertainment Enterprises Ltd Vs. Tajendra Modi and Ors (C.S.COMM.NO.231/2021)
10	State of Madhya Pradesh Vs. Narmada Bachao Andolon, (2011) 7 SCC 639
11	Standard Chartered Bank Vs. Directorate of Enforcement , (2005) 4 SCC 530
12	ESI Corp Vs. Jardine Henderson Staff Assn (2006) 6 SCC 581
13	Moreshwar Yadarao Mahajan Vs. Vyankatesh sitaram Bhedi 2022 SCC Online SC 1307
14	Google India Private Limited Vs. Vishaka Industries & Anr 2019 SCC Online SC 1587
15	J & K High Court in a Suo Moto PIL titled Court on its own motion Vs. Inspector General of Police & ors PIL.NO.12/2019

Arguments of the learned counsel for the

defendants:

9.1. Though the learned counsel for the defendants 1 to 4 made separate submissions their submission can be broadly divided into following points:



(i) The plaintiff failed to establish himself as a copy right owner of the speech. The learned counsel for the defendants submitted that the plaintiff has not submitted any documents or evidence to show that he is the copy right holder or owner of the list of works enumerated in Annexure “A” to the plaint. Even the substance of the speech delivered by the plaintiff was not produced before the Court and therefore the claim of the plaintiff that he is the owner of the copy right in the works enumerated under Annexure “A” is not legally sustainable.

(ii) All the counsel for the defendants submitted that the plaintiff failed to identify the alleged infringers and make them as a party to the present suit and consequently the suit is bad for non-joinder of necessary parties namely the actual infringers. It is the submission of the learned counsel for the defendants the alleged contents are not uploaded or forwarded by the defendants in their platforms. The role of the defendants is limited to providing online platform and the contents therein are all uploaded or forwarded by 3rd parties. Unless, the alleged infringers who uploaded/ forwarded infringing content in the online platform of the defendants are arrayed as the parties to the present suit, the alleged copy right infringement cannot be adjudicated upon.



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(iii) The learned counsel for the defendants further submitted that the alleged infringement content are not identified by the plaintiff properly by providing specific URL's of the uploader or the phone numbers of the forwarders. Unless the infringing contents are identified by the plaintiff by providing specific URL/phone number, even assuming the injunction is passed against the defendants, they would not be in a position to block the alleged infringement contents.

(iv) The learned counsel for the defendants further submitted that all the defendants are only intermediary within the meaning of Section 2(1) (w) of Information Technology Act. Therefore, they have got complete immunity under Section 79 of Information Technology Act. The learned counsel by relying on the judgment of the Apex Court reported in *shreya Singhal Vs. Union of India in (2015) 5 SCC 1* submitted that the obligation of an intermediary to remove the infringing content would arise only upon Court order or based on the order passed by the Government under Section 69(a). The learned counsel further submitted that the defendants are only providing online



platform for 3rd parties to upload their contents. The defendants neither created nor owned any contents uploaded in online platform.

(v) The defendants who are intermediaries have no direct control over the contents that are uploaded in their platforms. It is not possible for the intermediaries to pro-actively monitor the 3rd party content and adjudicate on legality of such content.

9.2. In addition to the above said points which were urged by all the counsel for the defendants, the learned counsel for the 2nd defendant additionally submitted that the 2nd defendant has no access to the contents uploaded in its whatsapp platform as the contents are in end to end encrypted form.

9.3. In addition to the above said points commonly urged by the learned counsel for the defendants, the counsel for the 3rd defendant additionally submitted that the 3rd defendant is not the owner or operator of the online platform, Face book service and hence it is not a necessary party to the suit.



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Issue No.1

10.1. The plaintiff's seeks an order of injunction restraining the defendants from infringing or exploiting or uploading in their respective Social media channel, any of the plaintiff's audio visuals works more fully described in annexure "A" to the plaint unless it is uploaded by the plaintiff or by his authorized personnel. The said prayer was mainly resisted by the defendants on the ground that the plaintiff failed to join the alleged uploaded/infringers as the party to the suit and therefore, the suit is bad for non-joinder of necessary parties.

10.2. It is also specific case of the defendants that the plaintiff failed to identify the 3rd party infringing contents by specific URLs and therefore it is not possible for the defendants to identify the contents and remove the same.

10.3. The defendants are only owning social media platform like You-tube, whatsapp, face book. The contents in those social media platform are not uploaded by them and contents are uploaded by various



persons who are users of the social media platform. It is the specific case of the defendants that they are not liable to monitor the forwards, uploads by numerous persons in their platform and find out alleged infringing contents. In this regard, the defendants relied on Section 79(1) of Information Technology Act. Section 79(1) of Information Technology Act, reads as follows:

79(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

10.4. The extent of liability of intermediaries like defendants came up for consideration before the Apex Court in *Shreya Singhal vs Union of India* reported in (2015) 5 SCC 1 and wherein the Hon'ble Apex Court observed as follows:

120. One of the petitioners' counsel also assailed Section 79(3)(b) to the extent that it makes the intermediary exercise its own judgment upon receiving actual knowledge



that any information is being used to commit unlawful acts.

Further, the expression "unlawful acts" also goes way beyond the specified subjects delineated in Article 19(2).

121. It must first be appreciated that Section 79 is an exemption provision. Being an exemption provision, it is closely related to provisions which provide for offences including Section 69A. We have seen how under Section 69A blocking can take place only by a reasoned order after complying with several procedural safeguards including a hearing to the originator and intermediary. We have also seen how there are only two ways in which a blocking order can be passed - one by the Designated Officer after complying with the 2009 Rules and the other by the Designated Officer when he has to follow an order passed by a competent court. The intermediary applying its own mind to whether information should or should not be blocked is noticeably absent in Section 69A read with 2009 Rules.

122. Section 79(3)(b) has to be read down to mean that the intermediary upon receiving actual knowledge that a court order has been passed asking it to expeditiously remove or disable access to certain material must then fail to expeditiously remove or disable access to that material. This is



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for the reason that otherwise it would be very difficult for intermediaries like Google, Facebook etc. to act when millions of requests are made and the intermediary is then to judge as to which of requests are legitimate and which are not. We have been informed that in other countries worldwide this view has gained acceptance, Argentina being in the forefront. Also, the Court order and/or the notification by the appropriate Government or its agency must strictly conform to the subject matters laid down in Article 19(2). Unlawful acts beyond what is laid down in Article 19(2) obviously cannot form any part of Section 79. With these two caveats, we refrain from striking down Section 79(3)(b).

123. The learned Additional Solicitor General informed us that it is a common practice worldwide for intermediaries to have user agreements containing what is stated in Rule 3(2). However, Rule 3(4) needs to be read down in the same manner as Section 79(3)(b). The knowledge spoken of in the said sub-rule must only be through the medium of a court order. Subject to this, the Information Technology (Intermediaries Guidelines) Rules, 2011 are valid.



124. In conclusion, we may summarise what has been held by us above:

124.1. Section 66A of the Information Technology Act, 2000 is struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2).

124.2. Section 69A and the Information Technology (Procedure & Safeguards for Blocking for Access of Information by Public) Rules 2009 are constitutionally valid.

124.3. Section 79 is valid subject to Section 79(3)(b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relatable to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material. Similarly, the Information Technology "Intermediary Guidelines" Rules, 2011 are valid subject to Rule 3 sub-rule (4) being read down in the same manner as indicated in the judgment.



10.5. A reading of above judgment would make it clear that Section 79 (3) (b) of Information Technology Act was read down by the Supreme Court by holding that the intermediaries are liable only upon receiving actual knowledge from a Court order or on being notified by the appropriate Government or its Agency. In the case on hand, admittedly, there is no Court order or order by Government in terms of Section 79 of Information Technology Act.

10.6. The learned counsel appearing for the plaintiff submitted that the law laid down by *Shreya Singhal case* would absolve defendants of the liability in a Civil action for damages or in a Criminal case. However, the observation of the Apex Court cannot be used as a shield by the defendants in an action for preventive relief of injunction.

10.7. In paragraph No.24 of the above said judgment, the Apex Court clearly held the intermediaries like defendants shall act only upon receiving actual knowledge by a Court order or by an order from appropriate Government or its agency and remove the infringing content. It is also observed in the absence of such a restricted interpretation it



would be very difficult for intermediaries like, Google, You-tube, Face book etc to act with millions of request made and the intermediaries are then to judge as to which of such request was legitimate and which are not. Hence, the submission made by the learned counsel for the plaintiff is not applicable to this Court. Therefore, this Court holds the defendants are liable to act only upon receipt of the Court order or an order from Government under Section 79(3) of Information Technology Act

10.8. The defendants cannot be expected to scrutinize each and every forward, uploads and posts in their social media platforms and look for infringing contents. In the case on hand, the plaintiff neither identify the infringers nor identify the URL's/Phone numbers of the infringers who posted infringing contents in the social media owned by defendants. Therefore, even, if an order of injunction is granted it would be impossible for them to implement the same.

10.9. It is not necessary for the plaintiff to identify each and every infringers the minimum requirement for implementing a preventive relief is identification of URLs/Phone numbers by the plaintiff.



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10.10. *In Google India Private Ltd., Vs. Visakha*

Industries and another reported in 2019 SCC online SC 1587, after referring to *Shreya Singhal case*, the Hon'ble Apex Court observed as follows:

54. *After referring to the decision in Shreya Singhal (supra), the Government of India has understood the position at law to be that [Section 79](#) stands read down to mean that an intermediary would need to takedown information only upon receiving actual knowledge that a court order has been passed to remove or disable certain material and not otherwise. The further stand of the Government of India is thus there is a recognition that intermediaries and neutral 116/2005 DLT 427 platforms are only facilitating information. It is further pointed out on behalf of the Government of India that the interpretation placed by this Court in Shreya Singhal (supra) was not available to the High Court when it passed the impugned order in this case. Shreya Singhal makes it clear that an intermediary's liability will not arise unless it failed to take down material upon there being actual knowledge by court order or government communication. This safeguard has been put in place to avoid chilling affect on free speech. The intermediaries would, if a contrary view is taken, stand elevated to*



the status of super censors and denude the internet of its unique feature of a democratic medium for all to publish, access and read any and all kinds of information.

55. *Owing to the special unique characteristic of the internet, intermediaries are not in a position to know about a content which is posted on its platforms by itself and, therefore, the strict liability principle cannot be made applicable to internet intermediaries. It is the specific stand of the Government of India that even pre-amendment, an intermediary could not know the contents of what is posted on its website and, therefore, be held liable in the absence of a takedown order by a court or Governmental Agency.*

10.11. ***In Suo Moto PIL titled Court on its own motion Vs. Inspector General of Police & ors, PIL.NO.12/2019, High Court of Jammu and Kashmir*** observed as follows:

The order made by us in paragraph 7 of the order dated 28.10.2020 is also wider than the limited liability imposed on the service provider by the Supreme Court. There is no responsibility of service providers for scrutiny or monitoring of the posts on the platform posted by it.



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10.12. In Myspac Ins. Vs. Super Cassettes Industries Ltd

2016 SCC Online Del 6382, the Delhi High Court observed as follows:

“To summarize the conclusions, it is held as follows

(a) Sections 79 and 81 of the IT Act and Section 51(a)(ii) of the Copyright Act have to be read harmoniously. Accordingly, it is held that proviso to Section 81 does not preclude the affirmative defence of safe harbor for an intermediary in case of copyright actions.

(b) Section 51(a)(ii), in the case of internet intermediaries contemplates actual knowledge and not general awareness. Additionally, to impose liability on an intermediary, conditions under Section 79 of the IT Act have to be fulfilled.

(c) In case of Internet intermediaries, interim relief has to be specific and must point to the actual content, which is being infringed.

78. In light of the above discussion impugned order of the learned Single Judge is set aside and is substituted with the following relief:

(i) The plaintiff Super Cassettes shall provide an updated catalogue of "specific" works in which it holds



copyright along with the location/ URL of such work on the appellant Myspace's website to the appellant as and when SCIL detects infringement."

10.13. In Kent RO Systems Ltd Vs. Amit Kotak (2017)

SCC Online Del 7201. While explaining the role of intermediaries, the Delhi High Court observed as follows:

30. To hold that an intermediary, before posting any information on its computer resources is required to satisfy itself that the same does not infringe the intellectual property rights of any person, would amount to converting the intermediary into a body to determine whether there is any infringement of intellectual property rights or not. All persons claiming any intellectual property rights will then, intimate the intermediaries of their claims and the intermediaries then, before hosting any material on their computer resources would be required to test the material vis-a-vis all such claims lodged with them, else would be liable for infringement.

31. My reading of the IT Rules aforesaid obliges the intermediary to remove/disable the information hosted on the portal only on receipt of complaint. The IT Rules, according to me do not oblige the intermediary to, of its own, screen all information being hosted on its portal for infringement of the



*rights of all those persons who have at any point of time
WEB COPY complained to the intermediary*

10.14. In view of the law laid down by the Apex Court in *Shreya Singhal* case cited above and the various decisions referred above. It is clear that the defendants are liable to act only upon receipt of a Court order or order by Government. The defendants are not expected to screen each and every post,, forwards, uploads in their platform which are in millions and remove the alleged infringing contents. It is for the plaintiff to point out or identify the specific URLs/locations/phone numbers and intimate the same to the defendants. In such case, the defendants will be in a position to act against infringing contents.

10.15. In the case on hand, admittedly, the plaintiff has not mentioned the URLs of the infringing contents. The plaintiff only mentioned the title of his speeches in annexure “A” to the plaint. Based on that the defendants cannot identify the infringing contents. It is not necessary for the plaintiff to name the infringers and add them as the parties. However, in order to implement the injunction passed against



infringing contents the specific location and URL of the same shall be identified and specified by the plaintiff. Then only the defendants would be in a position to implement the same. The plaintiff is not entitled to an *omnibus* injunction restraining the defendants from uploading/posting/forwarding speech of the plaintiff mentioned in annexure “A” to the plaint.

11. In view of the discussions made earlier, this Court comes to a conclusion, the suit is not bad for non-joinder of alleged infringers. However, in the absence of specific locations/URLs of the infringing contents, the defendants are not in a position to identify the infringing contents and remove the same.

12. Hence, the plaintiff is not entitled to relief of injunction as prayed for. Issue No.1 is answered in negative and the suit is not bad for non-joinder of alleged infringers.

Issue No.2:



13. In Issue No.1 the liability of defendants under Section 79 of Information Technology Act has been discussed extensively in the light of the law laid down by Apex Court in *Shreya Singhal vs Union of India*. Therefore, issue No.2 is answered in favour of the defendants, as the defendants are liable to act only in cases where they receive an order from Court or from appropriate Government under Section 69A of Information Technology Act.

Issue No.3:

14. In view of the discussions made earlier, this Court holds the defendants are only intermediaries as defined under Section 2(1) (w) of Information Technology Act and they are not responsible for infringing contents posted by third parties in their platform. However, the liability is limited as held in *Shreya Singhal case* cited above. Therefore, the defendants cannot be termed as infringers in the absence of any Court order or order from appropriate Government under Section 69 of Information Technology Act. Issue No.3 is answered accordingly.



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Issue Nos.4 and 5

15.1. Now let us discuss whether plaintiff is entitled to any relief in the light of case laws relied on by learned counsel for the plaintiffs.

15.2. In the case law relied on by the learned counsel for the plaintiff referred in *M/s.R.K.Productions Private Ltd v Bharat Sanchar Nigam Limited and 19 others reported in 2012 5 LW 626*, in John Doe suit, this Court observed that particulars of URL are absolutely necessary in order to grant an order of injunction against unknown 3rd parties, the relevant observation of this Court is as follows:

With reference to injunction and vacate injunction applications are concerned, it must be noted that at the ex-parte stage, this court had granted omnibus injunction order, thereby blocking the entire websites of individual concerned. Subsequently, on the matter being pointed out by the respondents, this court made a correction order on 22.06.2012 as extracted above. Therefore, it is open to the applicants/plaintiffs to give the particulars of URL, where the infringing movie is kept and on such receipt of particulars of



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URL from the plaintiffs/applicants, the respondents/defendants will have to take necessary steps to block such URLs. This amended order is not under challenge and that the said order is making a workable solution without hurting the stand of both sides. The respondents/defendants are undoubtedly internet service providers (ISPs) and therefore, they have an obligation not to allow such infringement to take place by using their services.

In the case on hand, unfortunately, the plaintiff failed to identify the URLs and therefore, the said case law will not be helpful to the plaintiff.

15.3. In yet another decision relied on by the learned counsel for the plaintiff *R.Ayubkhan vs. Lehren Networks Private Limited and others reported in (2021) SCC online Mad 5051*, a suit has been filed against specific individuals restraining them from uploading copy right protected films of the plaintiff in you-tube platform. Therefore, in the said case, the infringers were identified and suit appeared to have been filed by arraying them as parties. Therefore, the said case law is not useful to the plaintiff in the facts of the present case where infringes are not identified.



15.4. The un-reported judgment in C.S(O.S).No.3205 of 2014 passed by the Hon'ble High Court, Delhi in *M/s.Sandisk Corporation Vs Ramjee* and others is relating to infringement of trademarks copy right and rendition of accounts. The said suit was initially filed as John Doe suit against un-identified persons, subsequently, the infringers were identified and they were arrayed as parties. Therefore, the said case law is also not applicable to the facts of the present case where infringers are not identified.

15.5. Another judgment relied on by the learned counsel for the plaintiff in C.S.No.273 of 2022 in *Dr.G.V.Varadarajulu @ Sekar & others Vs R.Muthappa* is a John Doe interim application for injunction relating to immovable properties against un-identified persons. In that order an ex-parte injunction order was passed by this Court, fortunately in that case, the subject matter of the suit was an identified one namely immovable property. On the other hand, in the present suit, the infringing contents are not identified by the plaintiff. Therefore, the plaintiff cannot press into service, the order passed by this Court in the above said



application to determine the issue arising for consideration in the present suit.

15.6. In view of the discussions made in earlier issues, the plaintiff is not entitled to any relief as prayed for. However, dismissal of the present suit will not bar the plaintiff from filing a fresh suit by identifying the location/URLs/Phone number of the infringing contents.

16. In nutshell:

(a) The Suit is dismissed;

(b) In the facts and circumstances of the case, there will be no order as to costs.

09.08.2023

Index : Yes / No
NCC : Yes / No



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S.SOUNTHAR, J.

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Pre-Delivery Order made in
C.S.No.153 of 2021



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09.08.2023