

.* **HIGH COURT OF DELHI : NEW DELHI**

+ **CS (OS) No.871/2012**

% Order decided on : 30.03.2012

NIRMALJIT SINGH NARULA Plaintiff

Through Ms. Karnika Seth, Adv. with
Mr. Amit Seth & Mr. Lakshay
Sawhney, Advs.

versus

INDIJOBS AT HUBPAGES.COM & ORS Defendants

Through None

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.(Oral)

I.A. No.6040/2012 (u/S 151 CPC for exemption)

This application has been filed by the plaintiff under Section 151 of CPC, seeking exemption from filing the original and or/fair typed copies of the dim documents at this stage.

Heard. For the reasons stated in the application, the same is allowed and eight weeks time is granted to file the clear copies of documents.

The application is disposed of.

I.A. No.6041/2012 (O 13 R 1 r/w S 151 CPC for exemption)

Heard. Allowed to all just exceptions.

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The application is disposed of.

CS(OS) 871/2012

Let the plaint be registered as a suit.

Issue summons to the defendants, on filing of process fee and registered AD cover within one week, returnable on 04.05.2012.

I.A. No.6038/2012 (u/O XXXIX, R.1 & 2 CPC)

1. Issue notice for the date fixed.
2. The Plaintiff claims that he is a highly revered spiritual guide, renowned worldwide for his spiritual discourses as “Nirmal baba”. He is known for his spiritual teachings and healing powers and he regularly conducts assemblies across India called ‘Samagams’ wherein, he interacts with his followers and offers spiritual guidance. His preachings are telecasted by over 30 television channels on a daily basis including Sony TV and Aajtak, SAB and IBN7. He claims that he has lakhs of followers in India and abroad and plaintiff’s website www.nirmalbaba.com is visited by over one million followers in a month. Hence, he is a person with considerable reputation to protect.
3. The defendant No.1 is a ‘hubber’, which means a person or entity that is registered as a writer who writes articles on any topic on the defendant No.2’s website, www.hubpages.com where defendant No.2 provides webspace and technology to publish the content written by a hubber.
4. There is a commercial arrangement of earning on the website between every hubber including defendant No.1 and the

defendant No.2 through online advertising. Defendant No.2 states clearly on its website's Frequently asked questions under the heading "Making Money on Hubpages", that money is earned through online advertising ([Google AdSense](#) and the [HubPages Ad Program](#)) and/or affiliate referrals (displayed in the form of Amazon and eBay [Capsules](#)). Each time a visitor views one of the Hubs, the website of defendant No.2 displays ads. According to the plaintiff, 60% of the time, these ads can generate revenue for hubber, and 40% of the time, the ads can generate revenue for the defendant No.2 if a hubber has registered for the program.

5. Defendant No.1 is registered as a hubber on defendant No.2's website using the name "Indijobs". Defendant No.1 has written many articles on the website with a view to generate webtraffic leading to earnings for itself through online advertising programs including Google AdSense. As per the case of the plaintiff, recently it came to his notice that defendant No.1 has deliberately written defamatory articles about the plaintiff on the website with malafide intent of attracting followers of the plaintiff on the website and making unlawful earnings through online advertising, thereby, causing serious damage to the reputation of the plaintiff.

6. As per the plaintiff, the defendant No.1 has written a false and defamatory article about plaintiff which, the defendant No.2 has published and the same is titled "Is Nirmal Baba a Fraud?" at <http://indijobs.hubpages.com/hub/Is-Nirmal-Baba-a-Fraud>. In the said article defendants No.1 and 2 have made false statements about the

plaintiff that he is “*a suspicious guru*” and have made false and derogatory imputations by alleging that plaintiff uses ‘*Vashikaran mantra*’, that is black magic, tantric powers in the following words – “*He is quite confident about his vashikaran mantra by which he can control the thinking power of anyone on this planet.*”..” *He looks like a fraudster masquerading as a spiritual guru.*”

7. Plaintiff also avers that defendants No.1 and 2 further defamed the plaintiff by falsely stating “*Though, Nirmal Baba is no more offering vashikaran mantra, but it is a fact that his popularity rose because of this. But, the question remains. How come a mantra can control someone? It is not mantra, in fact, but it is his psychological tricks which controls someone. He do know and apply hypnotism*”. They have accused plaintiff of cheating his followers by stating “*He is only earning money from gullible people*”.

8. As per the plaintiff, these statements have not only caused injury to his reputation, but also deeply enraged the sentiments of his followers and made a mockery of his teachings.

9. The plaintiff has filed few more articles, also written by the defendant No.1 and published by defendant No.2 which per se contain derogatory remarks and statements against the plaintiff.

10. It is stated by the plaintiff that he served a cease and desist legal notice on defendant No.2 on 29.11.2011 calling upon defendant No.2 to remove the defamatory articles and provide contact details and name of the defendant No.1, who wrote the said articles. Despite the

said legal notice, these articles were not removed. Through reply dated 01.12.2011 the defendant No.2 declined to remove the said articles on ground that the articles merely project a difference of opinion about a public figure and averred that it is not liable for any third party content posted on its website and plaintiff should directly communicate with defendant No.1 asking him to remove the content.

11. By an e-mail dated 24.02.2011 a devotee of the plaintiff replied to defendant No.2 that the said articles are not simply an opinion, but, place serious false and defamatory allegations against plaintiff and requested for details of defendant No.1, so that a legal notice may be served upon him, which was again declined by defendant No.2 vide e-mail dated 28.02.2012 stating that the contact details will not be released without court order and that the content does not violate its website's terms of use.

12. Admittedly defendant No.2's own website's terms of use donot allow posting of content that is a malafide or that is aimed as personal attack or uses extreme profanity. The website's FAQ page provides as under -

“Making Personal Attacks: Debate and disagreements on points of substance are all right, but personal attacks, petty bickering, extreme profanity, and thread hijacking will be dealt with swiftly.”

13. Learned counsel appearing on behalf of plaintiff has also referred to clause 4 of the terms of use agreement published on defendant No.2's website, whereby defendant No.2 expressly prohibits

the publishing of defamatory statements against any person. The clause categorically states :

“4. RESTRICTIONS AND PROHIBITIONS ON USE

In Your use of the Service you must abide by the following restrictions and prohibitions on use. As a Service User or Author, You may not:

Publish Hubs or Hub or Author Content that include any content or links that are pornographic, defamatory, libelous, tortuous, vulgar, obscene, invasive of privacy, racially or ethnically objectionable, hateful, promotes or provides instructional information about illegal activities, promotes any act of cruelty to animals, or is otherwise offensive.”

By virtue of Clause 5 of the said terms of use agreement, defendant No.2 has reserved its rights to delete a user’s account for any reason. However, prima facie, it appears that despite of notice in the present case, the defendant No.2 contrary to its terms and conditions, is not prepared to delete defendant No.1’s hubpages, despite having knowledge of the derogatory nature of content posted by defendant no.1 on the website .

14. In view of the abovesaid act of defendant No.2, it 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 and not knowingly host or publish any information that is grossly harmful, defamatory, libellous, disparaging or otherwise unlawful.

15. Such intermediary is not liable for third party content if, it removes access to defamatory content on receipt of actual knowledge .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). ”

16. Prima facie, it appears that the defendant No.2 acted in clear non- compliance of the said due diligence obligations under the said rules read with Section 79 of IT Act, 2000 by not removing illegal information even after it obtained actual knowledge of the same when plaintiff has served on it cease and desist notice on it on 29.11.2011.

17. Further, Rule 3(5) of the said rules requires an intermediary to inform its users that in case of non compliance with rules of user agreement, the intermediary has the right to terminate access or its usage rights of users and remove non compliant information.

18. In the present case, defendant No.2 neither removed the illegal content nor terminated rights of access or usage of defendant No.1 from its website.

Personal jurisdiction over foreign defendant

19. From the documents filed by the plaintiff, being screen shots and print outs of the impugned articles it is clear that defendant No.2 conducts business in India and targets Indian visitors. Defendant No.2 published articles about Indian public figure meant for reading by Indian audience and has other articles written by defendant no.1 amongst others for visitors including Indians. Also, it displays advertisements next to the articles which pertain to Indian companies. The web page as on 17.03.2012 shows on <http://indijobs.hubpages.com/hub/Is-Nirmal-Baba-a-Fraud>. The website is interactive and allows visitors to post comments on articles written by hubber and interact with him. According to the **Banyan Tree Holding (P) Ltd vs A. Murali Krishna Reddy and Anr.** (Judgment dated 23.11.2008 passed in CS (OS) No.894/2008 by the Division Bench of this Court, it was held that for 'effects test' to apply where a forum state is justified in assuming personal jurisdiction over a foreign defendant, plaintiff must plead and show prima facie that specific targeting of the forum state by defendant resulted in an injury or harm to the plaintiff in the forum state in which case the forum state, can presume jurisdiction over out of state defendant. In view of abovementioned reasons, plaintiff has sufficiently shown how defendant No.2 is targeting Indian visitors and transacting business in

India and that the impugned articles have caused serious disparagement to the reputation of the plaintiff. Prima facie, the plaintiff has satisfied this Court that it assumes personal jurisdiction over defendants No.1 and 2.

Impleadment of Defendants 3 and 4.

20. Defendants No.3 is the Designated Authority that is empowered by Section 69A of the IT Act, 2000 to block a website from public access interalia, if content on any website or computer resource is of such nature that it poses threat to public order. In the present, case due to the publication of these defamatory articles by defendants No.1 and 2, it is claimed that the followers of the plaintiff are enraged and there is a threat of disturbance of public order, as the plaintiff has lakhs of followers in India itself. Thus, the plaintiff is also pressing for relief to block the defamatory pages about the plaintiff written on the website of defendant No.2 .

21. Learned counsel appearing on behalf of the plaintiff has also argued that Section 80 of the C.P.C that prescribes prior notice to the Central Government prior to instituting a suit does not apply in present facts of case, as the suit is not in respect of an act done by defendant No.3 or 4, as public officer and in the suit, no act of defendants No.3 and 4 are challenged or sought to be set aside. Therefore, notice under Section 80 of the C.P,C is not required in facts of the case. Further, she referred paras 14 and 15 of the case of **Ram Kumar & Anr vs State of Rajasthan and Ors.** (2008) 10 SCC 73. She seeks the order that interim relief is not sought by the plaintiff against the defendants

No.3 and 4 but, only to aid in protecting plaintiff's interests through blocking of the defamatory pages.

22. She further states that the defendant No.5 has been impleaded in the matter as the defendant No.5 is the registrar of the domain www.hubpages.com that belongs to defendant No.2 . As per clause I(1) of the Acceptable Use policy published on defendant No.5 website, the registrant of the website, defendant No .2 is under an obligation not to publish any defamatory content on the website. The said policy entitles the Registrar in its sole discretion to suspend or terminate the services ,restrict , or delete content or take other action incase of violation by a registrant. This policy forms a part of the Registrar/Registrant Service Agreement between defendant No.2 and 5. It is prayed that the defendant No.5 should be directed to terminate its agreement for services with defendant no.2 or atleast delete defamatory pages about plaintiff from website.

23. In view of the foregoing facts and reasons mentioned above, it appears that the plaintiff has been able to make out a strong prima facie case of passing of interim order. The balance of convenience also lies in favour of the plaintiff and against the defendant Nos. 1, 2 and 5. Incase, interim order is not passed, the plaintiff will suffer irreparable loss and injury. Thus, till the next date, the defendants Nos. 1 and 2 as well as their agents, partners, associates, servants, employees, representatives, successors, attorneys and assigns are restrained from selling, leasing, licensing, writing, publishing, hosting, advertising, any content, existing or future, that is defamatory about the

plaintiff whether written by defendant No.1 or any other person on defendant No.2's website hubpages.com or other websites associated with defendants No.1 and 2 or other print/electronic media within 36 hours from the period when the order passed in the present case is served. In failure to do so, the directions are issued to defendants No. 5 to block the website hubpages.com from public access within India.

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

I.A. No.6039/2012 (Section 79 IT Act r/w Section 151 C.P.C)

24. Defendant No.1 has registered himself under the name "Indijobs" in defendant No.2's website hubpages.com. When the plaintiff served a cease and desist notice on defendant No.2 calling upon it to remove the defamatory pages from its website and provide details of defendant No.1, defendant No.2 vide e-mail dated 01.12.2011 declined to disclose the identity of the defendant no.1. As per Section 79 of the Information Technology Act, 2000 read with Section 2 (1) (w) of the Information Technology Act, 2000, being an intermediary, defendant No.2 is under an obligation to disclose identity of the defendant No.1 to law enforcement agencies. This obligation is also expressly provided in Rule 3(7) of the IT (Intermediaries guidelines)Rules 2011. Also, under Section 79 of IT Act, 2000, an intermediary is liable for third party if despite actual knowledge, it fails to remove such illegal information, then the court can ask the party to disclose the identity of the person who is involved therein.

25. In the present case, admittedly the plaintiff has served notice to the defendant No.2 to remove the defamatory article but despite having knowledge, the defendant No.2 declined to remove the same.

26. Under these circumstances, it is directed that on the next date, the defendant No.2 shall provide the complete details of identity of defendant No.1 and Author Log in data of defendant No.1 including contact details, registration data, residence address and IP address to this court in sealed cover.

Copy of this order be given dasti to the plaintiff under the signature of Court Master.

MANMOHAN SINGH, J.

MARCH 30, 2012