

Dharampal Satyapal Sons Pvt. Ltd vs Youtube Llc & Ors on 14 August, 2020

Author: Mukta Gupta

Bench: Mukta Gupta

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 322/2020

DHARAMPAL SATYAPAL SONS PVT. LTD.

..... Plaintiff

Represented by: Mr.Pravin Anand, Ms.Vaishali Mittal,
Mr.Siddhant Chamola and
Mr.Souradeep Mukhopadhyay,
Advocates.

versus

YOUTUBE LLC & ORS.

..... Defendant

Represented by:

Ms.Mamta R. Jha, Ms.Shrutima
Ehersa and Ms.Sakshi Jhalani,
Advocates for defendant Nos.1 and 2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% 14.08.2020 The hearing has been conducted through Video Conferencing. I.A. 6925/2020 (exemption from filing clear/typed copies, notarised affidavits, physical form of suit papers)

1. Allowed, subject to all just exceptions.

2. Physical/notarised paper-book, attested affidavits along with the plaint, statement of truth, applications and certificate under Section 65B of the Indian Evidence Act be filed within one week of the resumption of the normal functioning of the Court.

3. Application is disposed of.

I.A. 6923/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

1. Additional documents, if any, be filed within 30 days.

2. Application is disposed of.

I.A. 6926/2020 (exemption from filing court fees)

1. Learned counsel for the plaintiff states that the court fee has since been filed and thus seeks leave to withdraw the present application.

2. Leave granted.

3. Application is dismissed as withdrawn.

CS(COMM) 322/2020 I.A. 6922/2020 (under Order XXXIX Rule 1 and 2 CPC) I.A. 6924/2020 (under Order XI Rule 2 Commercial Courts Act-seeking administration interrogatories on defendant Nos.1 and 2)

1. Complaint be registered as suit.

2. Issue summons in the suit and notice in the applications to defendant Nos.1 and 2. only at this stage since the identity of defendant Nos.3 and 4 is yet not known and the plaintiff on getting their identity, would implead them as parties.

3. Defendant Nos.1 and 2 in the suit are YouTube LLC and Google LLC.

4. Learned counsel defendant No.2 Google LLC enters appearance and accepts summons in the suit and notice in the applications. She states that defendant No.1 YouTube LLC has been taken over by Google LLC and thus Google LLCV is the only party and that defendant No.1 YouTube LLC be deleted from the array of parties.

5. Ordered accordingly.

6. Plaintiff would delete YouTube LLC from the array of parties. Amended memo of parties be filed within one week.

7. Written statement and reply affidavit to the application be filed by Google LLC within 30 days.

8. Replication and rejoinder affidavit be filed within three weeks thereafter.

9. The present suit has been filed by the plaintiff alleging disparagement by way of video clippings being shown on the YouTube created by defendant Nos.3 and 4 whose identity is yet to be known which videos not only disparage the products/spices of the plaintiff under the trademark „CATCH but also all other Indian spices.

10. Case of the plaintiff is that the trademark „CATCH was adopted by the plaintiff's predecessor in interest for table salt in the year 1987. Thereafter the plaintiff has been using this mark for various other products including pepper, spices, bottled beverages etc. Plaintiff claims that its product sold under the „CATCH / mark are very popular and have become a household name due to its quality and the extensive promotional and marketing activities carried out by the plaintiff. Plaintiff also states that it ensures that its product under the „CATCH mark are put to stringent quality control measures and therefore, the spices sold under „CATCH mark are of extremely high quality and are manufactured, processed, packaged and sold as per the highest standards of food safety and hygiene.

11. Grievance of the plaintiff in the present suit is with regard to the three videos on YouTube since the second week of July, 2020. The first video titled as " Indian Spices Tainted With Cow Urine Indian Food Spices Video" was uploaded by defendant No.3 on 7th July, 2020 on YouTube. On viewing the said video, the plaintiff found that the contents therein are entirely false, malicious and baseless as the video imputed that the plaintiff's spices are contaminated with cow urine and dung. Further the video displayed photograph of plaintiff's spices, prominently displaying the „CATCH mark thereby violating the plaintiff's right in trademark as well as copyright over the artistic work therein. On 13th July, 2020, the plaintiff lodged a complaint with defendant Nos.1 and 2 in respect of the impugned video however, no action was taken thereon and contrary thereto the defendant No.3 uploaded another video on 14th July, 2020 titled as "

Buyer beware, Indian Spices Tainted With Cow Urine & Cow Dung Popular Video". Again in this video the reference was that the plaintiff's spices under „CATCH marks were unhygienic and contaminated with cow excrements. The plaintiff lodged a complaint with defendant Nos.1 and 2 in this regard on 15th July, 2020 but no action was taken. On 17th July, 2020, the plaintiff came across yet another video on YouTube titled as "Cow urine and powder dung sprays in Indian spices and products □ □□□□□□□□□ □□ " □□□□ □□□□□□ □□□□ uploaded by defendant No.4 on 14th July, 2020 which essentially reproduces the visuals accompanying the impugned video- 1 and has clubbed it in Urdu voice over which falsely claimed that Indian spices are tainted with cow excrements. The plaintiff thus made a complaint to YouTube however, in absence of any Court order the defendant No.1/2 refused to remove the same. Plaintiff subsequently also wrote to the YouTube asking about the details of all the parties uploading the video which was also denied on the ground that YouTube respects the privacy of the person uploading the video. Further the basic subscriber information of the uploader was not provided in view of Rule 3(7) of The Information Technology (Intermediary Guidelines) Rules, 2011.

12. Hence the present suit inter alia seeking a decree of permanent injunction as well as mandatory injunction, requiring the defendant No.2/Goggle LLC to provide details of defendant Nos.3 and 4, rendition of accounts, damages, costs etc.

13. Learned counsel for the plaintiff submits that the version in the videos is totally incorrect not only because the plaintiff maintains strictest standards of quality control and hygiene but also the fact that the plaintiff does not export its products to USA.

14. Illustratively, part of the storyboard and transcript of video-1 shows as under:

15. Considering the averments made in the plaint as also the documents filed therewith the plaintiff has made out a prima facie case in its favour and in case no ex-parte ad-interim injunction is granted in favour of the plaintiff and against the defendants, the plaintiff will suffer an irreparable loss. Balance of convenience also lies in favour of the plaintiff. Consequently, Google LLC is directed to disable the three URL's mentioned in para-(a) of para-37 of the prayer in I.A. No.6922/2020 under Order XXXIX Rule 1 and 2 CPC from the country domain within 72 hours of the order being

uploaded on the website of this Court. The three URLs are as under:

" () Video titled "Indian Spices Tainted With Cow Urine Indian Food Spices Video, which is accessible at the URL:

<https://www.youtube.com/watch?v=vuQwzKILU9I>

(i) Video titled " Buyer beware, Indian Spices Tainted With Cow Urine. & Cow Dung Popular Video " which is accessible at the URL <https://www.youtube.com/watch?v=SthmUYLGGao>; and

(ii) Video titled "Cow urine and powder dung sprays in Indian spices and products □□□□□□ □□□□ □□□□□□□□□□ □ " □□□□□ which is accessible at the URL <https://www.youtube.com/watch?v=TEIvswdnp4> ;

16. Google LLC is also directed to file the basic subscriber information in respect of defendant Nos.3 and 4 with this Court within one week with copy of the same to the learned counsel for the plaintiff.

17. List on 8th October, 2020.

18. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

AUGUST 14, 2020 'vn'