

Directions To Defendant No.1-By ... vs Telegram Fz Llc on 25 November, 2020

Author: Mukta Gupta

Bench: Mukta Gupta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS (COMM) 282/2020
I.A. 6215/2020 (under Order XXXIX Rule 1 and 2 CPC)
I.A.8461/2020 (under Order XI Rule 10 CPC seeking discovery and directions to defendant No.1-by plaintiffs)
I.A.8462/2020 (under Order XXXIX Rule 1 and 2 CPC-by plaintiffs)

NEETU SINGH & ANRPlaintiff
Represented by: Ms. Rajeshwari H., Advocate with
Ms. Swapnil Gaur, Advocate.

versus

TELEGRAM FZ LLC Defendant
Represented by: Mr. Amit Sibal, Senior Advocate
with Mr. Sanjeev Kapoor,
Ms. Anushka Sharda, Ms. Raveena
Rai, Mr. Madhav Khosla, Ms. Smriti
Nair, Mr. Vinay Tripathi,
Mr. Madhav Chitale, Mr. Aishwary
Vikram & Mr. Saksham Dhingra,
Advocates for defendant No.1.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% 25.11.2020 The hearing has been conducted through Video Conferencing. I.A.11007/2020 (under Order V Rule 25 CPC -by plaintiffs)

1. By this application the plaintiff seeks service of Dasti summons so as to be able to serve the same on defendant No.1, for the reason defendant No.1 claims that they have not been validly served.

2. By this application the plaintiff/applicant points out that the plea of CS (COMM) 282/2020 PageGUPTA defendant No.1 is that summons have not been served in accordance with law, i.e. the bilateral treaty between India and United Arab Emirates (UAE) and therefore any decree passed by this Court will not be binding on the defendant No.1. The two modes permitted in the bilateral treaty between India and UAE executed in 1999 in respect of service of summons provide either service through Ministry of Justice or service of summons through postal channel.

3. Learned counsel for the plaintiff submits that considering the fact that most of the Government Departments are now working on less strength due to Covide-19 Pandemic situation, serving the defendant No.1 officially through Ministry of Law & Justice would be highly inconvenient and time consuming. Plaintiff be issued Dasti service so as to plaintiff serves the defendant No.1 through postal channel.

4. Issue Dasti service of summons in the suit and notice in the application to the plaintiff to be served to defendant No.1 through postal channel, returnable before this Court on 18th February, 2021.

5. Application is disposed of.

I.A.11008/2020 (delay in filing replication) I.A.11009/2020 (delay in filing reply to application under Order XXXIX Rule 1 and 2 CPC)

1. By these two applications the plaintiff seeks condonation of delay of 13 and 23 days in filing the replication and rejoinder affidavit respectively.

2. Notice.

3. Mr. Madhav Khosla, Advocate accepts notice in the applications.

4. For the reasons stated in the applications delay of 13 and 23 days in filing replication and rejoinder affidavit by the plaintiff is condoned.

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5. Replication and rejoinder affidavits are taken on record.

6. Applications are disposed of.

I.A.11010/2020 (under Order XI Rule 10 CPC)

7. Notice.

8. Mr. Madhav Khosla, Advocate appearing on behalf of defendant No.1/contesting defendant accepts notice in the application.

9. Reply affidavit, if any, be filed within four weeks.

10. Rejoinder affidavit in three weeks thereafter.

11. List the application on 18th February, 2021.

CS (COMM) 282/2020 I.A. 6215/2020 (under Order XXXIX Rule 1 and 2 CPC) I.A.8462/2020 (under Order XXXIX Rule 1 and 2 CPC-by plaintiffs) I.A.8461/2020 (under Order XI Rule 10 CPC seeking discovery and directions to defendant No.1-by plaintiffs)

1. Learned Senior counsel for defendant No.1 reiterates that since the Authorized Representative of the defendant No.1 is a Russian National and to apostille affidavit on behalf of defendant No.1 at UAE, he needs verification from the Russian Embassy and due to Covid-19 Pandemic the process is taking time. Therefore, though defendant No.1 has filed his written statement and reply affidavits along with applications seeking condonation of delay, however, in the absence of apostille affidavits, the same are not being taken on record and being listed before this Court.

2. Learned Senior counsel for defendant No.1 states that defendant No.1 is in the process of finding a solution of this issue and would take measures that the necessary affidavits are filed before this Court as early as possible.

3. Learned Senior counsel for defendant No.1 further states that he had made a statement on behalf of defendant No.1 on 23rd September, 2020 that CS (COMM) 282/2020 PageGUPTA without prejudice to the right and contentions of defendant No.1 in regard to territorial jurisdiction of this Court to entertain the suit, as and when any request for taking down the channel is received from the plaintiff Ms. Neetu Singh, whether it is a private or a public channel, which is allegedly infringing the plaintiff's copyright, the said channel will be taken down within 36 hours of the receipt of the intimation.

4. Learned Senior counsel for defendant No.1 states that the defendant No.1 is complying this undertaking, however, it has come to notice that some of the channels besides containing infringing contents also contain non-infringing contents and thus states that his statement be modified.

5. Learned Senior counsel states that he has instructions from defendant No.1 without prejudice to the rights and contentions of defendant No.1 in regard to territorial jurisdiction of this Court to entertain the suit that as and when any request for taking down an infringing content in a channel is received from the plaintiff Ms. Neetu Singh, the plaintiff will inform the said infringing content which will be taken down and in case the infringing content cannot be taken down by severances, the said channel itself will be taken down within 36 hours from the receipt of the intimation.

6. Learned counsel for the plaintiff has objection to the same for the reason that most of the time it is difficult to sever the contents of the infringing contents on the channel and secondly, the channels which are taken down are reposted/resurfaced after a few hours and thus, the plaintiff has to continuously keep informing defendant No.1.

7. The objection raised by learned counsel for the plaintiff cannot be accepted as the new channel is uploaded with a changed name of the channel which is required to be informed to the defendant No.1. Further, defendant CS (COMM) 282/2020 PageGUPTA No.1 has itself stated that in case the infringing content cannot be severed the channel itself will be taken out.

8. The modified statement of learned senior counsel for defendant No.1 is taken on record and the defendant No.1 will be bound by the said statement.

9. List the suit and the applications on 18th February, 2021.

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

MUKTA GUPTA, J.

NOVEMBER 25, 2020

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