

Delhi District Court

In The Matter Of :□vs You Tube on 4 June, 2015

Author: Rakesh Kumar-I

In the Court of Dr. Rakesh Kumar : Additional District Judge
(South District) Saket Courts Complex, New Delhi.

Suit No. 25/2015

Unique I.D. No. 02406C0049012015

In the matter of :-
Dr. Geeta Shroff
Wife of Mr. Ashok Shroff
Nutech Mediworld
H-8, Green Park Extension
New Delhi

V E R S U S

1. You Tube, Inc.
901, Cherry Avenue
San Brono,
CA 94066
USA

Also at:
Signature Tower 2, Tower B,
Gurgaon Sector 15 Part 2,
Near 32 Mile Stone
Gurgaon - 122001.

2. Google Inc.
1600 Amphitheatre Parkway
Moutain View
CA 94043
USA

Also at:
Signature Tower 2, Tower B,
Gurgaon Sector 15 Part 2,
Near 32 Mile Stone
Gurgaon - 122001.

Suit No. 25/15

O R D E R

1. This order shall decide an application under Order XXXIX Rules 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'the CPC') for temporary injunction and for directing the defendants to delete/remove/hide the impugned "Post" as well as the highlighted caption/tagline that is "Indian Money Hungry Dr. Geeta Shroff Must Watch" from "You Tube Channels".

2. The brief facts for the disposal of the present application are that the plaintiff is a Medical Doctor by profession; that lately while surfing the internet, the plaintiff came across a post uploaded on You Tube with a tag line/ highlighted caption "Indian Money Hungry Dr. Geeta Shroff Must Watch"; that the said post was uploaded by "Desh Ka Dushman", some probable entity/group/individual, whose exact particulars are not known; that there is no disclosure available on You Tube with respect to the said entity/group; that the defendant no. 1 is in a position to disclose the identity & particulars of the said entity/group; that the said impugned post as well as the caption/tag line which mentioned /describes the plaintiff as "Indian Money Hungry" is absolutely derogatory; that the plaintiff called upon the defendant no. 1 vide a written communication posted as per the framework/mechanism provided on You Tube itself i.e. through complaint mechanism by email on 05.01.2015 requesting the defendant no. 1 to immediately "remove" the said post as well as the said caption from You tube but the defendants refused to remove, delete and /or block the said posting as well as the highlighted tagline/caption; that the said post has defamed, tarnished the image and harmed the reputation of the plaintiff in the eyes of Suit No. 25/15 Page no. 2 / 5 general public.

3. The defendant opposed the present application by filing reply wherein contended that the defendant no. 1 does not have the ability to control the activities of the users beyond the ability to remove access to material posted on or stored in its systems, if the contents violates its Terms of Service or is held by a court of competent jurisdiction to violate any applicable law; that the defendant no. 1 merely serves as a medium that facilitates the access to information and entertainment and users from across the globe may upload any video from any place and at any time and viewers may view such videos at their discretion and control; that the defendant no. 1 does not select or procure the videos/ content that are uploaded on the Website nor does it perform proactive monitoring or any kind of editorial functions in relation to the content uploaded; that the entry of the video on the Website and its uploading is not selected, affected, controlled or determined by the defendant no. 1 in any way; that the defendant no. 1 may reactively remove a video for violation of the terms of service as also its Community guidelines; that the defendant no. 1 has requested the plaintiff to contact the uploader by way of You Tube's private messaging feature; that the impugned as well as the caption/tagline has not been posted by the defendants but has been posted by a third party on the website of the defendant no. 1; that the defendant no. 1 does not have direct control over the content posted by the third party in the present case; that the defendant no. 1 was not in position to adjudicate upon the veracity of the posting and therefore could not remove the said video postings.

4. I have heard Counsel for the parties and perused the Suit No. 25/15 Page no. 3 / 5 material available on record.

5. Having drawn my attention on CD and Annexures B (colly), the learned counsel for the plaintiff submitted that the post was uploaded by "Desh Ka Dushman", some probable entity/group/individual, whose exact particulars are not known to the plaintiff and only the defendant no. 1 is in a position to disclose the identity & particulars of the said entity/group. It is further stated that the said impugned post as well as the caption/tag line is absolutely derogatory and the said post has defamed the image and harmed the reputation of the plaintiff in the eyes of general public.

6. Per contra, it is submitted by learned counsel for the defendants that the defendant no. 1 does not have the ability to control the activities of the users beyond the ability to remove access to material posted on or stored in its systems, if the contents violates its Terms of Service or is held by a court of competent jurisdiction to violate any applicable law. It is further stated that the impugned as well as the caption/tagline has not been posted by the defendants but has been posted by a third party on the website of the defendant no. 1 and the defendant no. 1 does not have direct control over the content posted by the third party in the present case. It is further submitted that the defendants would remove the impugned video of the post from its website, if so directed by the Court.

7. I have given my thoughtful consideration to the submissions made on behalf of the parties.

8. From the discussion above stated, CD and Annexure Suit No. 25/15 Page no. 4 / 5 B(colly) placed on record by the plaintiff, prima facie it appears that the impugned post/video and tagline/caption is derogatory in nature and the said post has tarnished the image of the plaintiff in general public. Reputation is the only jewel that can not be bought and is built over the years and a person who is robbed of it is no less than a destitute.

9. In view of the above stated discussion, I am of the clear view that the plaintiff has been able to make out a strong prima facie case in his favour. The irreparable loss shall ensue to the plaintiff at this stage and not to the defendants, if such post /video and tagline/caption is continued on You Tube. The plaintiff shall certainly suffer an irreparable loss, if the post is not deleted from You Tube.

10. From the above discussion, the application under Order XXXIX Rules 1 & 2 CPC is allowed. The defendants are hereby directed to delete/remove/hide the said "Post" as well as the highlighted caption/tagline that is "Indian Money Hungry Dr. Geeta Shroff Must Watch" from "You Tube Channels", immediately. Nothing stated herein above shall tantamount to be my expression on merits of the case.

Pronounced in the Open Court on 04.06.2015 (Dr. Rakesh Kumar) Additional District Judge 03 (South) Saket Courts Complex, New Delhi.

Suit No. 25/15