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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 483/2019 & IAs No.12910/2019 (u/O XXXIX R-1&2 CPC),
12912/2019 (u/O VII R-14(3) CPC), 14226/2019 (u/O XXXIX R-4
CPC), 15952/2019 (u/O 151 CPC), 15953/2019 (u/O XXXIX R-4
CPC), 16035/2019 (u/O XXXIX R-4 CPC) & 16037/2019 (u/S 151 CPC)
SUBODH GUPTA Plaintiff

Through: Mr. Kailash Vasdev, Sr. Adv. & Mr.
Sandeep Sethi, Sr. Adv. with Mr. Sddharth
Garg, Mr. Sarnath Khanna & Ms. Neoma
Vasdev, Advs.

versus

HERDSCENEAND & ORS. Defendants

Through: Mr. Abhik Chimni with Mr. Tishampati
Sen, Ms. Aarti Krupa Kumar & Mr. Priyal
Agarwal, Advs. for D-1.
Ms. Richa Srivastava with Ms.Nayantara
Narayan & Ms. Malikah Mehra, Advs. for
D-2.
Mr. Mukul Rohatgi, Sr. Adv. &
Ms. Meenakshi Arora, Sr. Adv. with
Mr. Tejas Karia & Mr Ajit Warriar, Advs.
for D-3.
Mr. Udit Mendiratta & Mr. Ujval Mohan,
Advs. for D-4.
Mr. Arvind Nigam, Sr. Adv. with Mr. Neel
Mason, Mr. Vihan Dang, Ms. R.Ramya,
Mr. Mehtaab Singh Sandhu & Mr. Pratisht
Kaushal, Advs. for D-5.
Mr. Akhil Anand & Mr. Himanshu Vij,
Advs. for D-6.
Mr. Ritin Rai, Sr. Adv. with Ms. Shreya
Munoth, Ms. Kritika Bhardwaj, Ms. Amala
Dasarathi, Ms. Sanjana Srikumar & Ms.
Devdutta Mukhopadhyay, Advs. for
Indian Journalists Union.
Ms. Jayna Kothari, Sr. Adv. with

Ms. Tejaswi Shetty, Mr. Rohan Kothari,
Ms. Harshitha Reddy & Mr. Sangat Mishra,
Advs. for applicant in IA 16036/2019.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

18.11.2019

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1. The counsel for the defendant no.1 seeks to file *Vakalatnama* on behalf of defendant no.1, in a sealed cover and to file an application justifying the right of the defendant no.1, to maintain anonymity, at least at this stage, by furnishing a redacted copy thereof to the plaintiff.

2. Maintaining anonymity of identity in a litigation appears to run counter to our jurisprudence of adversarial nature of judicial proceedings, fairness of procedure and equality of opportunity to both/all parties. Allowing the defendant No.1 to contest the claim of the plaintiff, not only knowing the case but also knowing identity of the plaintiff, while making the plaintiff press his claim against defendant No.1 without knowing the entire defence of defendant No.1 and without even knowing identity of defendant No.1, will amount to treating the two unequally and which is against the very tenets of our jurisprudence. Disclosing the identity to the Court would not redress the aforesaid anomaly. Whenever the Courts have proceeded to adjudicate, as has happened in several cases in recent past, relying on material/information shared by one party, only with the Court, while concealing it from the opposite party, the same has created unnecessary suspicion qua the merits of the decision and invited criticism, diminishing the faith of the public in the decision making process and judiciary, and which faith of the public forms the spine of the judicial

process. Moreover, the nature of the controversy subject matter of the present suit also is such, where identity of the defendant No.1 is material for the plaintiff to properly pursue his case. The defendant No.1, without disclosing identity and wearing the veil of a virtual persona, has published statements concerning the plaintiff, which according to plaintiff are defamatory of the plaintiff. The plaintiff, without knowing the identity of defendant No.1, cannot effectively prove the same to be false, motivated and defamatory. Shadow boxing is not permitted in litigation. The plaintiff cannot be compelled to fight ghosts. I have in some recent orders held that persons making such statements cannot be permitted to be a judge in their own case, by making accusations and by not giving an opportunity to accused to defend the accusation. The defence of the accused may include factors concerning the accuser. The accuser cannot be permitted to indulge in guerilla warfare against the accused. Even where the law permits “in camera hearing”, as distinct from hearing in open Court, both parties are entitled to full knowledge of each other and each other’s case.

3. The counsel for defendant No.1 has contended that disclosing the identity of the defendant No.1 is likely to cause harm to the defendant No.1 and for which sufficient protection is not available in our legal system. It is also suggested that a victim of sexual harassment, as the defendant No.1 claims to be at the hands of plaintiff, in our society has to face a large number of issue and for this reason only the movement commonly known as ‘Me Too’ has gained ground all over the world.

4. Undoubtedly so. However, cure of a wrong does not lie in another wrong.

5. Though I have tried to hear the counsel for the defendant no.1 qua the

entitlement, if any, of the defendant no.1 to such anonymity and to fight a litigation without even disclosing the real identity, but after some hearing it appears that till the pleadings of the defendant no.1 are before this Court, appropriate arguments even cannot be heard as the counsel for defendant No.1 is sounding reluctant to spell out his case in open Court.

6. Thus, without conferring any right on the defendant no.1, the defendant no. 1, at this stage, is permitted to file *Vakalatnama* in a sealed cover and to file written statement/reply to the application for interim relief as well as any other application sought to be filed, all in a sealed cover and furnish redacted copies thereof to the counsel for the plaintiff. I have however recorded my thoughts herein so that counsels can address thereon.

7. Since the defendant no.1 is reported to have been served on 26th September, 2019, the aforesaid is permitted to be done within two weeks and it is made clear that if no written statement is filed within two weeks, the right to file written statement shall stand closed.

IA No.16036/2019(of Culture Workers Support Trust for impleadment) and IA No.15586/2019(of Indian Journalists Union for impleadment)

8. The senior counsel for the plaintiff states reply is required.

9. Same be filed within four weeks.

10. Rejoinder thereto be filed before the next date of hearing.

IA No.15854/2019(of the D-3 u/O.XXXIX R-4 CPC)

11. The senior counsel for the applicant/defendant no.3 states that since the defendant no.1 has appeared before this Court, the direction contained in the orders dated 18th September, 2019 and 30th September, 2019 to the defendant no.3 to disclose the identity of the defendant no.1 has been rendered infructuous.

12. The senior counsel for the plaintiff has been heard.

13. Since the defendant no.1 has appeared, it is clarified that the defendant no.3 need not comply with the direction contained in paragraph 15 of the order dated 30th September, 2019.

14. IA is disposed of.

IA No.15856/2019 (of D-3 for Substitution)

15. The senior counsel for the defendant no.3 Facebook Inc. states that it is Facebook Inc. which has data control over the subject content and Facebook Ireland Limited has no control over the same and is not capable of complying with any directions.

16. Facebook Inc. is already impleaded as defendant no.3 and there is no need to substitute the defendant no.4 again with defendant no.3.

17. Accepting the statement on behalf of the defendant no.3, the defendant no.4 is deleted from the array of defendants and endorsement to the said effect be made by the Court Master on the memo of parties, under his signature.

18. Though a direction is also sought to the same effect with respect to Instagram LLC but since Instagram LLC, though stated to be controlled by Facebook Inc., is known by itself, it is not deemed appropriate to, at this stage, delete defendant no.2.

19. The application is disposed of.

CS(OS) 483/2019

20. All the other applications shall also be taken up on the next date.

21. List on 22nd January, 2020.

22. Interim order to continue.

23. Though the senior counsel for the applicant in IA No.15953/2019 has

pressed his application under Order XXXIX Rule 4 CPC but it is deemed appropriate to take up all the applications on the same day since the issues are intertwined.

RAJIV SAHAI ENDLAW, J

NOVEMBER 18, 2019

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