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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(COMM) 146/2020

JAGRAN PRAKASHAN LIMITEDPlaintiff

Represented by: Mr.Jeevesh Mehta, Advocate.

versus

TELEGRAM FZ LLC & ORS. Defendants

Represented by: Ms.Maninder Acharya, ASG
instructed by Mr.Harish
Vaidyanathan Shankar, CGSC and
Mr.Viplav Acharya, Advocate for
defendant Nos.3 and 4.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **29.05.2020**

The hearing has been conducted through Video Conferencing.

I.A. 4074/2020 (Exemption)

Allowed, subject to all just exceptions.

I.A. 4075/2020 (Exemption from filing attested affidavits and court fees)

1. By this application, plaintiff seeks exemption from filing the duly attested affidavit as also the court fees.
2. Exemption is allowed, subject to the condition that plaintiff will file the duly sworn/attested affidavit and the court fees within 72 hours from the date of resumption of the regular functioning of this Court.
3. Application is disposed of.

CS(COMM) 146/2020 &
I.A. 4073/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Plaintiff be registered as suit.
2. Issue summons in the suit and notice on the application.
3. Learned Additional Solicitor General for the Union of India enters appearance on behalf of defendant Nos.3 and 4 which are Department of Telecommunications and Ministry of Electronics and Information Technology and states that the defendant Nos.3 and 4 have no control whatsoever on the activities of defendant No.1 and in view of the reliefs sought in the suit the defendant Nos.3 and 4 are neither the necessary nor proper parties.
4. Learned counsel for the plaintiff states that since the defendant No.1 was a company of Dubai, the plaintiff had impleaded defendant Nos.3 and 4 however, at this stage the plaintiff gives up defendant Nos.3 and 4.
5. Amended memo of parties deleting defendant Nos. 3 and 4 be filed within two days.
6. Issue summons in the suit and notice in the application to defendant No.1 on the plaintiff taking steps through email, SMS and whatsapp, returnable on 23rd June, 2020.
7. Plaintiff has filed the present suit impleading Telegram FZ LLC (in short 'Telegram') having its office at Business Central Towers, Tower-A, Office 1003/1004, Dubai, United Arab Emirates as defendant No.1 and John Doe/Ashok Kumar unidentified administrator of the Telegram Channels as defendant No.2.
8. Claim of the plaintiff in the suit is that the plaintiff is a company which is publishing a leading newspaper in Hindi named Dainik Jagran

which has wide circulation in both physical as well as digital media throughout the country and the digital e-paper of the plaintiff is available and published on www.jagran.com. Thus the readers of the newspaper have the option to either subscribe the physical/print newspaper or they can log on to the plaintiff's website to read the daily newspaper in the digital format on the web page itself. As per learned counsel for the plaintiff, considering the present COVID-19 situation the plaintiff is not charging any subscription fee from its readers in India but is charging a fee of one dollar in other countries however, in view of the enhanced postings the plaintiff is contemplating imposing fee on the digital newspaper in India as well. As per the plaint the website of the plaintiff has a security feature whereby any reader can read the newspaper in the digital form on the website but cannot download the same in the PDF format. Plaintiff also claims to be the



exclusive owner of the trademark Dainik Jagran and the said trademark with its variations is registered in number of classes.

9. Defendant No.1 Telegram is a cloud based instant messaging and voice over IP service. Telegram client apps are available for android, iOS, Windows Phone, Windows, MacOS and Linux. These users of Telegram can send messages and exchange photos, videos, stickers, audio and files of any type.

10. Plaintiff claims that as on April, 2020 Telegram had around 400 million monthly active users with atleast 1.5 million new users signing up every day.

11. Grievance of the plaintiff in the present suit is that the defendant No.1

grants access and permission to the users of the application to create various channels while not disclosing the identity of such users and in view of the absence of the identity being known, the plaintiff has impleaded them as defendant No.2. The said users of defendant No.1 have created channels with IDs: t.me/dainkjagran, t.me/dainikjagranhindi, t.me/dainikjagran_jnm, t.me/dainikjagranpdf, t.me/dainik_jagran, t.me/dainikjagran, t.me/DJagran, t.me/Dainik_Jagran_pdf, t.me/Fainik_Jagran_News, t.me/dainikja. On these channels the e-papers of the plaintiff are being uploaded in PDF format on daily basis and thus the defendant No.1 with the help of these channels are not only permitting availability of current editions of the e-paper but also users subscribing to the channels of defendant No.1 can download all the previous editions of the e-paper published in the past, which is otherwise available to a user only if he subscribes the e-paper subscription while visiting the website of the plaintiff.

12. Considering the fact that the defendant No.1 through defendant No.2 was indulging into reproducing, adopting, distributing, transmitting and disseminating the e-newspapers of the plaintiff and thereby not only causing the plaintiff serious financial loss but also violating the plaintiff's trademark rights as well as copyrights in the e-newspaper, the plaintiff issued a notice to defendant No.1 on 9th April, 2020 by way of email to which no reply was received from defendant No.1. Therefore, plaintiff was constrained to issue three further reminders dated 16th April, 2020, 30th April, 2020 and 1st May, 2020 however, the defendant No.1 did not respond.

13. Consequently, the plaintiff filed the present suit before this Court and an advance copy of the plaint and documents therewith were served to defendant No.1 by email on 23rd May, 2020 whereafter the plaintiff received

a reply on 25th May, 2020 from defendant No.1 claiming that the channels had been blocked. Plaintiff has however placed on record a screenshot dated 28th May, 2020 which shows that the channels of the defendant No.2 were still working. Plaintiff has also placed on record material to show that the daily viewership of the defendant No.2's channels for which defendant No.1 claims to be intermediary is growing day-by-day as is evident from the fact that as on 16th May, 2020 there were 18989 subscribers of the Dainik Jagran National Edition whereas as on 18th May, 2020, the subscriber of the said edition rose to 19239 on the channels of defendant No.2.

14. Learned counsel for the plaintiff referring to the provisions of Section 79 of the Information Technology Act submits that the defendant No.1 cannot escape from its liability on the ground that it is a intermediary for the reason the defendant No.1 is required to conduct due diligence and in terms of Rule-3 sub-rule 4 of the Information Technology (Intermediaries Guidelines) Rules, 2011 on being informed about the misuse, the defendant No.1 is required to pull down the said channels within 36 hours. Despite repeated reminders after the notice dated 9th April, 2020, the said channels of the defendant No.2 have not been pulled down and the reply of the defendant No.1 received on 25th May, 2020 that the channel has been blocked is also incorrect in view of the screenshot of the channel dated 28th May, 2020.

15. Considering the facts noted above the plaintiff has made out a prima facie case in its favour and in case no ad-interim injunction is granted the plaintiff would suffer irreparable loss. Balance of convenience also lies in favour of the plaintiff.

16. Consequently, an ad-interim injunction is granted in favour of the

plaintiff and against the defendant Nos.1 and 2 in terms of prayer (a) of I.A. No.4073/2020 under Order XXXIX Rule 1 and 2 CPC. The defendant No.1 is also directed to disclose the basic subscriber information/identity of the users/owners of the channels who have been impleaded as defendant No.2 who are using the emails/addresses as mentioned in para (b) of the application i.e. t.me/dainkjagran, t.me/dainikjagranhindi, t.me/dainikjagran_jnm, t.me/dainikjagranpdf, t.me/dainik_jagran, t.me/dainikjagran, t.me/DJagran, t.me/Dainik_Jagran_pdf, t.me/Fainik_Jagran_News, t.me/dainikja.

17. Defendant No.1 is further directed to take down/block the telegram channels with Ids: t.me/dainikjagran, t.me/dainikjagranhindi, t.me/dainikjagran_jnm, t.me/dainikjagranpdf, t.me/dainik_jagran, t.me/dainikjagran, t.me/DJagran, t.me/Dainik_Jagran_pdf, t.me/Fainik_Jagran_News, t.me/dainikja or any other similar channels infringing the rights of the plaintiff within 48 hours of the receipt of this order.

18. Compliance under Order XXXIX Rule 3 CPC be made within one week.

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

MUKTA GUPTA, J.

MAY 29, 2020
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