
Dr. Ravinder Kumar Anand Vs Ozo Media Estate Limited And Others**Notice Of Motion No. 1009, 1995, 3095 Of 2018, Suit No. 184 Of 2011**

Court: Bombay High Court**Date of Decision:** Aug. 14, 2019**Hon'ble Judges:** S.J. Kathawalla, J**Bench:** Single Bench**Advocate:** Rohaan Cama, Bhandari, Pranjali Bhandari, Pandit Kasar, Chanakya Keswani**Final Decision:** Disposed Off

Judgement

1. The present order disposes of three Notices of Motion filed in the present Suit.

2. For the purposes of the present order the background facts of the suit are not very material. Suffice it to state that there were 40 suits filed by the

respective Plaintiff in respect of 40 Agreements for Sale entered into by the respective Plaintiff with Defendant No. 1 herein in respect of certain

commercial office spaces which formed the subject matter of the said Agreements. On account of disputes in respect of the building plans, the said 40

suits came to be filed for specific performance of the respective Agreements for sale of the aforesaid commercial premises.

1st Consent Minutes

3. On 11th December 2015, a composite compromise came to be arrived at between the parties, and was recorded in Consent Minutes of Order

($\text{A}\text{C}\text{a}, \text{A}$ "1st Consent Minutes $\text{A}\text{C}\text{a}, \text{A}$). The 1st Consent Minutes inter alia provided for certain payments to be made by Defendant No. 1 which amounts, as set

out in clause 3, were to be deposited in this Court together with interest at the rate determined by the Court. An issue had arisen regarding certain

blogs / links / URLs bearing the names of certain Defendants, which according to the Defendants were false and defamatory, and were required to be

removed. Accordingly it was agreed between the parties to the 1st Consent Minutes that the said blogs / links / URLs were liable to be removed and

discontinued. It was requested by the parties that certain orders be passed inter alia against M/s. Google Inc., M/s. YouTube LLC USA and others.

4. The 1st Consent Minutes were taken on record by this Court on 17th December 2015 and an order was passed in terms thereof. This Court, by

consent, further determined the rate of interest at 8.5% per annum payable on the principal sum from the date of the respective advances till the date

of deposit. The figure payable as on 30th January 2016 was agreed between the parties and recorded in paragraph 2(ii) of the order. Certain further

directions were given to M/s. Google Inc. and others as set out in paragraph 2(iii) of the order. Accordingly, the suits and the Notices of Motion then

pending were all disposed of. Subsequently, a clarification of clause 2(ii) of the order dated 17th December 2015, was made vide an order dated 17th

February 2016.

2nd Consent Minutes

5. For reasons that are at this point not of relevance, the parties entered into Modified / Amended Consent Minutes of Order (Ã¢â¬Å2nd Consent

MinutesÃ¢â¬Å). By the 2nd Consent Minutes there was an amendment to Clause 3 and it was now provided that Defendant No. 1 was to deposit within

120 days from the date of removal of the concerned blogs/URLs/links, the agreed sum together with interest as set out in the modified / amended

Clause 3. Clause 6 of the modified / amended terms forming part of the 2nd Consent Minutes, particularized in Annexure Ã¢â¬Å7Ã¢â¬Å thereto, the blogs /

links / URLs etc. which were liable to be taken down / removed / discontinued. An obligation was cast on the Plaintiff to address communications to

M/s. Google Inc. and others to ensure that the blogs / links / URLs Ã¢â¬Åparticularized in Annexure Ã¢â¬Å7Ã¢â¬Å be removed.

6. Annexure Ã¢â¬Å7Ã¢â¬Å to the 2nd Consent Minutes contains a list of 293 blogs/links/URLs etc. which were to be removed. There is a note at the foot

of Annexure Ã¢â¬Å7Ã¢â¬Å which reads thus: Ã¢â¬ÅAny other Blogs / URLÃ¢â¬Ås / YouTube Videos which are not included above - may also be deleted.Ã¢â¬Å.

Pertinently, Clause 7 of the 2nd Consent Minutes seeks certain directions from this Court to M/s. Google Inc. and others, and no obligation is cast, in

this Clause, on the Plaintiff. This is of some significance in the light of what is stated hereafter. The 2nd Consent Minutes were taken on record by an

Order dated 29th July 2016. The Court subsequently came to be seized of Notice of Motion No. 1157 of 2016, Notice of Motion No. 1455 of 2016 and

Notice of Motion (L) No. 1299 of 2017 filed by Google India Private Limited, Google Inc. USA and You Tube LLC seeking inter alia clarification that

Clauses 6, 7 and 8 of the 1st Consent Minutes and Clauses 2, 3, 6, 7 and 8 of the 2nd Consent Minutes would not be binding on them. By orders dated

4th January 2018, the above Notices of Motion were disposed of with the clarifications as prayed.

7. The Plaintiff had filed a similar Notice of Motion, being Notice of Motion (L) No. 844 of 2018 seeking clarification that the above clauses of the 1st

Consent Minutes and 2nd Consent Minutes would not be binding on the third parties. This Notice of Motion too was disposed of by consent, vide an

order dated 10th April, 2018 clarifying the above position.

8. The effect of the above Notices of Motion being allowed were that the directions given to the third parties referred to above stood recalled. By

agreement of the parties, including Defendant No. 1, there was therefore now no question of Clause 7 of the 2nd Consent Minutes being given effect

to. It was clarified that the remaining terms under the 1st Consent Minutes and the 2nd Consent Minutes would continue to be binding on the parties

thereto.

The present Notices of Motion

9. The Plaintiff then filed Notice of Motion No. 1009 of 2018 seeking inter alia a direction that the period of 120 days for Defendant No. 1 to deposit

the money along with interest as agreed in Clause 3 of the 2nd Consent Minutes, commenced from the date of the orders dated 4th January 2018 /

10th April 2018. In this Notice of Motion, Defendant Nos. 1, 2 and 4 to 7 filed an Affidavit dated 3rd August 2018, placing on record a copy of a report

by one Dreamworth Solutions Private Limited (Ã¢â¬Å1st Dreamworth ReportÃ¢â¬Å), stating that 38 of the original 293 Blogs were still active and were

required to be removed.

10. After taking necessary steps for removal, and as 289 of the 293 blogs referred to in Annexure Ã¢â¬Å7Ã¢â¬Å of the 2nd Consent Minutes had been

removed, the Plaintiff filed Notice of Motion No. 1995 of 2018 seeking that the Respondents added therein remove the remaining four blogs from their

website. The present contesting Defendants filed an Additional Affidavit in Notice of Motion No. 1009 of 2018 on 12th December 2018 placing on

record a further report by Dreamworth Solutions Private Limited (Ã¢â¬Å2nd Dreamworth ReportÃ¢â¬Å) claiming that there were 21 blogs active, including

two of the original 293 which formed the subject matter of Notice of Motion No. 1995 of 2018. It was contended that besides the 293 blogs in

Annexure Ã¢â¬Å7Ã¢â¬Å, these other blogs were also required to be removed.

11. The Plaintiff thereafter filed Notice of Motion (L) No. 3095 of 2018 in Notice of Motion No. 1009 of 2018 seeking a direction to the concerned

Respondents therein to remove the 19 blogs set out therein from their website. By orders passed by this Court on 19th December 2018 and 22nd

December 2018, it was directed that the said blogs be removed.

12. When the matter was listed before this Court (in chambers) on 11th January 2019, the contesting Defendants handed over (without any Affidavit)

a third report by Dreamworth Solutions Private Limited (Ã¢â¬Å3rd Dreamworth ReportÃ¢â¬Å) stating that there were certain further blogs that were

required to be removed.

13. The Plaintiff filed Additional Affidavits dated 17th January 2019, 25th January 2019 and 7th March 2019 stating that all the blogs in the 3rd

Dreamworth Report had in fact been removed. When the matter appeared before this Court on 7th March 2019, this Court noted that the two articles

appearing on links of Indian Express had been removed.

14. When the matter appeared on Board on 12th March 2019, the contesting Defendants filed a further report of Dreamworth Solutions Private

Limited (Ã¢â¬Ï4th Dreamworth ReportÃ¢â¬Ï) stating that there were 56 further blogs which were required to be removed. It bears mention that the 56

items mentioned in the 4th Dreamworth Report, actually pertain to only 29 URLs which have been mentioned 56 times.

15. Based on the 4th Dreamworth Report, the Plaintiff filed Additional Affidavits highlighting that out of the 29 URLs, 23 URLs (mentioned 43 times)

stood removed.

16. At the hearing today, the Plaintiff has tendered a compilation with an index showing the 29 URLs (mentioned 56 times) and the status thereof. As

regards the 6 remaining URLs (mentioned 13 times), 2 had been removed and of the 4 which remained as on the date of the hearing, it was submitted

by Mr. Cama on behalf of the Plaintiff that :

(i) the URLs at Sr. Nos. 27 and 29 were full text reportings of Court judgments which could not removed;

(ii) the URL at Sr. No. 31 was a post put up by Mr. Ashok Mahindru himself;

(iii) the URL at Sr. No. 34 was only a link to various persons with the name Ã¢â¬ÏAshok MahindruÃ¢â¬Ï and was in any event in no manner defamatory.

17. On behalf of the Plaintiff Mr. Cama has contended that regardless of the steps bonafide taken by the Plaintiff, to remove the blogs in the

Dreamworth Reports, in fact, the Plaintiff was required under Clause 6 of the 2nd Consent Minutes only to remove the 293 blogs referred to in

Annexure Ã¢â¬Ï7Ã¢â¬Ï and the same have been removed. He submits that the note at the foot of Annexure Ã¢â¬Ï7Ã¢â¬Ï was at highest an expression that

the Plaintiff Ã¢â¬ÏmayÃ¢â¬Ï, if found appropriate, delete any other blogs of like nature and this was not an obligation to keep removing blogs / links ad

nauseum, ad infinitum. Mr. Cama submitted that the Defendants are proceeding on an incorrect assumption that they can, on a rolling basis, keep

raising new blogs and thereby defer the payment obligation under amended Clause 3 recorded in the 2nd Consent Minutes.

18. He submits that in any case, without prejudice to their rights and contentions, all the URLs in the 4th Dreamworth Report have been removed

except for the 4 (mentioned 13 times) referred to above, which are ex facie judgments of the Court or posts within the control of Mr. Ashok

Mahindru, Defendant No. 4, himself and the Plaintiff cannot be required to remove the same. He therefore submits that the 120 daysÃ¢â¬Ï period for

the deposit as per amended Clause 3 recorded in the 2nd Consent Minutes be treated as having commenced, at very minimum, from today.

19. Per contra, Mr. Kasar on behalf of the contesting Defendants contends that firstly there is no desire by the contesting Defendants to prolong the

matter as they are required to continue to pay interest till such time as the deposit is actually made. He further places reliance on Clause 7(b)(iii) of

the amended / modified terms recorded in the 2nd Consent Minutes to contend that all blogs containing material / contents concerning Defendant No.

1. Defendant No. 4, Mr. Ashok Mahindru, his companies, family members and employees which are defamatory, derogatory, false, mischievous and

mala fide are required to be removed. Mr. Kasar however, in fairness, did not stretch the argument to contend that the Defendants can, on a rolling

basis, keep furnishing further lists of blogs to be removed.

20. I have heard the learned Counsel for the parties. It is clear from a perusal of the 1st Consent Minutes and the 2nd Consent Minutes that the

arrangement between the parties was restricted to the Plaintiffs ensuring removal of the 293 blogs in Annexure A. It appears, admittedly so,

that those 293 blogs / links / URLs have been removed. The note at the foot of Annexure A certainly cannot and does not entitle the

Defendants to keep furnishing new lists of blogs and thereby defer the obligation to deposit under Clause 3 as amended and recorded in the 2nd

Consent Minutes. It would have been sufficient for the Plaintiffs to have simply removed the 293 blogs, and thereafter the time would have been

treated as having commenced for the purpose of the concerned Defendants being required to make the deposit; the Plaintiff need not necessarily have

removed any other blogs, than the 293 referred to in Annexure A.

21. The reliance placed by the contesting Defendants on clause 7(b)(iii) of the 2nd Consent Minutes is entirely misplaced. Clause 7(b)(iii) is a direction

to YouTube, which direction, by the orders dated 4th January 2018 read with the order of 10th April 2018, stand recalled, and the parties by consent

agreed that the said Clause 7 will not be required to be enforced qua the third parties. Clause 7 does not impose an obligation on the Plaintiffs and

therefore the Defendants cannot seek shelter thereunder. Even otherwise clause 7(b)(iii) speaks of defamatory / derogatory articles being required to

be removed. Ex facie neither the Court reported judgments nor the posts by Ashok Mahindru himself, or the Facebook page in question, constitute

defamatory or derogatory or false material. Thus, even assuming clause 7(b)(iii) was to impose an obligation on the Plaintiff, (which it does not), there

would be no obligation on the Plaintiff to remove the last 4 remaining blogs / URLs, set out in the 4th Dreamworth Report.

22. Having regard to the 4th Dreamworth Report, there are only 4 blogs / URLs which remained to be removed. From the arguments made by Mr.

Kasar, fortunately it does not appear that there is any attempt to suggest that there are any other blogs / URLs which are in issue. As noted above

two of these URLs are reports of Court judgments and the same certainly cannot constitute defamatory or derogatory material and nor can there be

any obligation on the Plaintiff to remove the same. As regards the blog at Sr. No. 31 of the Compilation furnished by the Plaintiff, it is evident that the

blogs have been posted by Ashok Mahindru himself. The words and catch phrases used on the said blogs are entirely within the control of Mr. Ashok

Mahindru himself, and if any are perceived by him to be undesirable, he is at liberty to remove the same. Certainly, the Plaintiffs cannot be foisted with

an obligation to remove blogs posted by Mr. Ashok Mahindru himself.

23. As regards Sr. No.34 of the Compilation furnished by the Plaintiff, the same is nothing but a list of persons named "Ashok Mahindru". The

same in no manner is offending, defamatory or derogatory, and in any event the Plaintiff has no control over a list of such names from Facebook.

24. In the circumstances I am of the view that the Plaintiff have duly complied with their obligations under the 2nd Consent Minutes, and particularly in

Clause 6 thereof. Accordingly, Clause 3 as amended in the 2nd Consent Minutes must be given full effect. Though I would be entitled to direct that the

period of 120 days from the removal of the 293 blogs has long since lapsed, as a matter of indulgence to the Defendants, I am hereby directing that

the period of 120 days contemplated in Clause 3 of the 2nd Consent Minutes shall be deemed to have commenced from the date of uploading of this

order and Defendant No. 1 shall deposit the sum stated therein, inclusive of interest at 8.5% per annum, payable from the dates of the respective

advances as particularized in Annexure A-1 to the 1st Consent Minutes till the date of deposit. Thereafter the remaining clauses of the 1st

Consent Minutes and 2nd Consent Minutes will take effect as already agreed.

25. This order shall be treated as an order in all the suits. With the above directions, the Notices of Motion filed by the Plaintiff in the captioned suit

stand disposed of.