

Karan Bajaj & Anr vs Pradeep Poonia on 23 November, 2020

Author: Mukta Gupta

Bench: Mukta Gupta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 515/2020
I.A.10874/2020 (under Order XXXIX Rule 1 and 2 CPC)

KARAN BAJAJ & ANR. Plaintiff
Represented by: Mr. Mukul Rohatgi, Senior Advocate
with Mr. Rajshekhar Rao,
Ms. Shwetashree Majumder,
Ms. Diva Arora, Ms. Vasundhara
Majithia & Ms. Eva Bishwal
Advocates.

versus

PRADEEP POONIA Defendant
Represented by: Ms. Swathi Sukumar, Advocate with
Mr. Satyajit Saran &
Mr. Naveen Nagarjuna, Advocates.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
ORDER

% 23.11.2020 The hearing has been conducted through Video Conferencing. I.A.10877/2020 (Exemption)

1. Exemption allowed subject to just exceptions.
2. Original documents, if any, be filed within two weeks of the resumption of the normal Court functioning.
3. Application is disposed of.

I.A.10876/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

1. Evidence/material through Pen Drive/Compact Disc be filed within two weeks.
2. Application is disposed of.

CS(COMM) 515/2020 PageGUPTA I.A.10875/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

1. Learned counsel for the defendant states that the defendant would like to file reply to this application because the plaintiff has concealed material documents, even though being a commercial suit, plaintiffs were required to file all relevant documents with statement of truth.
2. Reply affidavit be filed within three weeks.
3. Rejoinder affidavit be filed within two weeks thereafter.
4. List the application on the date fixed.

CS(COMM) 515/2020 I.A.10874/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Complaint be registered as suit.
2. Issue summons in the suit and notice in the application to the defendant.
3. Learned counsel for the defendant accepts summons in the suit and notice in the application.
4. Written statement to the suit and reply affidavit to the application along with affidavit of admission-denial be filed within 30 days.
5. Replication and rejoinder affidavit along with affidavit of admission- denial be filed within two weeks thereafter.
6. List the suit and the application before the Court on 6th January, 2021.
7. Present suit has been filed by the plaintiff Karan Bajaj and Whitehat Education Technology Private Limited as plaintiff No.1 and plaintiff No.2 respectively against Pradeep Poonia, the defendant herein, inter alia, seeking injunction restraining the defendant from indulging in defamation, infringement of trademarks and copyrights, passing off, dilution and tarnishing of trademark, torts of inducing breach of contract, mischief and CS(COMM) 515/2020 PageGUPTA invasion of privacy, damages, etc.
8. According to plaintiffs, plaintiff No.1 is an entrepreneur and started the plaintiff No.2 company that is Whitehat Education Technology Private Limited, which company has since been taken over by BYJU's, however, the plaintiff No.1 as the CEO of the company/plaintiff No.2 continues to look after the said company.
9. The plaintiff No.2 is a start-up which is teaching Coding to the children from the comfort of their houses helping them build Games, Animations and Apps etc. Plaintiff No.2 claims to have developed the Proprietary Coding Curriculum focused on product creation and imparts lessons through live, interactive online classes. Plaintiff No.2 offers five levels of courses, that is, Beginners, Intermediate, Advanced, Professional and Applied-Tech at different levels. The prospective students are given free classes thereafter the prospective students can enrol and the enrolment is for a particular number of

classes for the unlimited period. At any stage if the student is dissatisfied, the student has an option of moving out from the course and the balance fee is refunded on the same day.

10. Grievances of the plaintiffs in the present suit is to the actions of the defendant which have been detailed from para 29 onwards of the plaint and can be categorized as under:-

(i) The plaintiffs are the registered owner of the trademarks i.e. the word mark and device mark 'Whitehat Jr'. In the tweets the defendant uses the marks 'WhiteHat Sr' and 'WhiteHatPoonia' besides the defendant also runs a YouTube Channel with the name 'WhiteHat Sr', thereby infringing the plaintiff's trade mark rights.

(ii) The plaintiffs claim that the defendant is indulging in hacking into CS(COMM) 515/2020 PageGUPTA plaintiff No. 2's internal business communications platform (called SLACK) to access confidential employee communications, including communications with customers, system and even passwords of CEO, i.e., plaintiff No.1 and has provided the same to the third parties and put them in public domain by repeatedly live-streaming the contents of this confidential platform on YouTube to the world at large.

(iii) The defendant is putting up videos to humiliate its teachers and defames the plaintiffs. The modus operandi adopted by the defendant is through a minor girl who gets enrolled in various classes under different names and takes various objections and then the same are uploaded on the channels on YouTube.

(iv) The defendant is also indulging in tweets falsely claiming that the plaintiffs have only 2,000 teachers and they have fudged the numbers like a ponzi scheme/ BYJU's scheme, whereas the actual number of teachers with the plaintiffs are around 7500.

(v) Defendant claims that the plaintiff has a pyramid like structure of working and due to this pyramid like structure the plaintiffs' works are SCAM.

(vi) Even if some of the parents of the students post encouraging tweets and videos with regard to the plaintiffs activities, the defendant immediately responds by discouraging them. In one such instance the defendant responded to a positive tweet saying that some people have the impression that the 'Whitehat Jr' pre-targets rich classes but what is the harm if those who can afford their course are interested in it. Reality is that these millionaires do not think twice while putting struggling parents in EMIs traps.

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(vii) In the tweet dated 11th October, 2020 the defendant states that the plaintiffs' sales men go to any extent to sell their products; from telling that their teachers are Ph.D. to telling that the kid is in the top 1%.

(viii) The defendant in one of his tweets dated 5th September, 2020 has even stated that 'Whitehat Jr' has all the ingredients of a pyramid scheme and uses housewives who have no idea what coding is to 'teach' AI to those innocent six years old kids who have no idea how to multiply.

(ix) In its tweet dated 3rd September, 2020 the defendant has not only accused the plaintiff of child abuse but claimed that how is this different from child sexual abuse.

(x) In the tweets dated 22nd September, 2020 and 20th October, 2020 the defendant claimed that the plaintiffs teachers are selling already free available platform and poses the question if that was not a scam?

(xi) In the tweet dated 1st November, 2020 the defendant claims that his scheme is not to defame 'Whitehat Jr' but to shut it down because of enough of their scam.

11. Learned counsel for the plaintiff relies upon the decision of the Supreme Court in (2017) 10 SCC 1 K.S. Puttaswamy vs. Union of India and also distinguishes the decisions relied upon by learned counsel for the defendant in 2011 (178) DLT 705 Tata Sons Limited vs. Greenpeace International & Anr. and 2018 (172) DRJ 363 Puhpa Sharma vs. D.V. Kaur.

12. Ms. Swathi Sukumar, Advocate who enters appearance on behalf of defendant on advance notice rebuts the arguments on behalf of the plaintiffs and states that the defendant has not infringed the trademark of the plaintiffs as the defendant is not carrying on any commercial activity by using the CS(COMM) 515/2020 PageGUPTA trademark 'Whitehat Sr' or the similar trademark for the purposes of business or profit making. It is stated that even if the defendant is using 'Whitehat Sr' or 'WhiteHatPoonia' for his tweets, there is no element of any financial gain to him and it is only in relation to a cause that he has taken up. It is further contended that the allegations in the plaint do not reach the threshold of defamation.

13. It is further claimed that the plaintiffs are guilty of concealing material documents. The plaintiffs' claim of Wolf Gupta, which the plaintiffs stated was employed at Google for a salary of 20 crores was fictitious for the reason no such child ever existed and now the plaintiffs in this suit admit that Wolf Gupta was only a fictitious character created to attract the children. It is stated that not only the defendant but various magazines including the FORBES magazine and newspapers in their articles have criticized the working of the plaintiffs based on this claim of the plaintiffs. It is stated that the threshold required for a claim of damages is very high and once the defendant files its reply affidavit he will be able to clear each and every fact to show that the defendant is not indulging in any defamation.

14. Learned counsel for the defendant further states that though the plaintiffs claim that in case student is not interested, on the same day balance fee is refunded, however, there are several students and their parents who have stated that they have not been refunded the fee. This is a matter of fact which can be determined only after the defendant has placed his affidavit on record.

15. Ms. Swathi Sukumar, Advocate on instructions states that the defendant has not downloaded the curriculum of the plaintiffs from their CS(COMM) 515/2020 PageGUPTA server and is willing to suffer an ad interim injunction on this grounds and undertakes that the defendant will not release any curriculum or the material of the plaintiff on which it has a copyright, on its channel or the third party channel or free to be used in public domain.

16. The plaintiff has placed on record material to show that number of groups have been in possession of plaintiff No.1's password as is evident from the screenshot in Para 54 of the plaint, this action of the defendant and his associates of taking the passwords and misusing the plaintiff No.1's account/personal details is clearly injurious to the plaintiffs and invades the privacy of the plaintiff No.1 and employees of plaintiff No.2.

17. Learned counsel for the defendant states that the defendant is not in possession of the passwords of the plaintiff No.1 or the plaintiff No.2 and has never misused the same and is willing to suffer an ad interim injunction that no material whatsoever has been downloaded or retrieved by the defendant or hacked by using or without using the passwords of the plaintiffs.

18. However, para 58 of the plaint shows that the defendant prima facie has logged into the system of the plaintiff No.2 and is live streaming the videos by hacking into the system. The contents of chat as demonstrating the conversation between the plaintiff No.2's employees has been displayed by the defendant.

19. Having heard learned counsels for the parties at length at this stage itself, this Court finds that grant of an interim injunction in the present suit entails prima facie adjudication on various disputed questions of facts for which it would be appropriate to have the affidavit of the defendant. However, there are certain facts born out from the tweets of the defendant CS(COMM) 515/2020 PageGUPTA on which an ad interim injunction is required to be passed against the defendant, as the plaintiffs have made out a prima facie case on those counts and in case an ad interim injunction is not granted the plaintiffs would suffer an irreparable loss and the balance of convenience also lies in favour of the plaintiffs.

20. Consequently, till the next date of hearing defendant is restrained from:-

(i) downloading the instructions/curriculum of the plaintiffs and thereafter circulating to various people as the same causes financial loss to the plaintiffs;

(ii) from hacking or unauthorizedly or unlawfully accessing the plaintiff No.1's system and plaintiff No.2's internal business communication platform 'SLACK' used for its employees and display conversation or chat between the plaintiffs' employees or between plaintiff No.1 and its employee on its YouTube channel to the world at large;

(iii) commenting on the number of teachers or the quality of teachers employed by plaintiff No.2 without sufficient or complete details about the said number or their educational and other professional background;

(iv) using, telecasting or transmitting any information received directly or indirectly by hacking unauthorizedly or through the passwords from the plaintiffs server or communication systems into the public domain;

(v) using the name 'Whitehat Sr' for its YouTube Channel;

21. The defendant is also directed to take down the following tweets and the URLs:-

(i) Tweet dated 10th September, 2020, mentioned in Para 36, page 33(i), CS(COMM) 515/2020 PageGUPTA

(ii) Tweet dated 12th September, 2020, mentioned at page 34(ii),

(iii) Tweet dated 5th September, 2020, mentioned at page 38(v),

(iv) Tweet dated 11th October, 2020, mentioned at page 39,

(v) Tweet dated 3rd September, 2020, mentioned at page 40,

(vi) Tweet dated 22nd September, 2020 and 20th October, 2020, mentioned at page 43(ix),

(vii) Tweet dated 23rd October, 2020, mentioned at page 44-45, and

(viii) Tweet dated 17th November, 2020, mentioned in Para 60, at page 89.

<https://www.youtube.com/watch?v=EcARDhdmZek&t=4s>
<https://www.youtube.com/watch?v=54d5doqTN0Q&t=8s>
<https://www.youtube.com/watch?v=2gArCJrEcvk>
<https://www.youtube.com/watch?v=lN1DOE7GoYw&t=1s>
<https://twitter.com/whiteHatSnr/status/1330455721897443329>
<https://twitter.com/whiteHatSnr/status/1327235519852343296>
<https://twitter.com/whiteHatSnr/status/1327240205661659137>
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<https://twitter.com/whiteHatSnr/status/1319644472074932224>
<https://twitter.com/whiteHatSnr/status/1328710063121264640>

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

MUKTA GUPTA, J.

NOVEMBER 23, 2020
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