VERDICTUM.IN

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

\+ CS(COMM) 230/2023

MS. AARADHYA BACHCHAN AND ANR. ..... Plaintiffs
Through: Mr. Dayan Krishnan, Sr. Advocate with Mr. Pravin Anand, Mr. Ameet Naik, Ms. Vaishali Mittal, Ms. Madhu Gadodia, Mr. Siddhant Chamola, Mr. Shivang Sharma, Mr. Hersh Desai, Ms. Pallavi Bhatnagar, Ms. Megha Chandra, Mr. Harsh Jha, Mr. Sujoy Mukherjee and Ms. Tarini Kulkarni, Advs.

Versus

BOLLYWOOD TIME & ORS. ..... Defendants
Through: Ms. Mamta Rani Jha, Ms. Shruttima Ehersa and Mr. Rohan Ahuja, Advs. for Defendant 10/Google LLC

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

O R D E R

% 20.04.2023

CS(COMM) 230/2023

1. Plaintiff 1 Aaradhya Bachchan is the daughter of Abhishek Bachchan and Aishwarya Bachchan and granddaughter of Amitabh Bachchan and Jaya Bachchan, all of whom are celebrities in their own right. The facts of this case reveal that Plaintiff 1, at the tender age of 11, is having to suffer the vicissitudes which have visited her as sequelae of her celebrity status.

2. Shorn of superfluities, the grievance of Plaintiff 1 in the present plaint, which has been filed through her father (Plaintiff 2), is that, though she is a healthy school going child, studying in Dhirubhai Ambani International School, Mumbai, certain miscreants, merely for

VERDICTUM.IN

the sake of puerile publicity, have, over a period of time, been circulating videos on YouTube, stating that Plaintiff 1 is critically ill, to the extent that one of the videos even claimed that she was no more. Apparently, morphed pictures have also been used in the said videos, so as to lend colour to the information that they seek to convey, with one of the videos even showing a child surrounded by wreaths. The videos also invite subscriptions from those who are viewing them.

3. Such videos, alleges the plaint, breach Plaintiff 1's right to privacy and are in violation of Rule 3(1)(b)(iii) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("the 2021 Intermediary Guidelines Rules"), as amended in 2022 by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022 ("the 2022 Amendment Rules") and also violates the intellectual property rights, which vests in the Bachchan family, including copyright in the images and pictures of the plaintiffs.

4. This Court has seen the images that have been provided with the plaint.

5. Though it is not the first time that such misleading information is being circulated in respect of celebrities, where the information relates to a child of tender years, it reflects a particularly morbid perversity on the part of the person circulating such information, with complete and resolute apathy to the interests of the child who is targeted. Every child is entitled to be treated with honour and respect, be she the child of a celebrity or the child of a commoner. Dissemination of misleading information relating to a child, especially as regards her physical or mental wellbeing, is something which is

VERDICTUM.IN

completely intolerable in law. No technicalities can come in the way of the Court stepping in, where such attempts are brought to its notice.

6. Ms. Mamta Rani Jha, learned Counsel, who appears for Google LLC, which runs the YouTube platform, submits that her client has no control over the content of the videos which are posted on the YouTube platform, as the videos are not screened by her client before they are posted. She submits that though YouTube has a zero-tolerance policy with respect to certain exceptional cases such as child pornography and other such content, for which they have a special mechanism in place, in respect of other information, the only remedial mechanism available is for a person, who may object to the information posted on YouTube to bring it to the notice of the Google LLC, whereupon measures would be taken to take down the offending contents. She submits that on such a complaint having been received from Plaintiff 1's father, steps were being taken in accordance with law.

7. The submission is plainly unacceptable.

8. Mr. Dayan Krishnan, learned Senior Counsel for the plaintiffs, has drawn my attention to the fact that the 2021 Intermediary Guidelines Rules were amended by the 2022 Amendment Rules, and that Rule 3(1)(b) of the amended 2021 Intermediary Guidelines Rules reads thus:

> "**3(1) Due diligence by an intermediary**: An intermediary, including social media intermediary, significant social media intermediary and online gaming intermediary, shall observe the following due diligence while discharging its duties, namely:—
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VERDICTUM.IN

(b) the intermediary shall inform its rules and regulations, privacy policy and user agreement to the user in English or any language specified in the Eighth Schedule to the Constitution in the language of his choice *and shall make reasonable efforts to cause the user of its computer resource* not to host, display, upload, modify, publish, transmit, store, update or share any information that, –

(i) belongs to another person and to which the user does not have any right;

(ii) is obscene, pornographic, paedophilic, invasive of another's privacy including bodily privacy, insulting or harassing on the basis of gender, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or promoting enmity between different groups on the grounds of religion or caste with the intent to incite violence;

(iii) is harmful to child;

(iv) infringes any patent, trademark, copyright or other proprietary rights;

(v) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any misinformation or information which is patently false and untrue or misleading in nature;

(vi) impersonates another person;

(vii) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognisable offence, or prevents investigation of any offence, or is insulting other nation;

(viii) contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource;

(ix) is in the nature of an online game that is not in conformity with any law for the time being in force in India, including any such law relating to gambling or betting or the age at which an individual is competent to enter into a contract;

(x) violates any law for the time being in force;"

VERDICTUM.IN

9. Mr. Dayan Krishnan further draws attention to Rule 4(4) of the 2021 Intermediary Guidelines Rules, which reads thus:

> "**4. Additional due diligence to be observed by significant social media intermediary:—**
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> *****
>
> (4) A significant social media intermediary shall endeavour to deploy technology-based measures, including automated tools or other mechanisms to proactively identify information that depicts any act or simulation in any form depicting rape, child sexual abuse or conduct, whether explicit or implicit, or any information which is exactly identical in content to information that has previously been removed or access to which has been disabled on the computer resource of such intermediary under clause (d) of sub-rule (1) of rule 3, and shall display a notice to any user attempting to access such information stating that such information has been identified by the intermediary under the categories referred to in this sub-rule:
>
> *Provided* that the measures taken by the intermediary under this sub-rule shall be proportionate having regard to the interests of free speech and expression, privacy of users on the computer resource of such intermediary, including interests protected through the appropriate use of technical measures:
>
> *Provided* further that such intermediary shall implement mechanisms for appropriate human oversight of measures deployed under this sub-rule, including a periodic review of any automated tools deployed by such intermediary:
>
> *Provided* also that the review of automated tools under this sub-rule shall evaluate the automated tools having regard to the accuracy and fairness of such tools, the propensity of bias and discrimination in such tools and the impact on privacy and security of such tools."

"Significant social media intermediary", it may be noted, is defined, in clause (v) of Section 2(1) as meaning "a social media intermediary having number of registered users in India above such threshold as

VERDICTUM.IN

notified by the Central Government", and the threshold stands notified, *vide* Notification S.O. 942(E) dated 25th February 2021 issued by the Ministry of Electronics and Information Technology as 50 lakhs. By any standards, therefore, YouTube, or Google LLC, is a "significant social media intermediary", and Rule 4(4) of the Intermediary Guidelines Rules, *prima facie*, applies to it.

10. Mr. Dayan Krishnan points out that, while in its pre-amended *avatar*, the 2021 Intermediary Guidelines Rules only requires the intermediary to call upon its user to draw up an agreement undertaking not to post the excepted categories of contents, the amended 2021 Intermediary Guidelines Rules further requires the intermediary to "make reasonable efforts to cause the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share" any such information. The words "and shall make reasonable efforts to cause the user of its computer resource" have been introduced by the 2022 Amendment Rules. As such, he submits that the intermediary can no longer claim to be a mere passive spectator regarding the information which is uploaded on its platform, but is required to be more proactive in nature. The intermediary, in order to be in conformity with the amended 2021 Intermediary Guidelines Rules, is also required *to make reasonable efforts to cause the user of its computer resource, i.e. in the case of a video clip posted on the YouTube, the person who posts the clip, not to host, display or upload any of the excepted categories of information*.

11. Ms. Mamta Rani Jha, at this stage, submits that the words "reasonable effort" has to be interpreted in terms of Section 79 of the Information Technology Act, 2000 ("the IT Act"). Mr. Dayan Krishnan, in response, submits that the plaintiffs are not seeking

VERDICTUM.IN

censorship of content uploaded on YouTube before it is uploaded, but that, in view of the more stringent nature of the responsibility of the intermediary in the amended 2022 Intermediary Guidelines Rules, that the intermediary should, immediately on being informed of content which falls within the categories of contents, envisage in the said Rule, proceed to take it down, without any lapse of time.

12. The Court would examine this aspect of the matter on the next date of hearing.

13. However, Defendant 10 Google LLC is directed, in its response to this plaint, as well as in its response to IA 7429/2023, to set out in detail its policy, so as to ensure that it remains in compliance with Rule 3(1)(b) of the 2021 Intermediary Guidelines Rules (as amended) as also whether, after the amendment of the said rules, which took place as far back in October 2022, Defendant 10 has effected any change in its policy so as to bring it in line with the amendments effected thereby.

14. The Court may have to examine whether the existing policy of Defendant 10 is sufficient to ensure compliance with the amended Rule 3(1)(b) of the 2021 Intermediary Guidelines Rules, as in its very character as an intermediary, Defendant 10 is duty bound, in law, to ensure strict compliance with the entire statutory regime relating to intermediaries by which it is governed, which would include the 2021 Intermediary Guidelines Rules as amended in October 2022.

15. For the present, therefore, the let the plaint be registered as a suit. Issue summons in the suit. Summons are accepted on behalf of Defendant 10 by Ms. Mamta Rani Jha. Let summons issue to the

VERDICTUM.IN

remaining defendants, present at the YouTube channel IDs, provided in the memo of parties.

16. Summons be issued to Defendants 1 to 9 at the details to be provided by Defendant 10 in accordance with the directions issued today in terms of prayer (iii) in IA 7429/2023, immediately on such details being provided.

17. Written statement, accompanied by affidavit of admission and denial of the documents filed by the plaintiffs be filed within 30 days with advance copy to learned Counsel for the plaintiffs who may file replication thereto, accompanied by affidavit of admission and denial of the documents filed by the defendants within 30 days thereof.

18. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission and denial of documents and marking of exhibits on 9th May 2023, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

IA 7429/2023 (Order XXXIX Rules 1 and 2 of the CPC)

19. By this application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), Plaintiff 1 seeks interlocutory injunctive reliefs. The prayer clause in this application reads thus:

> "In light of the above, it is most humbly and respectfully prayed before this Hon'ble Court that it may be pleased to:
>
> > (i) Pass an order of temporary injunction restraining the Defendant Nos. 1 to 9, Defendant No. 12 their associates, servants, agents, affiliates, holding companies, assignees, substitutes, representatives, group entities, their subscribers, employees and/or persons

VERDICTUM.IN

claiming through them and/or under them and all other persons from creating, publishing, uploading sharing, disseminating etc. the videos identified in paragraph 27 of this application, or any other videos which are identical to, or similar in content, and/or any other videos or content in any format, which discloses any details pertaining the Plaintiffs on the internet or through social media platforms, websites, blogs, or any other media such as the Metaverse, blockchain, any Artificial Intelligence program, or any other media such as print, audio-visual etc. that result in

(a) Violation of the Plaintiffs' right to privacy; and/or
(b) Tarnishing and bringing disrepute to the goodwill and reputation that is vested Bachchan family name of the Plaintiffs; and/or
(c) Exploitation and/or misappropriation of the Plaintiffs' personality rights;
(d) Defamation of the Plaintiffs

(ii) An order granting *ex parte* relief in terms of prayer (i) above;

(iii) An order directing the Defendant No. 10, to reveal the identity and all other contact details of Defendant Nos. 1 to 9, 12, including but not limited to name, e-mail ids, basic subscriber information, IP address etc.

(iv) An order directing Defendant No. 10 to immediately de-list and deactivate all videos that are subject to restraining orders of this Hon'ble Court in terms of the prayer (i) and/or (ii) above;

(v) An order directing the Defendant No. 11, MeitY to ensure that access is disabled to all infringing content that is uploaded by the Defendant Nos. 1 to 9, Defendant 12, which is identical or similar to the videos identified in paragraph 27 of this application, and/or any other videos and/or content in any format, including but not limited to use of pictures, names images, likeness that violate the rights of the Plaintiffs;

And pass any other order as this Hon'ble Court may deem fit in the facts of the present case."

20. The facts, as recited hereinabove, make out a clear *prima facie* case in favour of the plaintiffs and against the defendants, justifying grant of *ad interim* relief. Given the nature of the grievance that has

VERDICTUM.IN

been urged in this plaint, relief would have to be granted at an *ad interim* stage without waiting for a response from the defendants to prevent further prejudice to the plaintiffs.

21. As such, issue notice. Notice is accepted on behalf of Defendant 10 by Ms. Mamta Rani Jha. Notice be served on the remaining defendants by all modes.

22. Reply be filed within a period of four weeks with advance copy to learned Counsel for the plaintiffs, who may file rejoinder thereto, if any, within a period of four weeks thereafter.

23. List before the Court on 13th July, 2023.

24. The following directions are issued in the interregnum:

(i) Defendants 1 to 9, as also their associates, servants, agents, affiliates and all other acting on their behalf are restrained, forthwith, from disseminating or further transmitting the videos relating to the following URLs (enlisted in paras 25 and 26 of this application):

(a) https://www.youtube.com/watch?v=h860MSBfilY
(b) https://www.youtube.com/watch?v=UHNM39SUBdM
(c) https://www.youtube.com/watch?v=HdSN4NU-gCg
(d) https://www.youtube.com/watch?v=yGFBwvaxcd0
(e) https://www.youtube.com/watch?v=2cyHOH9SDeM
(f) https://www.youtube.com/watch?v=J7cTaVCVLhM
(g) https://www.youtube.com/watch?v=5vKM0pITXDE
(h) https://www.youtube.com/watch?v=uU8zMlyXIhw
(i) https://www.youtube.com/watch?v=rGnTlEreatU
(j) https://www.youtube.com/watch?v=IilSjdN4kTY

VERDICTUM.IN

(k) https://www.youtube.com/watch?v=FFR4YEK4Kfs

(l) https://www.youtube.com/watch?v=Kv11-f-m-t4

(m) https://www.youtube.com/watch?v=yGFBwvaxcd0

(n) https://www.youtube.com/watch?v=2cdLrvKZ9o0

(o) https://www.youtube.com/watch?v=SrL5nnFxEWY

(p) https://www.youtube.com/watch?v=i1ggFfsg6z4

(q) https://www.youtube.com/watch?v=T4gAdobq9_U

(r) https://www.youtube.com/watch?v=OjRrwOUU-kY

(s) https://www.youtube.com/watch?v=FResFi3VkUI

(t) https://www.youtube.com/watch?v=O8yqeKTBbBo

(u) https://www.youtube.com/watch?v=C8G2GRjQ7Vk

(v) https://www.youtube.com/watch?v=s9YtmnOKWLc

(w) https://www.youtube.com/watch?v=NcLliol3AvQ

(x) https://www.youtube.com/watch?v=fItvda9dKgY

(ii) Defendants 1 to 9 as well as all others acting on their behalf, are also restrained from creating, publishing, uploading, sharing or disseminating of any videos which are identical or similar in content to the videos forming subject matter of the aforesaid URLs. In order to avoid any ambiguity, it is clarified that this would encompass all videos which deal with the physical condition of Plaintiff 1. In other words, Defendants 1 to 9 are completely restrained from uploading, sharing or disseminating any content, on any public platform available across the internet, relating to the state of health or the physical condition of Plaintiff 1.

(iii) The plaintiffs have also pointed out that others, who may be unknown at this point of time and who, therefore, have been impleaded, in a representative capacity under the appellation

VERDICTUM.IN

"John Doe(s)" as Defendant 12, might indulge in similar activities, which would also have to be injuncted. The request has merit.

(iv) Accordingly, the following directions are issued to Defendant 10, i.e. Google LLC:

(a) Defendant 10 shall disclose, to the plaintiffs as well as place on affidavit in the present proceedings, the identity and all contact details of Defendants 1 to 9, including their Basic Subscriber Information (BSI), name, email IDs, IP address and all other information which is at present available with Defendant 10.

(b) Defendant 10 will immediately proceed to delist and deactivate all the videos forming subject matter of the URLs, enlisted in sub para (i) *supra* and contained in paras 25 and 26 of the present application.

(c) On the plaintiffs bringing to the notice of Defendant 10 any other video clip which is uploaded on its YouTube platform, dealing with the physical health and well-being of Plaintiff 1, Defendant 10 shall proceed immediately to take down the said URL(s). The plaintiffs would, thereafter, be required to move an application before this Court bringing the said fact to its notice with due expedition.

(d) Defendant 11, the Ministry of Electronics and Information Technology (MeitY) is directed to block access to the aforesaid contents, uploaded by Defendants

VERDICTUM.IN

1 to 9, as well as to any other similar videos or clips containing similar contents, as noted hereinabove, on the plaintiffs bringing it to their notice.

25. Compliance with Order XXXIX Rule 3 of the CPC be effected, in respect of the absent defendants within one week from the date of communication (in the case of Defendants 1 to 9) of their details by Defendant 10, as directed *supra*.

I.A. 7430/2023(Order XI Rule 2 of the CPC)

26. Issue notice. Notice is accepted on behalf of Defendant 10 by Ms. Mamta Rani Jha. Notice be served on the remaining defendants by all modes.

27. Reply be filed within a period of four weeks with advance copy to learned Counsel for the plaintiffs, who may file rejoinder thereto, if any, within a period of four weeks thereafter.

28. List before the Court on 13th July 2023.

I.A. 7431/2023 (Order XI Rule 1(4) of the CPC)

29. This application seeks permission to file additional documents. The plaintiffs are permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act within four weeks from today.

30. The application stands disposed of accordingly.

VERDICTUM.IN

I.A. 7432/2023 (Section 80 of the CPC)

31. In the facts of the present case, exemption is granted as prayed for.

32. The application stands allowed.

I.A. 7433/2023 (Exemption)

33. For the reasons stated in the application, the plaintiffs are exempted from the requirement of serving an advance notice on the defendants.

34. This application stands allowed accordingly.

I.A. 7434/2023 (Exemption)

35. Subject to the plaintiffs filing legible copies of any dim or illegible documents within 30 days, exemption is granted for the present.

36. The application is disposed of.

I.A. 7435/2023 (Section 149 of the CPC for extension from filing court fees)

37. Extension of time of 10 days is granted to pay court fees.

38. The application is allowed.

I.A. 7436/2023 (Section 12A of the Commercial Courts Act, 2015)

VERDICTUM.IN

39. In view of the judgment of the Division Bench of this Court in ***Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd***[1], exemption is granted from the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

40. The application stands allowed accordingly.

I.A. 7437/2023 (leave to file certain documents)

41. Leave to file videos on a CD/pendrive granted, subject to filing an appropriate application under Section 65-B of the Evidence Act.

42. The application is disposed of.

I.A. 7438/2023 (Order II Rule 2 of the CPC)

43. Issue notice. Notice is accepted on behalf of Defendant 10 by Ms. Mamta Rani Jha. Notice be served on the remaining defendants by all modes.

44. Reply be filed within a period of four weeks with advance copy to learned Counsel for the plaintiffs, who may file rejoinder thereto, if any, within a period of four weeks thereafter.

45. List before the Court on 13th July 2023.

C.HARI SHANKAR, J

APRIL 20, 2023
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[1] **2022 SCC OnLine Del 3529**