

Operation Mercy India Foundation And ... vs Facebook Inc And Anr on 15 September, 2020

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(OS) 262/2020 & I.A. Nos. 8108-09/2020
OPERATION MERCY INDIA FOUNDATION AND ORS.

Through : Mr. Akhil Sibal, Sr. Adv. with Mr. Ga
Nair, Mr. Varun Singh, Ms. Pranati
Bhatnagar, Ms. Kritya Sinha, Ms. S
Malik and Mr. Shantanu Parashar, A

versus

FACEBOOK INC AND ANR.

Through : Mr. Mukul Rohatgi, Sr. Adv. with Mr.
Karia, Adv. for D-1.
Mr. Ajit Warriar, Adv. for D-2 [no
deleted].

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER
ORDER

% 15.09.2020 [Court hearing convened via video-conferencing on account of COVID-19]

1. Allowed, subject to the plaintiffs curing the deficiencies referred to in the captioned application within six weeks from today. CS(OS) 262/2020 & I.A. No. 8109/2020

2. Issue summons in the suit and notice in the captioned application. 2.1 Mr. Tejas Karia accepts service on behalf of defendant no. 1 while Mr. Ajit Warriar accepts service for defendant no. 2. 2.2 Notice shall issue to defendant no. 3 via e-mail at the following e mail address: omjusticeseekers@gmail.com.

3. The plaintiffs have approached this Court on account of the fact that certain defamatory posts have been uploaded which impacts their reputation.

3.1 It is the assertion of the plaintiffs that the posts contain content which is contrary to the public record and, therefore, should be taken down by defendant nos. 1 and 2.

3.2 Mr. Akhil Sibal, learned senior counsel, who appears for the plaintiffs, has submitted that these posts bear the stamp of anonymity and, therefore, cause damage while hiding the identity of the person who is behind these posts. In this behalf, Mr. Sibal has drawn my attention to one post, a copy of which is appended on page 452 of the documents filed by the plaintiffs.

3.3 Furthermore, in support of his submission that the impugned posts contain content which is false and contrary to the public record, Mr. Sibal has also drawn my attention to the tabular chart which is incorporated in paragraph 20 at page 27 of the plaint.

3.4 Mr. Sibal says that except for one FIR i.e. Crime No. 22 of 2016, which has been lodged based on a complaint made by a former employee of plaintiff no. 1 i.e. one, Mr. Albert Lael, all other proceedings, after investigation, stand closed. Besides this, Mr. Sibal has also adverted to the proceedings commenced by the said person i.e. Mr. Albert Lael in the NCLT, Hyderabad Bench.

3.5 According to Mr. Sibal, averments made in the NCLT petition are similar to the impugned posts. For this purpose, Mr. Sibal has drawn my attention to page 329 of the documents filed by the plaintiff. The said document is a copy of the order dated 26.06.2020 passed by the NCLT, Hyderabad.

4. It is in this context, Mr. Sibal, for the moment, presses the prayer for taking down the Uniform Resource Locators [in short "URLs"] from which the impugned posts have been uploaded. The list of these URLs has been set out on pages 477 to 479 of the documents filed by the plaintiffs.

5. Mr. Mukul Rohatgi, learned senior counsel, who appears for defendant no. 1, says that if an order is passed by this Court directing taking down of the aforesaid URLs, defendant no. 1 will comply with the same. 5.1 It is, however, submitted by Mr. Rohatgi that the impugned webpage, in its entirety, cannot be taken down as it impinges on the right of free speech.

5.2 Mr. Rohatgi submits that insofar as the defamatory posts are concerned, it is between the plaintiffs and the defendant no. 3 and, if the Court passes an order, based on the submissions made by the counsel for the parties, that direction will be complied with.

5.3 On the aspect of global blocking/geo-blocking, Mr. Rohatgi says that this issue is pending consideration before the Division Bench of this Court in FAO(OS) No.212/2019, titled Facebook, Inc. vs. Swami Ramdev & Ors. 5.4 I am also informed that a statement has been made by the respondents in the aforesaid appeal proceedings, to the effect, that "... in view of the appeal itself being fixed for final hearing, no contempt proceedings will be initiated ...".

5.5 Furthermore, reliance is also placed by Mr. Rohatgi on an interim order dated 01.06.2020, passed by a coordinate bench of this Court, in CS(OS) 135/2020, titled Patanjali Ayurveda Ltd. & Anr. vs. Sobhagya Media Pvt. Ltd. (APN Live) & Ors., in support of his contention that a direction for geo-blocking cannot be ordered.

6. At this stage, Mr. Ajit Warrier, who appears for defendant no. 2, says that directions, if any, issued by this Court can be complied with by defendant no. 1 only, therefore, defendant no. 2 need not continue as a party to the instant proceedings.

6.1 Mr. Rohatgi and Mr. Tejas Karia affirm this position. 6.2 In these circumstances, for the moment, the following directions are issued:

(i) Defendant no. 2 is deleted from the array of parties. The plaintiffs will file an amended memo of parties within one week from today.

(ii) For the moment, the following URLs shall stand blocked/suspended:

Posts Dates	URLs
25.08.2020	https://www.facebook.com/permalink.php?story_fbid=348561403189499&id=100457737999868
16.08.2020	https://www.facebook.com/permalink.php?story_fbid=341438977235075&id=100457737999868
12.07.2020	https://www.facebook.com/permalink.php?story_fbid=314843536561286&id=100457737999868
05.07.2020	https://www.facebook.com/permalink.php?story_fbid=309528763759430&id=100457737999868
27.06.2020	https://www.facebook.com/permalink.php?story_fbid=303826244329682&id=100457737999868
09.06.2020	https://www.facebook.com/permalink.php?story_fbid=297843051594668&id=100457737999868
12.06.2020	https://www.facebook.com/permalink.php?story_fbid=292263472152626&id=100457737999868
03.06.2020	https://www.facebook.com/permalink.php?story_fbid=285252436187063&id=100457737999868
27.05.2020	https://www.facebook.com/permalink.php?story_fbid=280083346703972&id=100457737999868
20.05.2020	https://www.facebook.com/permalink.php?story_fbid=274926810552959&id=100457737999868
13.05.2020	https://www.facebook.com/permalink.php?story_fbid=269738417738465&id=100457737999868
01.04.2020	https://www.facebook.com/permalink.php?story_fbid=237574534288187&id=100457737999868
13.03.2020	https://www.facebook.com/permalink.php?story_fbid=222395075806133&id=100457737999868
04.03.2020	https://www.facebook.com/permalink.php?story_fbid=215720813140226&id=100457737999868
15.02.2020	https://www.facebook.com/permalink.php?story_fbid=201665564545751&id=100457737999868
29.1.2020	https://www.facebook.com/permalink.php?story_fbid=188515102527464&id=100457737999868
05.12.2019	https://www.facebook.com/permalink.php?story_fbid=161902001855441&id=100457737999868
11.11.2019	https://www.facebook.com/permalink.php?story_fbid=151925526186422&id=100457737999868
04.11.2019	

https://www.facebook.com/permalink.php?story_fbid=148752649837043&id=10045773799986806.10.2019
https://www.facebook.com/permalink.php?story_fbid=139890100723298&id=10045773799986802.10.2019
https://www.facebook.com/permalink.php?story_fbid=132575618121413&id=10045773799986826.09.2019
https://www.facebook.com/permalink.php?story_fbid=129154751796833&id=100457737999868

(iii) Defendant no. 1 will ensure that the aforementioned URLs remain blocked/suspended till further orders of this Court. This exercise will be completed within one week from today.

(iv) Defendant no. 3 [now defendant no. 2] i.e. omjusticeseekers@gmail.com is injuncted from uploading defamatory posts. It is, however, made clear that if defendant no. 3 [now defendant no. 2] or any other person were to upload, a copy of the FIR numbered as Crime no. 22 of 2016, that will not fall within the ambit of the injunction order passed by this Court.

(v) Defendant no. 1 will furnish to the Court, the Basic Subscriber Information [in short "BSI"], concerning defendant no. 3 [now defendant no. 2] i.e. omjusticeseekers@gmail.com, in a sealed cover or in the electronic form, which will be password protected, albeit within one week from today.

(v)(a) The Registry will take necessary steps to preserve and secure the BSI information received from defendant no. 1.

7. Written statement(s) in the suit and reply(ies) to the captioned application will be filed within six weeks from today. Replication(s) and rejoinder(s) thereto, will be filed before the next date of hearing.

8. List the matter on 26.11.2020.

9. The plaintiffs will comply with the provisions of Order XXXIX Rule 3 of the CPC within five days from the date of receipt of a copy of this order.

RAJIV SHAKDHER, J SEPTEMBER 15, 2020 pmc/KK Click here to check corrigendum, if any