

SHEPHALI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO. 2315 OF 2016

IN

SUIT (L) NO. 751 OF 2016

AND

NOTICE OF MOTION 2147 OF 2016

Eros International Media Ltd. & Anr. ...Plaintiffs
Versus
Bharat Sanchar Nigam Ltd. & 49 Ors. ...Defendants

Mr. Shailesh Mandon, i/b R. M. Partners, for the Plaintiffs.
Mr. Udit Mendiratta, i/b Trilegal, for Applicant/Defendant No. 11.

CORAM: G.S. PATEL, J
DATED: 9th August 2016

PC:-

I. This is an application by the original Defendant No. 11, Tata Communications Ltd, for a modification of my order dated 26th July 2016. The modification sought is in respect of paragraph 25 of that order, which reads as follows:

“In addition, when the Plaintiffs call upon Defendants Nos. 1 to 42 to block access to the 134 URLs mentioned in Exhibit “C” to the Plaint as amended (or future specific, verified URLs as mentioned earlier), the

Defendants will also display certain special default error pages when any attempt is made to access those blocked links. Those error pages are to contain suitably worded text prepared by the Plaintiffs' attorney and approved by Mr. Dhond:

- (a) Referencing the relevant provisions of the Copyright Act, 1957 that prescribe penalties for offences of copyright violations (mentioning specific sections, prison term and amounts); and
- (b) Referencing this order by its date, the suit number and the details of the present Suit. It is not necessary to reproduce the entire order. It is sufficient to state that the block of that particular link is authorised by this order. The suit number must be correctly mentioned.
- (c) A statement that any person aggrieved (i.e., not merely Defendants Nos. 1 to 42) by any such block may directly approach this Court with at least 48 hours' notice to the Advocates for the Plaintiffs (whose address is also to be given) for a variation or modification of this order in relation to that particular URL or web link.

I do not suggest that this information should be exhaustive or copious (as in setting out the entire Plaint or affidavit). It is sufficient to set out the essentials."

2. Obviously, this direction was necessary in the public interest. It was intended to ensure that persons who came upon a blocked URL learned of the reasons for that block; were told of the order that directed the blocking; learned of the various provisions of the Copyright Act, 1957, and the penalties it prescribes; and perhaps

most important, were told which Court to approach and in which matter for redress. This was essential because conceivably the block might affect parties not arrayed as defendants to this John Doe action.

3. The Plaintiffs themselves had absolutely no difficulty with these provisions or requirements. They did not seek wider or more sweeping orders for blocking entire websites. Their Counsel, Mr. Dhond, on instructions, accepted the need for these safeguards. None of other Defendants, many of whom are ISPs or intermediaries, have so far expressed any difficulty in complying.

4. Today, the 11th Defendant, Tata Communications Limited, tells me that it is “technically not feasible” to provide this information and that their “software” or “systems” do not allow this. It agrees that whenever a banned URL is sought to be accessed, it can only serve up a page with some text that says (and says only) that the URL has been ‘blocked under orders of the Competent Authority’ or some equally useless statement. This kind of statement is the purest drivel. Blocked when? Under what order? At whose instance? Where does an affected party go? None of this is, according to Tata Communications, necessary; and none of it is technically feasible.

5. This is entirely incorrect. There are several solutions that will work. Some of them are utterly obvious and elementary to anybody who has done a beginners’ course in web application coding; a competent 17-year-old would be able to do this.

6. There is also an in-built contradiction in what Tata Communications says. This is entirely incorrect, and it is incorrect on the face of it. If the Tata Communications Ltd can display an *alternative* page with one line ('blocked under orders of the Competent Authority'), then it can surely display a page with more substantial and meaningful text. The length of the text is entirely irrelevant; and Tata Communications Ltd knows this. What Tata Communications suggests is that a court should, in such John Doe orders, withhold vital and necessary information because anything more informative is 'technically not feasible'.

7. Tempting though it is to comment on the technical competence, or, more accurately, the abysmal lack of it in even daring to make this suggestion, I will resist and leave it to Tata Communications Limited to do whatever is necessary within three days from the date this order is uploaded.

8. List the matter on Friday, 12th August 2016 for compliance.

(G. S. PATEL, J.)