

Vasundhara Prakash vs Half Baked Beans Literature Pvt Ltd & Ors on 8 February, 2019

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CM(M) 223/2019

VASUNDHARA PRAKASH Petitioner
Through: Mr.Rahul Ajatshatru and Prachi
Nirwan, Advocates

versus

HALF BAKED BEANS LITERATURE PVT LTD & ORS
..... Respondents
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 08.02.2019 Exemption allowed subject to all just exceptions. CM(M) 223/2019 and CM No. 6166/2019 Initial submissions have been made.

Inter alia it has been submitted on behalf of the petitioner whilst assailing the impugned order dated 3.1.2014 in TM No. 80/18 vide which an application under Order I Rule 10(3) CPC read with Section 151 CPC filed by the respondent No. 3, arrayed as the defendant No. 3 to the said suit, has been allowed to contend that there is no immunity available to the respondent No.3 in terms of Section 79(3) of the I.T Act, 2000 and that there had been a flagrant violation of Rule 75(3) of the Copy Right Rule, 2013 in as much as the infringing copy has not been brought down by the defendant No. 3 within a period of thirty six hours of the complaint made by the petitioner on 12.4.2018 Reliance has also inter alia been placed on behalf of the petitioner on the verdict of the Hon'ble Division Bench of this Court in MYSPACE INC. V. SUPER CASSETTES INDUSTRIES LTD. 236 (2017) DLT 478 (DB), with reference to the observations in paragraph 47 of the said verdict which read to the effect:

47. In this Court's opinion, Section 79 grants a measured privilege to an intermediary. However, that would not mean that the rights guaranteed under the Copyright Act are in any manner curtailed. All Section 79 does is regulates the liability in respect of intermediaries while the Copyright Act grants and controls rights of a copyright owner. Under the circumstances, it is difficult to conceive how one would pose a barrier in the applicability of the other. The true intent of Section

79 is to ensure that in terms of globally accepted standards of intermediary liabilities and to further digital trade and economy, an intermediary is granted certain protections.

Section 79 is neither an enforcement provision nor does it list out any penal consequences for non-compliance. It sets up a scheme where intermediaries have to follow certain minimum standards to avoid liability; it provides for an affirmative defence and not a blanket immunity from liability." , to submit that there is no blanket immunity from liability provided Section 79(3) of the IT Act, 2000 to the respondent No.3 and that the deletion of the respondent no. 3 from the array of parties would gravely prejudice the trial of the suit and also the rights of the petitioner.

Without any observations on the merits or demerits of the trial made, notice of the petition and the CM no. 6166/2019 be issued to the respondents on taking of steps by the petitioner through all permissible modes including approved courier with the tracking report being placed on record, returnable on 8.3.2019.

ANU MALHOTRA, J FEBRUARY 08, 2019/SV