

Vyakti Vikas Kendra & other vs Jitender Bagga & Google [2012 - Intermediary

Delhi High Court

Vyakti Vikas Kendra & other vs Jitender Bagga & Google [2012

HIGH COURT OF DELHI : NEW DELHI

CS(OS) No.1340/2012

Order decided on : 09.05.2012

VYAKTI VIKAS KENDRA,INDIA PUBLIC CHARITABLE
TRUST THR TRUSTEE MAHESH GUPTA & ORS Plaintiffs

Versus

JITENDER BAGGA & ANR Defendants

MANMOHAN SINGH, J.(Oral)

I.A. No.8878/2012 (u/S. 148, 149 and 151 CPC)

1. Plaintiff has deposited the amount in order to get the court fee. Challan has been filed. Let the court fee be filed within one week. The application is disposed of.

I.A. No.8876/2012

2. Original documents/legible/fair typed copies of dim documents be filed within eight weeks from today. The application is disposed of.

CS(OS) 1340/2012 & I.A. No.8877/2012 (u/O. XXXIX, R. 1 & 2 CPC)

3. Let the plaint be registered as a suit.

4. Issue summons in the suit and notice in the application to the defendants, returnable on 30.05.2012. Dasti as well.

5. The four plaintiffs, namely, Vyakti Vikas Kendra, India Public Charitable Trust, Mr Gautam Vig, Mrs. Bhanumati Narsimhan and Mrs. Sharmila Murarka, have filed present suit against the defendants for damages to tune of Rs.5,09,00,000/-, permanent and mandatory injunction, mainly on the ground that they are aggrieved, hurt and immensely concerned on account of certain highly defamatory materials posted on an internet website by the name <http://www.blogger.com/> by one Mr Jitender Bagga, the defendant No.1 herein. The said website is owned by Google, the defendant No.2. It is a Blog Publishing Service which allows people to create and publish a "Blog".

6. According to the plaintiff, the defendant No.1 has been indiscriminately sending e-mails and has published a large number of blogs on the website <http://www.blogger.com/>, which according to them is highly vulgar, disgusting and abusive references towards His Holiness Sri Sri Ravi Shankar, owner of Art of Living Foundation, and towards various other persons associated with the Art of Living.

7. It is stated in the plaint that the plaintiff No. 1, Vyakti Vikas Kendra, India Public Charitable Trust, is a registered Public Charitable Trust constituted to implement and promote the spiritual, educational, social and developmental activities for The Art of Living in India. The Art of Living, founded in 1981, is one of the world's largest volunteer based, humanitarian and educational

organizations inspired by His Holiness Sri Sri Ravi Shankar's vision of creating a stress-free, violence-free society. The plaintiff No. 2, Mr. Gautam Vig is a devout follower of His Holiness Sri Sri Ravi Shankar. The plaintiff No. 3, Mrs. Bhanumati Narsimhan is His Holiness Sri Sri Ravi Shankar's sister and an Art of Living teacher. The plaintiff No. 3 is personally a victim of the defendant No. 1's defamatory acts. The plaintiff No. 4, Mrs. Sharmila Murarka is an Art of Living Teacher.

Plaintiff No. 4 is also personally a victim of defendant No. 1's defamatory acts. The defendant No. 1 has created and published various materials on the Internet, which are highly defamatory to the plaintiffs. In para 10, there is a table containing defamatory materials to the plaintiffs, the Art of Living Foundation, its spiritual head Sri Sri Ravi Shankar and his family members. The list of Internet URL is as under:

Internet URL <http://revolutionprithvi.blogspot.in/> <http://revolutionprithvi.blogspot.in/> <http://revolutionprithvi.blogspot.in/>
<http://revolutionprithvi.blogspot.in/> <http://revolutionprithvi.blogspot.in/> <http://revolutionprithvi.blogspot.in/>
<http://revolutionprithvi0.blogspot.in/> <http://revolutionprithviandmore.blogspot.in/>
<http://srisriravishankariguruorconman.blogspot.in/> http://chairmanrilabetsrioting.blogspot.in
[http://chairmanrilabetsrioting.blogspot.in/2011/12/chair man-reliance-industries-limited.html](http://chairmanrilabetsrioting.blogspot.in/2011/12/chair-man-reliance-industries-limited.html)
[http://chairmanrilabetsrioting.blogspot.in/2012/01/does](http://chairmanrilabetsrioting.blogspot.in/2012/01/does-chairman-reliance-industries.html)
[-chairman-reliance-industries.html http://chairmanrilabetsrioting.blogspot.in/2012/02/is- reliance-industries-limited-chairman.html](http://chairmanrilabetsrioting.blogspot.in/2012/02/is-reliance-industries-limited-chairman.html)
<http://diduspresidentcreateterrorists.blogspot.in/> [http://revolutionprithviandmore.blogspot.in/2012/02/sri](http://revolutionprithviandmore.blogspot.in/2012/02/sri-sri-ravi-shankar-barack-obama.html)
[-sri-ravi-shankar-barack-obama.html http://revolutionearthandmore.blogspot.in/2011/12/revo lution-earth-more.html](http://revolutionearthandmore.blogspot.in/2011/12/revolution-earth-more.html)
[http://diduspresidentcreateterrorists.blogspot.in/2012/0 2/aol-founder-us-president-are-global.html](http://diduspresidentcreateterrorists.blogspot.in/2012/02/aol-founder-us-president-are-global.html)
[http://diduspresidentcreateterrorists.blogspot.in/2012/0 1/arent-present-un-secretary-general-us.html](http://diduspresidentcreateterrorists.blogspot.in/2012/01/arent-present-un-secretary-general-us.html)
[http://diduspresidentcreateterrorists.blogspot.in/2012/0 1/is-us-president-incompetent-fraud.html](http://diduspresidentcreateterrorists.blogspot.in/2012/01/is-us-president-incompetent-fraud.html)
[http://chairmanrilabetsrioting.blogspot.in/2012/01/does](http://chairmanrilabetsrioting.blogspot.in/2012/01/does-chairman-reliance-industries.html)
[-chairman-reliance-industries.html http://chairmanrilabetsrioting.blogspot.in/2011/12/chair man-reliance-industries-limited.html](http://chairmanrilabetsrioting.blogspot.in/2011/12/chair-man-reliance-industries-limited.html)
[http://chairmanrilabetsrioting.blogspot.in/2012/01/does](http://chairmanrilabetsrioting.blogspot.in/2012/01/does-chairman-reliance-industries.html)
[-chairman-reliance-industries.html http://chairmanrilabetsrioting.blogspot.in/2012/02/is- reliance-industries-limited-chairman.html](http://chairmanrilabetsrioting.blogspot.in/2012/02/is-reliance-industries-limited-chairman.html)

8. It is contended by the plaintiffs that in case the interim order is not passed against the defendants, the plaintiffs will suffer irreparable loss and injury. They will also suffer immense loss of reputation, mental trauma, harassment and humiliation.

9. It is stated in the plaint that notice was given to the defendant No.1, who failed to give any reply.

10. The plaintiffs have filed the policy of defendant No.2 for removal of defamatory content from its website <http://www.blogger.com/>. The relevant extract thereof reads as under :

"After careful review, Blogger may remove content or place a content warning page before viewing content deemed offensive, harmful, or dangerous, such as : ? Hate against a protected group ? Adult or pornographic images ? Promotion of dangerous and illegal activity ? Content facilitating phishing or account hijacking ? Impersonated user identity Additionally, we are aware that there may be content on Blogger that is personal in nature or feels invasive. Please note that Blogger is a provider of content creation tools, not a mediator of that content. We allow our users to create blogs, but we don't make any claims about the content of these pages. We strongly believe in freedom of expression, even if a blog contains unappealing or distasteful content or presents unpopular viewpoints. We realize that may be frustrating, and we regret any inconvenience this may cause you. In cases where contact information for the author is listed on the page, we recommend that you work directly with this person to have the content in question removed or changed.

Here are some examples of content we will not remove unless provided with a Court order :

- ? Personal attacks or alleged defamation
- ? Parody or satire of individuals
- ? Distasteful imagery or language
- ? Political or social commentary"

11. Defendant No.2 is an 'intermediary' within the definition of Section 2(1) (w) and Section 79 of the Information Technology Act, 2000. Under Section 79 (3)(b) of the IT Act,2000, defendant No.2 is under an obligation to remove unlawful content if it receives actual notice from the affected party of any illegal content being circulated/published through its service. He is bound to comply with Information Technology (Intermediaries Guidelines) Rules 2011.

Rule 3(3) of the said rules read with Rule 3(2) requires an intermediary to observe due diligence or publish any information that is grossly harmful, defamatory, libellous, disparaging or otherwise unlawful.

12. Rule 3(4) of the said rule provides obligation of an intermediary to remove such defamatory content within 36 hours from receipt of actual knowledge. The said rule expressly provides as follows-

" The Intermediary , on whose computer system the information is stored or hosted or published , upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through e-mail signed with electronic signature about any such information as mentioned in sub rule (2) above, shall act within 36 hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub rule (2)."

13. In view of the foregoing facts and reasons mentioned above, it appears that the plaintiffs have been able to make out a strong prima facie case of passing of ex-parte interim order. The balance of convenience also lies in favour of the plaintiffs and against the defendants. Incase, interim order is not passed, the plaintiffs will suffer irreparable loss and injury. Thus, till the next date, the defendant No. 2 is directed to remove all defamatory contents about the plaintiffs posted by the defendant No.1 on defendant No.2's website <http://.blogger.com/> as well as the links mentioned in paragraph 4 of the present application within 36 hours from date of knowledge of the order passed by this Court. The defendant No.1 is restrained from sending any e-mail including e-mails, the details of which are given in para 7 of this order or posting any material over the internet which has a direct or indirect reference to the plaintiffs or the Art of Living Foundation or any member of the Art of Living Foundation, or His Holiness Sri Sri Ravi Shankar.

14. Compliance of Order XXXIX, Rule 3 CPC be made within three days.

15. Copy of the order be given dasti under the signature of the Court Master/Private Secretary.

MANMOHAN SINGH, J.

MAY 09, 2012 jk