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

*Reserved on : 29<sup>th</sup> May, 2019*

*Date of decision : 23<sup>rd</sup> October, 2019*

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**CS (OS) 27/2019**

**SWAMI RAMDEV & ANR.**

.....Plaintiffs

Through: Mr. Darpan Wadhwa, Sr. Advocate with Mr. Simranjeet Singh, Mr. Rohan Ahuja, Ms. Sonali Dhir, Mr. Aadhar Nautiyal and Ms. Cauveri Birbal, Advocates (M: 9205109664).

versus

**FACEBOOK, INC. & ORS.**

.... Defendants

Through: Mr. Parag P. Tripathi, Sr. Advocate with Ms. Richa Srivastava, Mr. Aditya Nayar, Ms. Mishika Bajpai & Ms. Nayantara Narayan, Advocates, for D-1.

Mr. Arvind Nigam, Sr. Advocate with Mr. Mehtaab Singh, Mr. Prathishth Kaushal, Ms. Shruttima Ehersa & Ms. Sakshi Jhalani, Advocates for D-2&3 (M-8814048526)

Mr. Sanjeev Sindhwani, Sr. Advocate with Mr. Deepak Gogia & Mr. Jithin M. George, Advocates for D-5 (M-9971766556)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUDGMENT**

**Prathiba M. Singh, J.**

**I.A. 855/2019**

1. The Plaintiffs – Swami Ramdev and Patanjali Ayurved Ltd. have filed the present suit against the Defendants- Facebook Inc., (Defendant No. 1)

Google Inc., (Defendant No. 2) YouTube LLC, (Defendant No. 3) Google Plus, (Defendant No. 4) Twitter International Company, (Defendant No. 5) and Ashok Kumar ('John Does'), (Defendant No. 6) seeking a permanent and mandatory injunction, as also damages. For the sake of convenience, the Defendants and their various websites, social media platforms, URLs, weblinks etc., are collectively referred to as "*Platforms*".

2. The allegation of the Plaintiffs is that various defamatory remarks and information including videos, based on a book titled '*Godman to Tycoon – the Untold Story of Baba Ramdev*' are being disseminated over the Defendants' platforms. The Plaintiffs submit that the defamatory content contained in the said book was subject matter of a judgment passed in CM (M) 556/2018, wherein a Id. Single Judge of this Court had restrained the publisher and author from publishing, distributing and selling the book without deleting the offending portions. The allegations contained in the videos, which have been uploaded on the Defendants' platforms are in fact the defamatory allegations contained in the book which have already been directed to be removed. The said judgment was challenged by the publisher before the Supreme Court and the same is pending. It is however submitted that there is no stay of the order/judgement.

3. The suit was listed on 21<sup>st</sup> January, 2019, on which date, notice was directed to be served on the Defendants. On 24<sup>th</sup> January, 2019, after hearing Id. Counsels for the parties, the following order was passed:

*"6. A perusal of the transcript of the video shows that similar allegations as contained in the offending portions of the book which were directed to be deleted, are also contained in the video. The said judgment has been appealed against in the Supreme Court. However,*

*there is no stay as per the Ld. Counsels for the Plaintiffs. Considering that the allegations made are similar to the allegations which were directed to be deleted by the said order, a prima facie case is made out for grant of injunction. Balance of convenience is in favour of the Plaintiff and irreparable injury would be caused if the interim order as prayed for is not granted. The Ld. Senior Counsel for the Defendants 1-3, submit that the Defendants are willing to block the said URLs/disable them from the India domain. Till the next date, the Defendants are directed to remove/block/disable the URLs and weblinks connected to the offending video for the India domain. The URLs are mentioned at pages 19 to 24 of the documents filed by the Plaintiff. The blocking/disabling be given effect forthwith and, in any event, no later than 72 hours.*

*7. The question as to whether the said URLs also deserve to be blocked globally, would be heard on the next date. A short reply on this issue be filed by the Defendants within two weeks.*

*8. The basic subscriber information for the entity/person/s, which/who has uploaded the said video be placed in a sealed cover.”*

Thus, an interim order was granted directing removal of the offending URL and weblinks for the India domain. The platforms submitted that insofar as global blocking of the videos is concerned, they wish to make submissions on this issue. The above order of injunction continues to operate and parties have been heard on the issue of global blocking.

4. Thereafter, the platforms have placed on record the Basic Subscriber Information (*hereinafter* ‘BSI’) relating to the uploading of the videos. Pleadings have also been completed by the parties. On 23<sup>rd</sup> May, 2019, while the matter was part heard, the Court had directed the platforms to seek

instructions in respect of the following:

*“(i) Whether the identity of a person uploading the video is shown on YouTube at the beginning or end of the video and if not —for what reason?*

*(a) Can any video which is uploaded on YouTube be edited by YouTube?”*

On 5<sup>th</sup> April, 2019, in view of the technical submissions made, the parties were directed to keep one technically qualified person to be present in Court during the arguments. On 28<sup>th</sup>, May, 2019, Id. Counsel appearing for Defendant No. 2- Google Inc. was also directed to clarify as to in what manner geo-blocking is effected on the YouTube platform.

5. Pursuant to the orders passed by the Court, some written notes have been placed on record by Facebook, Google LLC and Twitter in respect of geo-blocking. The note filed by Facebook was referred to during oral submissions. The remaining defendants have however filed the same only along with their written submissions and no reference was made during arguments to the same. For the sake of completeness, the same are however being considered.

6. None of the Defendants have any objection to blocking the URLs and disabling the same, insofar as access in India is concerned. However, all the Defendant platforms have raised objections to removal/blocking/disabling the impugned content on a global basis. On the other hand, the Plaintiffs argued that blocking merely for the Indian territory alone is not sufficient as the content would be accessible through international websites, which can be accessed in India. Thus, according to the Plaintiffs, for the remedy to be effective, a global blocking order ought to be passed.

7. It is on the question or whether geo-blocking is sufficient, under these

circumstances, that counsels have primarily addressed the Court. Further, none of the Defendants have any objection for blocking the URLs for the territory of India i.e., the India domain.

**Submissions on behalf of the Plaintiff**

8. On behalf of the Plaintiffs, Mr. Darpan Wadhwa, Id. Senior Counsel submits that if a defamatory article, book or any other content is printed or published, then the publisher of the same is liable for defamation. The Defendants are seeking protection under Section 79 of the Information Technology Act, 2000 (*hereinafter 'the Act'*) on the ground that they are intermediaries. Since they claim that their role is that of passive intermediaries, they are bound to follow the due diligence required under law. As per the judgment in *Shreya Singhal v Union of India AIR 2015 SC 1523*, the phrase “actual knowledge” in Section 79 is a Court order, thus, once the Court passes an order, they are bound to disable the content globally and cannot raise objections to the geographical extent of implementation of the injunction. It is Mr. Wadhwa’s submission that if the Defendants claim that they do not have an obligation to comply with the orders of the Court, then they are no longer entitled to safe harbour under Section 79 of the Act. He relies on the definitions of “computer resource”, “computer system”, “computer network” and “data” in Sections 2(1)(k), 2(1)(l), 2(1)(j) and 2(1)(o) respectively to submit that the Act does not provide that the blocking has to be restricted to the territory of India. Thus, a Court of competent jurisdiction can pass effective orders directing global blocking. He further submits that an intermediary’s role cannot be to adjudicate as to whether the content is defamatory or not, but to remain

passive and obey the orders of the Court. An intermediary cannot argue on behalf of the person who has uploaded the content. It is submitted that the harm that is being caused by continued accessibility to the content is irreparable to the Plaintiffs, whereas there is neither any inconvenience nor harm caused to the Defendants if they are to effect global blocking. The platforms have the technical capability to carry out such blocking.

9. Mr. Wadhwa further submits that under the Information Technology (Intermediaries Guidelines) Rules, 2011 (*'2011 Rules'*) it is not for the intermediaries to decide what is defamatory. They are to merely follow the law, including orders of the Court. They have to appoint a grievance officer to take care of the users' grievances. The Plaintiffs cannot be forced to avail of legal remedies in every country to ensure that content is taken down. That would be a very high order, inasmuch as it would make the remedy granted by this Court completely ineffective.

#### **Defendants' submissions**

10. On the other hand, it is submitted by Mr. Parag Tripathi, Id. Senior Counsel appearing for Facebook – Defendant No. 1, that no effort has been made by the Plaintiffs to implead the persons whose details have been provided in the BSI. He relies upon the judgments in *Google Inc. v Equustek Solutions, Robert Angus and Clarma Enterprises Inc*<sup>1</sup> (hereinafter, "*Equustek-I*") and *Google LLC v Equustek Solutions Inc., et al.* (hereinafter, "*Equustek-II*")<sup>2</sup> and submits that the question as to what

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<sup>1</sup> *Google Inc. v Equustek Solutions, Robert Angus and Clarma Enterprises Inc* 2017 SCC 34 (Supreme Court of Canada)

<sup>2</sup> *Google LLC v Equustek Solutions Inc., et al.*, United States District Court, Northern District of California, San Jose Division, case No. 5:17-cv-04207-EJD, December 14, 2017

constitutes defamation differs from country to country. For example, in the U.K., the onus is upon the Defendants to show that the content is not defamatory. However, in the U.S., the onus on the Plaintiff in a defamation action is very high. Defamation laws differs from jurisdiction to jurisdiction, and therefore, passing of a global disabling order would be contrary to the principle of comity of Courts and would result in conflict of laws.

11. Mr. Tripathi further submits that the issues raised could have far reaching impact, and Section 79 of the Act is a work in progress. Dissemination of views on the internet is an essential ingredient of freedom of speech and expression and the integrity of national judicial systems has to be maintained. In fact, the injunctioned book is itself available on various platforms internationally, which itself shows that the injunction has to be restricted to India alone. Plaintiff No.1, being a public figure, should be open to criticism. He submits that an injunction would not be liable to be granted *inter alia* on the following grounds:

- i) The main Defendants i.e. the persons who have uploaded the video have not been impleaded;
- ii) Though the Court has jurisdiction to pass a global injunction order, which is clear from a reading of Articles 244 and 246 of the Constitution, which provide for implicit long arm jurisdiction, the Court ought to be reluctant to pass a global blocking order;
- iii) In order to ensure that access is disabled, the platforms have resorted to geo-blocking which is more than sufficient to take care of the Plaintiffs' interests;
- iv) The Plaintiffs have not brought on record any evidence to show as to whether anyone has viewed the content globally;

- v) There are no extreme circumstances, that require a global injunction order to be passed;
- vi) The order to be passed by the Court has to be proportionate to the danger or harm that is alleged. There is greater harm in passing a global injunction order in such circumstances;
- vii) The publisher of the book has also not been impleaded in the present case and no effective order can be passed in the absence of the publisher;
- viii) The Defendants are intermediaries and cannot be compelled to run foul of the law in jurisdictions such as the U.S. where they are headquartered.

12. He further submits that a global ban on content ought to be the last resort of the Court. Such an order results in muzzling dissent. Reliance is placed on the *Equustek* litigation, wherein an order to remove content was passed by the Courts in Canada and when Google brought an action before a US District Court to prevent enforcement of the Canadian Court's order, the U.S. Court restricted the application of the Canadian court's order only to Canadian territory. Such judgments could severely undermine the dignity of Indian courts if global injunction orders are passed. He relies upon the judgment of the Supreme Court of New York County in *Ajitabh Bachchan v India Publications 154 Misc. 2d 228 (N.Y. Misc 1992) decided on 13<sup>th</sup> April, 1992* to support this argument. Further reliance is placed on the judgment of the Supreme Court of New South Wales in *Macquarie Bank Ltd. & Anr. v. Berg [1999] NSWSC 526*. Reliance is also placed on the opinion of the Attorney General of the Court of Justice of the EU given in the case of *Google Inc. v. CNIL Case C-507/17*. Since public interest differs



from one country to another, an Indian court's perception of public interest ought not to bind other jurisdictions. He further submits that the right of freedom of speech and expression in India ought to be at least as much as in the U.S., and the principles of territoriality ought to be applicable in these cases. A decision of the Sao Paulo State Court of Appeal, Brazil in ***Twitter Brasil Rede de Informacao Ltda v. Tim Cellular S/A, Interlocutory Appeal No. 2055830-58.2016.8.26.0000*** is relied upon in support of the principle of territoriality. Reliance is also placed on an article written by Marc P. Epstein published in the Fordham Law Review titled *Comity Concerns Are No Joke: Recognition of Foreign Judgments Under Dormant Foreign Affairs Preemption*<sup>3</sup> which severely criticized what was termed as "libel tourism." Further reliance is also placed on a publication by Alex Mills titled "*The Law Applicable to Cross-Border Defamation on Social Media: Whose law governs free speech in 'Facebookistan'*"<sup>4</sup> published in the Journal of Media Law, wherein the author raises the question as to whose laws govern free speech on social media platforms. It is argued that if orders can be passed by national Courts which would result in global removal of content, then law of free speech on internet would be reduced to the lowest common denominator.

13. Mr. Tripathi also cites the order of this Court dated 14<sup>th</sup> January, 2019 in ***Sasikala Pushpa v. Facebook & Ors. CS (OS) 510/2016*** and order dated 25<sup>th</sup> April, 2019 passed by this Court in ***Patanjali Ayurved Ltd. v Facebook Inc. & Ors. CS (OS)449/2018***.

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<sup>3</sup> Marc P. Epstein, *Comity Concerns Are No Joke: Recognition of Foreign Judgments Under Dormant Foreign Affairs Preemption*, 82 Fordham Law Review 2317 (2014)

<sup>4</sup> Alex Mills, *The Law Applicable to Cross-Border Defamation on Social Media: Whose law governs free speech in 'Facebookistan'*, Journal of Media Law 7 (2015) 1-35

14. Mr. Arvind Nigam, Id. Senior Counsel appearing for Google Inc. and YouTube LLC takes the following preliminary objections:

- i) That the suit has been filed by a Power of Attorney – Mr. Gyandeep Sharma. Since an action for defamation is an action *in personam*, the Plaintiff ought to have personally verified and filed the plaint.
- ii) That the suit lacks cause of action as there is nothing offensive contained in the video.
- iii) That the plaint does not refer to the judgment of the Id. Single Judge in CM(M) 556/2018, which has only been placed before the Court during the course of arguments, and only the closure report of the CBI was relied on.
- (iv) That the plaint relies upon four pages of URLs, however, there is no mention as to which is the one which is extracted in the Plaint.
- (v) That none of the persons who have uploaded the video have been impleaded.
- (vi) That there is no mention as to which is the offensive part in the video. It is the settled position that the specific words which are defamatory have to be pointed out, as held in the judgment of the Supreme Court in ***R. Rajagopal v. State of Tamil Nadu 1994 SCC (6) 632***. Since the entire plaint is mere paraphrasing and is only alleging innuendo, the plaint ought to be rejected.
- (vii) That the necessary party i.e. the uploader of the video having not been impleaded, the suit would be liable to be dismissed. He relies upon the judgments in ***ABC Laminart v AP Agencies, Salem (1989) 2 SCC 163*** and ***Ramesh Hirachand Kundanmal v Municipal Corporation of Greater Bombay and Others (1992) 2 SCC 524*** to

argue that if a necessary party is not impleaded, the suit would be liable to be dismissed.

15. It is further submitted by Mr. Nigam that the order of Id. Single Judge in CM(M) 556/2018, which is in the public domain, itself contains the offending parts, and thus firstly, as Courts have to consider as to whether the content is vexatious or scandalous, the judicial record itself becomes defamatory. He relies on a judgment passed in the case of ***HPS Chawla v NPS Chawla and Ors. FAO (OS) No. 55/2005 (Decided on 22<sup>nd</sup> September, 2005)*** to submit that redaction was directed in the judicial order to ensure that offensive content is not made public. Since the Plaintiff is in public life and runs a business organization for crores worth of business, the Plaintiff ought to be open to criticism.

16. Insofar as the Act is concerned, it is submitted that under Section 1(2), it applies to only to the territory of India. Though under Section 75 it is clear that the Act applies to any offence or contravention committed outside of India if the same is committed through a computer, computer system or computer network located in India, the contraventions as contemplated under the Act are provided for in Sections 43, 43A, 66A, 66B, 66 66E and Section 66F. However, defamation is not covered in these provisions. Reliance is also placed on the decision in ***Playboy v. Chuckleberry 939 F. Supp. 1032 (S.D.N.Y. 1996)*** to argue that a U.S. court in the said case had held that there could not be an injunction by a U.S. Court against publication of a magazine titled 'Playmen' in Italy. It is further argued that the grant of a global injunction at the interim stage is like decreeing the suit. Since the Plaintiff's reputation is restricted and localised in India, the Plaintiff is adequately protected by geo-blocking. If the uploader himself removes the

offending material, then the removal takes effect globally.

17. Mr. Sanjeev Sindhvani, Id. Senior Counsel appearing for Twitter submits that the grant of a global injunction can have a regressive effect even on India. He relies upon Section 13 CPC to submit that India also prescribes various conditions to recognize judgments of foreign Courts. He further relies upon the Sections 3 and 4 of the IPC to argue that if there are extra territorial offences, an order of an Indian Court would not be enforceable abroad. The principles of comity of courts and comity of nations requires Courts to respect the territoriality of their jurisdiction. The contraventions under the Act cannot be dealt with by a Civil Court as they are criminal offences. The High Court of Justice in Northern Ireland, in ***George Galloway v. William Frederick Frazer & Ors. [2016] NIQB 7*** has held that no global injunction can be granted. The Defendants have already complied with the orders on a pan-India basis and geo-blocking has been done. The Plaintiffs have not complained of any violations of the order that has already been passed, and under the provisions of Order VI Rule 4 CPC, pleadings are required to be specific and in the absence thereof, no injunction can be granted. The mere apprehension of use of VPN and proxy servers to access global websites cannot be sufficient to presume that the data is likely to be transmitted and accessed in India. In ***Suresh Jindal v. Rizzoli Corriere Della Sera Prodzioni T.V. S.p.a. and Ors [1991] Suppl. (2) SCC 3***, the Supreme Court, being conscious of the limitations, granted an injunction against dissemination only in India. In view of the fact that the global standard to protect free speech could be very low in various jurisdictions, Indian Courts, which have a higher standard for free speech, should not impose the said standards internationally. In ***Shreya Singhal***

(*supra*), it has been held by the Court that the injunction, if any, has to be in the narrowest terms.

**Rejoinder submissions by the Plaintiffs**

18. In rejoinder submissions, Mr. Darpan Wadhwa, Id. Senior Counsel submits that the plaint is not lacking in material particulars. In various paragraphs, the manner in which the content uploaded in the video is defamatory has been set out. Specific reliance is placed on pages 31, 33, 38, 39 and 53 of the plaint. Reliance is also placed on the judgment of the Id. Single Judge, specifically, pages 91, 118, 119, 121, 178, 179 and 201 where the very same content, as contained in the video, has been dealt with as part of the book. It is further submitted by Mr. Wadhwa that the right of reputation is a Right under Article 21 of the Constitution. Thus, the Court has to balance the Plaintiff's rights enshrined in Article 21 as against the rights under Article 19, which are being claimed by the platforms

19. Insofar as the argument of mis-joinder and non-joinder is concerned, he submits that the BSI does not give any details except the IP addresses. Only in some cases, mobile numbers and e-mail addresses have been given. It is not clear if those individuals are even identifiable.

20. He relies upon the pleadings i.e. written statements filed by the platforms wherein the platforms are attempting to justify as to why global blocking orders ought not to be granted. He submits that the apprehensions of conflict of laws and violation of the principle of comity of courts are all theoretical. He relies upon the judgment in *Equustek-I (supra)*, especially paragraphs 20 and 27, to argue that Google Inc. is subject to personal jurisdiction before this Court and hence any injunction order granted by the

Court has to have full effect. Plaintiffs, citizens and individuals cannot be forced to go courts in each country to protect their reputation.

21. He submits that Section 79 of the Act is the exception to the rule that every publisher is liable. The platforms are publishers and since they intend to seek protection and safe harbour under Section 79 upon being served with a Court order, they have a duty to implement the same. Rule 3(2) of the Rules has to be part of the user agreement, and if any content is defamatory, the same has to be taken down. Intermediaries cannot be judges in their own cause and cannot attempt to police content on their own. Since they do not claim any responsibility at the stage of uploading, the removal of content has to be without hesitation. If they question the orders of the Court, they no longer remain neutral intermediaries and are liable as publishers. He distinguishes the judgment in *Ajitabh Bachan (supra)*. He relies upon the judgment in *Niemela (supra)* to argue that global blocking was sought. He submits that on a VPN network, the video on global platforms is easily available in India. While the platforms are willing to protecting trademarks and copyrights on a global basis, they are refusing to protect a person's reputation. The platforms have not included defamation as part of their policies and hence where defamatory content is concerned, Court orders are required. While the platforms, based on their own policies, do remove content on a global basis, they refuse to do so on the basis of Court orders. The reason for such resistance by the platforms is because the advertising revenue of the platforms depends on the number of hits they get on the shared content. Controversial content gets more hits, and thus if the said content remains, the platforms earn greater revenues. He submits that the publication in the Journal of Media Law in fact states that intermediaries

ought to stay out of judging and leave the same to the Courts.

**Analysis and findings**

22. The following issues, which have been raised by the parties, are being decided at the *prima facie* stage:

- 1) Mis-joinder / non-joinder of parties;
- 2) Whether the content is defamatory;
- 3) Whether the Defendants are intermediaries and if so, what should be the form of injunction order that is to be passed?

**1) Mis-joinder / non-joinder of parties**

23. This objection has two dimensions. The first is the non-impleadment of the publisher and the author of the book. The second is the non-impleadment of the persons disclosed in the BSI.

24. Insofar as the first objection is concerned, the book is not directly in issue in the present case, though the offending videos is claimed to be derived from the book. Insofar as the publisher / author of the book is concerned, the Plaintiffs have already availed of their legal remedies against them and a detailed judgment has already been passed by the Id. Single Judge in CM(M) 556/2018. The subject matter of the present suit is the offending video and other related content, which is derived from the book and has been uploaded on various links on the Defendants' platforms. The details of the said links have been annexed to the plaint and run into four pages.

25. Insofar as non-impleadment of the individuals who have uploaded these videos and other allegedly offending content is concerned, a perusal of the BSI which has been filed by the platforms shows that the information is

in the form of account IDs along with IP addresses. Each of the platforms has disclosed the BSI-for example, the Twitter BSI runs into 145 pages, and shows details of from which IP address the user has logged in, and at what time date. There are no other details of the said user. In respect of some users, e-mail addresses have been given. However, no further details are available. The Plaintiffs having received these BSI details, would have to make detailed enquiries and investigations in order to identify the complete contact details of the individuals whose IP addresses or e-mail addresses, or in some cases, mobile numbers have been disclosed. The Plaintiffs may, after proper enquiries take proper steps to implead such uploaders as they deem appropriate, based on the BSI disclosed by the platforms. The suit is at the initial stage and it cannot be said that without impleadment of these subscribers, the suit is not maintainable. At the time when the suit was filed, the Plaintiffs had no way of ascertaining the details of these persons and even now, the subscriber information which the Court has glanced through, appears to be quite cryptic. This is owing to the nature of internet itself wherein users can upload information without disclosing their complete identities. In *X Vs. Twitter Inc.*,<sup>5</sup> the Supreme Court of New South Wales has held that such circumstances would in fact justify granting of a *Norwich Pharmacal* order directing discovery of further details. However, the same could be done at a later stage. Thus, the objection that due to non-joinder of these parties, the suit is not liable to be entertained is not tenable at this stage. At the time of framing of issues, the question of mis-joinder or non-joinder can be considered by the Court. However, since these platforms are

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<sup>5</sup> [2017] NSWSC 1300



being used for directly disseminating the impugned content, they are undoubtedly necessary and proper parties in the present suit. In ***Ramesh Hirachand Kundanmal v Municipal Corporation of Greater Bombay and Others (supra)***, the Supreme Court has laid down the law as to who necessary and proper parties are. This is a settled legal position, and does not require any repetition or reiteration, At the *prima facie* stage, this Court is of the opinion that the suit is not liable to be dismissed for non-joinder of the alleged uploaders of the information or the publishers / author of the book.

**2) Whether the content is defamatory?**

26. The status of the Plaintiffs is well known and has already been subject matter of the earlier litigation. A perusal of paragraph 18 of the plaint shows that the Plaintiff has transcribed one of the videos, which it finds to be offending, defamatory and malicious. The said video clearly claims to be a summary of the book – ‘*Godman to Tycoon – The Untold Story of Baba Ramdev*’. The publishers of the book are mentioned. The video is also conscious of the fact that the book has been banned w.e.f. 11<sup>th</sup> August, 2017, which appears to be the date of one of the orders passed in the litigation between Plaintiff No.1 and the publisher. Interestingly, the video claims that the views in the video are of those of the author of the book and that the video channel itself has no relationship with the views expressed therein. Thereafter, the video proceeds to give a summary of the book. The relevant portion of the transcription is given below:

*“Hello Friends! Today I am going to tell you the summary of the book “Godman to tycoon: The Untold Story of Baba Ramdev.” This book has been authored by Priyanka Pathak Narain who is a journalist and before publishing this book she used to cover*

*spirituality and religion for a newspaper called The Mint. She got the inspiration for this book from her work there. Priyanka interviewed more than 52 people while researching this book, which included Acharya Balkrishna, who is the Managing Director of Patanjali and owns 94% of the company's shares. You might know that this book has been banned with effect from 11<sup>th</sup> August 2017 and so the book is not available anywhere. A District Court in Delhi heard a petition from Baba Ramdev's legal team and issued a notice to the book's publisher Juggernaut Books ordering them to immediately cease the publication of the book. Baba Ramdev undertook this action because he believes the book is defamatory to him. Before watching this video please understand that the views expressed in it are of the book's author and our channel has no relation with the said views. Come, let us understand the summary of the book. Baba Ramdev was born Ramakrishna Yadav in a village called Saiyad Alipur in the state of Haryana. His family was very poor and his father was a farmer..."*

27. The video does give a history of Plaintiff No. 1, as paraphrased from the book. There are various insinuations and allegations made against the Plaintiffs including the business of Plaintiff No.2. Various unverified allegations are also contained in the video. Allegations have also been made against the Plaintiffs in respect of monetary irregularities. There are insinuations that the Plaintiff is connected with the three deaths. The video concludes by saying:

*"So friends this was a summary of Baba Ramdev's biography "Godman to Tycoon." I will reiterate that our channel does not have any relation to the views expressed in the book and the contents of the video are entirely based on the research and views of the book's Author."*

Thus, the ultimate credit is being given to the author of the book – who may or may not be connected with the preparation of the video and uploading of the same.

28. The contents of the video are not being repeated in this judgment, in order to ensure that the same is not further published, as rightly contented by Mr. Nigam. There is no doubt that reading of the transcript, or a viewing of the video clearly attempts to give an impression to the viewers that the Plaintiffs have been involved in various murders, financial irregularities, misuse of animal parts, etc. However, all this information, as per the video, has been derived not independently, but as a summary of the book itself. Thus, the judgment in CM (M) 556/2018 dated 29<sup>th</sup> September, 2018 clearly becomes relevant. A perusal of the said judgment shows that the Id. Single Judge, after considering the law of defamation, including the balance between the Article 21 and Article 19(1)(a) has concluded that the content of the book is not justified. The implicit allegations have been held to be *prima facie* untrue. The Id. Single Judge has arrived at the following findings:

*“139. In the instant case the avowed contentions of the petitioner have been that as regards the publication in “Chapter 16 Mystery 2 : The Guru’s Disappearance” in the BOOK to implicitly state that the petitioner was somehow involved or complicit in the disappearance of his Guru Shanker Dev Ji and that further he, the petitioner having used his influence with the Government was able to scuttle the investigation which was not handled in a fair and transparent manner, coupled with the factum that the said publication came to the knowledge of the petitioner on 29.07.2017 after the Special Judicial Magistrate (CBI)/ACJM(I) Dehradun vide order dated*

*13.02.2015 accepted the closure report filed by the CBI in this matter, which aspect was not adverted to by the author and thus in view of the order dated 13.02.2015 of the Special Judicial Magistrate (CBI)/ACJM(I) Dehradun in case No. 1428/14 vide which the closure report submitted by the CBI in relation to the missing report for Guru Shanker Devi Ji at PS Khankhan, Haridwar, which was registered on 16.07.2007 was closed, the publication in relation to this aspect in 2017 prima facie cannot be held to be justified.*

*...*

*140. As regards "Chapter 9 Mystery 1: The Ally's Murder" which relates to the death of Swami Yoganand, the key associate of the petitioner, it is contended by the petitioner that through the said chapter which reads to the effect ...*

*it has been insinuated against the petitioner that he had something to do with the murder of Swami Yogananda on account of a falling out between the petitioner and Swami Yogananda on account of a falling out between the petitioner and Swami Yogananda and the petitioner contends that it is been further represented as if the Investigating Officer had filed an extraordinary report by stating that the perpetrators were unknown and that the respondents had not clarified that such reports are called "Untrace Reports" and are common place and that the same had been done with the sole intention of creating an aura of suspicion so as to defame the petitioner and that in the light of the "Untraced Report" which has also been admitted by the author, it is contended on behalf of the petitioner that it is clear that there was no way for the respondents to prove that the allegations were true and accordingly no defence would succeed in relation to the same. Prima facie the factum that there was an "Untrace Report" in existence, there exists no*

*justification for creation of an aura of suspicion against the petitioner in relation to the murder of the Swami Yogananda rightly contended on behalf of the petitioner.*

*141...In this context, thus the contention of the petitioner seeking to contend that there were deliberate insinuations against him made by the author that he was not willing to get the post mortem conducted on the body of Rajeev Dixit to cover up a foul play, prima facie cannot be accepted.”*

29. It was held that the fact that Plaintiff No. 1 is a public figure could not *ipso facto* constitute a license to defame him. Insofar as the interlocutory injunction is concerned, the Court in paragraphs 180 concludes as under:

*“180. Thus as the petitioner about whom the BOOK is written about is living human being and thus entitled to be treated with dignity and has a right of social reputation as an ordinary citizen even if he be a public figure, and as reputation as a cherished value and an element of personal security, portions of the BOOK which make readers think that he is an ambitious villain, until so proved in the Court of Law are necessarily to be restrained from being published and distributed for sale till disposal of the suit bearing no. 619/2017 pending before the learned ACJ-CCJ-ARC(E), Karkardooma Courts, Delhi. This is so as the right to reputation of a living individual under Article 21 of the Constitution of India cannot be sacrificed and crucified at the altar of the right to freedom of speech and expression of another and both have to be harmonized and balanced in as much as no amount of damages can redeem the damage to reputation of any person and merely because there have been previous publications on the same issue, the same does not permit any repetitions of prima facie defamatory insinuations against him.*

After holding as extracted above, the Court directed deletion of various portions in Chapter 9 – ‘Mystery 1’, Chapter 16 – ‘Mystery 2’, and Chapter 25 in the following terms:

*“181. In view thereof, all the respondents in C.M.(M) 556/18 & C.M.(M) 557/18 are restrained from publishing, distributing and selling the BOOK i.e. “Godman to Tycoon” The Untold Story of Baba Ramdev, ISBN No. 9789386228383 in any manner, - until they delete the following : -*

*(a) At Pages 69 to 70, Chapter 9 Mystery 1 : The Ally’s Murder (Entire Chapter 9).*

*"A day after the Asian tsunami swept up the shorelines of fourteen countries', killing nearly a quarter of a million people, an intriguing event occurred in Kankhal. In the darkening winter evening of 27 December 2004, a scuffle broke out in the single-storey Yogananda Ashram, home to Swami Yogananda, the man whose licence had enabled Divya Pharmacy to function and grow for eight years since its inception in 1995 till 2003.*

*Yogananda's neighbours are cagey about discussing it even today but they say they heard raised voices coming from his house that eventful evening. No one imagined, though,, that Yogananda — the lonely man who lived without a telephone or even electricity — was being knifed to death. One Vasant Kumar Singh discovered his lifeless body shortly after and called the police. Along his lifeless body shortly after and called the police. Along with other neighbours, the young Tarun Kumar went in with the police. 'I remember it still. He was there in that dark room when I went in ...*

- lying in a pool of his own blood.*

*As mentioned earlier, in 2003 Divya Pharmacy had abruptly changed the vaidya on its registration from Swami Yogananda to Sri Saty Pal Singh, Yogananda is said to have had a falling out with Ramdev’s increasingly powerful enterprise but the*

*reasons for this are still unknown.*

*With Yogananda's death, a key associate who had provided critical help to Ramdev in his early days was gone. The murder remains unsolved till date. Ten months later, on 25 October 2005, investigating officer B.B. Juyal filed his final report in the case - Case unsolved. Perpetrators unknown."*

*(b) At Page 105 to 114, Chapter 16 Mystery 2 : The Guru's Disappearance (Entire Chapter 16).*

*"A year after Ramdev had a successful run in the United Kingdom and delivered a speech at the United Nations in New York came plans for a yoga tour of the United States. India's foremost yoga guru was scheduled to start his tour in New York on 30 June 2007 and wind it up in Coventry in the UK on 8 August, rumbling through New Jersey, Chicago, Glasgow and London in between.*

*Animesh Goenka, then president of Heritage India, a small charitable organization that was involved with the planning of Ramdev's tour, had told the media that the US leg of the tour, estimated to cost \$350,000, was to be funded exclusively through charitable donations from private individuals and corporations. The sale of tickets to the yoga camps, priced between \$100 and \$500, was expected to raise half a million dollars. This money, Goenka had asserted, would be funnelled into research on amla and developing a product for which a patent could be sought.*

*While Ramdev prepared for his international tour, Balkrishna was making certain critical and far-reaching changes. On 18 May 2007, fifteen months after its formation, Patanjali Ayurveda Pvt. Ltd dropped the word 'private' from its name. This was a critical move if the company wanted to list itself on the stock market. Patanjali's shareholding also changed around this time, as would happen frequently over the years, with several of Ramdev's key associates coming*

*on board as shareholders, albeit minor ones, at this point. As before, and as with Vedic Broadcasting Pvt. Ltd, Ramdev's pliant and trustworthy Balkrishna remained the largest shareholder by far.*

*Notable among these new shareholders were Krishan Kumar Pittie and Sarvan Poddar Pittie would eventually play a major role in Ramdev's quest for media domination and Poddar would buy a Scottish island, Little Cumbrae, for GBP 2.1 million in September 2009 and donate it to Patanjali Yogpeeth's UK trust.*

*Balkrishna also converted Vedic Broadcasting Pvt. Ltd into a public limited company.*

*Kirit Mehta and his partners at Aastha were too busy struggling to survive to notice the dramatic changes that were taking place in Vedic Broadcasting's story. Had they been a little more alert they would have sensed that something wasn't quite sitting right. Ramdev was preparing to take over Aastha.*

*But Ramdev himself missed something brewing in his own backyard. Amid his heady successes, and hectic travel, he failed to see that his guru Shankar Dev was ailing, increasingly unhappy and isolated in his own home, Kripalu Bagh Ashram. For instance, Shankar Dev, who was the convener of the Divya Yog Mandir Trust, was not on the boards of any of the new companies that were set up by Ramdev.*

*But what Ramdev could not see, though it was in plain sight, many in Haridwar saw. Several remember the swiftly ageing Shankar Dev, ravaged by spinal tuberculosis, becoming increasingly frail and forlorn. Spinal tuberculosis causes the patient to cough blood, lose weight, get night sweats and chills, and experience a loss of appetite, fatigue and fever, and it can sometimes impair mobility as a result of pain in the spine and damage to the joints.*

*Like in many small towns, friendships and kinship survive long years in Kankhal Sushant*



*Mahendru's family, friends of Shankar Dev, continued looking out for him even after he stopped coming to their house when his old friend died. 'I have seen him several times during those months when he had TB, He was alone and ignored in a little room in Kripalu Bagh Ashram.... cooking for himself, washing his own clothes and utensils. The only difference was that he took rickshaws to commute because he could no longer cycle because of the TB. But even that was difficult for him ....*

*These people [Ramdev and Balkrishna] had a Nissan Terrano at the time, but not one person in Kankhal has any memory of Shankar Dev sitting in any of their cars. He was always on a cycle or in a rickshaw,' says Mahendru. \*

*The anguish of watching Shankar Dev deteriorate is etched on Mahendru's face. From being the master of his ashram, Shankar Dev was reduced to a sidestepped hasbeen in Kripalu Bagh.*

*ShankarDev is still the subject of hushed conversations in Kankhal today. Those who remember tell of his trials and speak of his tribulations in lowered voices — no one wants to cross the now all-powerful Ramdev. In a small place like Kankhal, word can get around. They are right to be worried. For instance, when I asked about Shankar Dev's deteriorating standard of living Balkrishna became positively belligerent and furious at me.*

*Ramdev's tour began successfully in New York when a thousand people, mostly Indian Americans already familiar with his yoga through Aastha USA, attended his inaugural camp at Nassau Community College — some from as far as California.*

*At the Garden State Exhibit Center in Somerset, New Jersey, there was a groundswell of fan support — 3000 people attended. The state Senate and the General Assembly passed a resolution that this Legislature honors Swami Ramdev for his firm belief*

*that good health is the birthright of all human beings, and extends best wishes for a successful yoga camp in the US'.*

*It was when Ramdev was in Chicago that news came from Kankhal. On 14 July 2007, Shankar Dev disappeared. Vanished without a trace. He left that morning for his usual walk and simply did not return.*

*It may have been devastating news for Ramdev. Or maybe it was just inconvenient timing. With the Chicago schedule drawing to a close, Ramdev had to choose: Should he go on to London, where the House of Commons planned to receive and honour him, or should he send his regrets and rush back to Kankhal to lead the search for his missing guru?*

*Usually once a disciple takes deeksha, or initiation into the sacred, from his guru, he establishes a bond with him. Ramdev had not just taken deeksha from Shankar Dev but also accepted saffron robes from him — that is, he renounced the world. From the moment he took the saffron robes from Shankar Dev, that gurushishya relationship was meant to become the central fulcrum of his life. From that moment onward, Ramdev was supposed to consider his guru as his spiritual and temporal father and mother.*

*There is no way of knowing what Ramdev truly felt when he heard of the disappearance or if he struggled with the decision or for how long, but in the end he decided to carry on with his tour. The day after his aides filed a missing person's report at Kankhal police station, on 18 July 2007, Ramdev attended a ceremony at the British House of Commons in his honour.*

*An investigation began in India, but clues were scarce. A cryptic note was found in Shankar Dev's room: 'I have taken some loan from you for this trust but I cannot repay it. Please forgive me. I am leaving.' He was seventy-seven years old.*

*The note raised more questions than it*

*answered: Exactly how much did this old man who continued to live as simply as before Ramdev's meteoric rise borrow that he could not repay the sum? Why did he borrow it? When had he taken the loan? And from whom? More importantly - why did Ramdev, sitting atop an empire worth at least Rs 100 crore, not repay the loan on his behalf? Why did Shankar Dev not ask him for help? Or had he?*

*Even though Karamveer had left the organization, Shankar Dev, who missed him dearly, often called him - sometimes for financial help. 'I used to send whatever little I could so he could get by,' says Karamveer. Vipin Pradhan, a former aide and Karamveer's nephew, says, 'By then, the trust was being run by ... relatives of Ramdev who had come in from outside and had no intention, of serving any interest other than their own. They treated Shankar Dev badly and he was very unhappy.'*

*Karamveer says that once when he was visiting Haridwar and staying with an old friend in Tripura Ashram, 'Shankar Dev came to meet me. They had sent two people after him to do his CID [that is, to spy on him]. They waited at the gates while we met. I'm not sure why... they [Ramdev and Balkrishna] had doubts [about Shankar Dev] in their minds at the time... who knows what doubt... what they were thinking at the time. It must have been a very difficult situation for Shankar Dev.'*

*But it is Radhika Nagrath's appraisal of the situation that is most damning. Remember, Nagrath is the one who designed Divya Pharmacy's website in its early days. She is still associated with Patanjali and has an obvious soft spot for Ramdev, whom she speaks of with affection, though she is unhesitatingly honest. She says, 'Shankar Dev was a real saint - a very gentle guy. He felt ousted in his own home. He did not get any compassion because these people were in a race for something else. It was once his home, his shelter. He*

*used to sign all the expense cheques for the trust at first [but] now the authority was taken away from him and he was not happy with the way things had shaped out. He had given these people shelter and now they had no time for him ... they had no use for an old man any more.'*

*An uneasy silence always follows questions about Shankar Dev among Kankhal residents. People always ask, 'Can I trust you? Are you writing for him or against him? You see, Ramdev has become too powerful. And look what happened to his guru ...'*

*After his pit stop at the House of Commons, Ramdev continued his tour, travelling to Glasgow then back to London, and finally ending his tour in Coventry on 8 August 2007. When he returned to India, more than three weeks had passed since Shankar Dev's disappearance. To outside observers it seemed as though Ramdev was too busy chasing fame and fortune, making them wonder: did he even care?*

*After his return, Ramdev summoned a press conference in Haridwar, remembers the Jansatta reporter and Haridwar resident Sunil Pandey. At the press conference he was saying how Shankar Dev was like a father to him and how sad it was ... I asked him that if he really was like a father to him, why –didn't he come back?*

*"I was in the US, conducting camps, answered Ramdev.*

*" Well, if a family member disappeared, one would come back, isn't it? 'Pandey pressed Ramdev.*

*If I knew he was alive, I would have,' replied Ramdev.*

*'So you are admitting that you know that he is dead?' demanded Pandey.*

*That was the suspicion in everyone's minds.*

*Stunned, realizing he had misspoken, Ramdev fell silent.*

*Then his people just took over and changed the*

*subject. Though a lot of people were present at the press conference,' recalls Pandey.*

*Little of this murky business was reported in the national media at that time. Across the country, Ramdev's star was ascendant.*

*It was only in October 2012, five years after Shankar Dev's disappearance, that the Central Bureau of Investigation (CBI), India's apex investigative agency, initiated a probe to find him. In his inimitable style, Ramdev welcomed the investigation on the one hand, but also attacked the CBI and the government, accusing them of a politically motivated conspiracy to frame him in the case. Given the sour relationship between Ramdev and the Union government at that time, his allegation did have some credence.*

*Whatever the CBI's initial motivations, it was widely reported- that it initiated a move to close the case in December 2014 - by this time the Narendra Modi-led government had taken charge at the Centre – because the agency had failed to make any headway. The special BJ magistrate in Dehradun set the date for the next hearing as 12 January 2015 but this is where the public case file goes cold.*

*It's hard to ascertain what happened thereafter. While a right to information (RTI) request I filed with the CBI in Delhi met with the response that the CBI was not covered by the RTI, another filed in Dehradun met with the response that the CBI does not answer questions on open cases. Ergo, the case is still open.*

*(c) At Page 201 Chapter 25 : Conclusion*

*"A trail of people whose goodwill or frailties he used to further his own enrichment and pursue his own agenda, people who were left by the wayside after they had served their purpose. A trail of people who either vanished into thin air, or died mysterious deaths, or live on in utter fear of him. A trail of decisions and political machinations driven not by the principles he espouses but by expediency."*

(d) At Page 202 Chapter 25 : Conclusion

*"Finally, a trail of shirked responsibility. For every negative event surrounding him, he has consistently yelled foul, always choosing to lay the blame at someone else's door."*

...

...

...

*"All Ramdev's former allies, aides, supporters and mentors who had watched him rise but has fallen by the wayside at some point seemed to have been waiting for a call like mine, from anyone at all, asking them about their time with Ramdev."*

Insofar as the remaining content is concerned, the Court directed as under:

*"182. As regards the submissions made in relation to other portions of the BOOK as detailed in the petition, the same prima facie fall within the domain of thought provocation and debate and criticism and the prayers in relation thereto cannot presently be accepted."*

30. A perusal of the transcript of the video shows that the same is nothing but a summary of the book. It contains a large portion of the deleted content in a paraphrased / summarized manner. Thus, the videos are falling foul of the judgment passed by this Court.

31. Ld. Counsels for the parties have confirmed that the publisher of the book had filed SLPs before the Supreme Court being SLP Nos. 30307-30308/2018 which are stated to be pending in the Supreme Court. However, there is no stay on the order of injunction that has been passed.

32. Thus, insofar as the question as to whether the content is defamatory or not, the same need not be gone into by this Court as the offending video in the present suit is nothing but a summary of the book, which has already

been litigated upon. There has been no serious contest as to the fact that all the offending videos whose links have been filed at pages 19 to 24 of the documents file are merely summarizing/ paraphrasing extracts of the book itself. Since this has not been factually contested by any of the parties, the Court has not viewed each of the videos. The submissions of the Id. Counsels have been focused on the video whose transcript has been provided in the plaint in paragraph 18(a). The Plaintiff's averments in para 18(a) have been rebutted only on the ground that the platforms are intermediaries. There has been no denial of the content of the video as mentioned in paragraph 18(a) of the plaint. Paragraph 18(a) of the Plaint reads as under:

*"18. That the brief facts necessitating the filing of the present suit are stated herein under:*

*a) That the Plaintiffs in October, 2018 came to know from Plaintiff No. 1's followers including the special power of attorney holder and the distributors and officials of Plaintiff No. 2 about uploading/sharing/ dissemination/publication of highly defamatory and malicious videos/URLs/Weblinks against the Plaintiff No. 1 on the portals of the Defendants, based on absolutely false and/or wrong and/or misleading facts/documents/statement thereby insinuating that the Plaintiff No. 1 is responsible for the death of Mr. Rajiv Dixit and his guru Swami Shankar Dev Ji and his colleague Swami Yogananda. That the vilification campaign launched by the Defendants against the Plaintiff No. 1 by allowing the uploading of several videos/URLs/Weblinks are false, frivolous, misconceived and reeks of malafide intentions. The contents of one such video is reproduced herein below:*

*...*

33. Thus, the question as to whether there has been defamation or not has

been decided in the earlier round of litigation between the parties and the publisher. In fact, Google and YouTube have taken the stand that the impugned videos / URLs / web links have been duly disabled from the country domain. They have denied that the vilification campaign is at the behest of the Defendants and further state that they are strictly neutral and passive intermediaries. Insofar as Facebook is concerned, it has taken a stand that it is only an intermediary, which provides platform to third parties to upload content and it cannot be asked to proactively monitor its platform. Thus, the content of the video to the extent it contains paraphrasing of content which was directed to be removed from the book is held to be defamatory. A perusal of the video transcript and the offending portion of the book show the clear similarity and prima facie, establish that the video is derived from the book and hence is defamatory. In any event, this issue is moot inasmuch as the video begins by stating that it is based on the book. Thus, the defamatory nature of the video cannot be disputed.

**3) Whether the Defendants are intermediaries and if so, what should be the form of injunction order that is to be passed?**

34. In order to answer this question, the following aspects need to be considered:

- a) Role of Google, YouTube, Facebook and Twitter in the dissemination of content;
- b) Interpretation of Section 79;
- c) Whether geo-blocking is sufficient or whether a global injunction is required to be granted?



***Written Statement of Facebook***

35. In its written statement, Facebook pleads that it is an intermediary under Section 79 and has no role in initiating transmission, selecting the receiver of any transmission and or selecting or modifying the information contained in the transmissions. It is entitled to protection under Section 79. Reliance is placed on ***Shreya Singhal (supra)***. Facebook pleads that it does not have an obligation to proactively monitor the Facebook service in order to block the offending posts. It merely provides a platform to upload the content. It states that the request for global blocking would result in a “conflict of laws situation”, as a global injunction may not be in consonance with the law in other jurisdictions and may jeopardize Facebook’s status as an intermediary in other jurisdictions. This would be violative of international comity. It states that it is neither the author nor the publisher of third-party content and enjoys immunity under Section 79. In terms of ***Shreya Singhal (supra)***, it is only required to act upon a valid Court order or request from an authorized Government agency. It has already taken action in respect of the URLs pointed out by the Plaintiffs. It further avers that it is in compliance with the 2011 Rules and it shall not host, display, modify or publish any information which is covered under Rules 2 and 3 of the 2011 Rules.

***Written statement of Google LLC and YouTube LLC***

36. Google and YouTube have both filed a common written statement. It is averred that Google Plus i.e. Defendant No.4 is not a separate juristic entity, and is only a product which is owned and operated by Google LLC. The said Defendant thus deserves to be deleted. The two platforms claim

that they are not publishers of the content, which has been created by a third party and uploaded on [www.youtube.com](http://www.youtube.com). The said content is neither created nor controlled nor owned by the platforms and is accessed on the Internet on an 'as is' basis. Google and YouTube claim that they have complied with the order dated 24<sup>th</sup> January, 2019 and disabled the web links / URLs to the extent they related to India. The said paragraph is relevant and is extracted herein below:

*“4. Without prejudice to the submissions made herein it is submitted that the answering Defendants have duly complied with the order dated 24.01.2019 passed by this Hon'ble Court and the Defendant No. 3 has duly disabled the web links/URLs complained of by the Plaintiffs in the present matter, to the extent that they pertained to YouTube (hereinafter, “Impugned URLs”) from the country domain.”*

37. Insofar as the prayer as to blocking and restriction of access to all other media in control of the Defendants is concerned, their stand is that such blocking would be contrary to the “established principles of defamation law” and Section 79 of the IT Act.

38. As per the basic terms and conditions of YouTube, a user has to contractually agree to the following three documents:

- i. YouTube's Terms of Service;
- ii. Google's Privacy Policy;
- iii. YouTube's Community Guidelines.

39. These are binding on every user, who gives various representations and warranties. Only the uploader has specific knowledge of the content of the video, and the platforms are mere intermediaries. Thus, no liability can be fastened upon them. YouTube claims that it provides for a “robust, easy-

to-use mechanism” on its website and any user can report a video for violation of his or her rights. In addition, a complaint form can also be filled, which is publicly accessible. Upon receipt of any complaint, the same is reviewed as per YouTube’s policy and local law of every country, and the same is acted upon. It is submitted that since defamation is a subjective issue, and laws vary from each country, such issues are subject to the local laws of the country where alleged defamation is complained of. It avers that the Courts are the adjudicating authorities to decide whether the alleged content is defamatory. Since YouTube is a dynamic platform, where videos are uploaded every hour, no specific knowledge of the contents of videos can be attributed to YouTube.

40. As per ***Shreya Singhal (supra)***, a Court order has to be passed identifying the content as being defamatory, as a claim of defamation is especially hard to judge and only Courts of competent jurisdiction can take a decision on the same.

41. It is pleaded that the plaint does not disclose a cause of action as the ingredients required for a defamation action are not satisfied. It is further pleaded that the injunction sought is vague and broad, as an order is being sought in respect of “*other active URLs/links which contain or purport to contain, the infringing or disparaging Video...*”. Such an order would be contrary to ***Shreya Singhal*** (supra). Further, injunction is being sought “*across the globe.*” It is pleaded that an order in such terms is beyond the territorial jurisdiction of this Court. Since every Court has its own standards for freedom of speech and expression, the order of the Court cannot be enforced beyond Indian borders. Such an order would expose the Defendants to liability for censoring content in various countries, which

would be contrary to free speech standards and may also expose the platforms to legal proceedings. It is averred that such order would lead to libel tourism and forum shopping.

42. It is submitted that active monitoring also cannot be directed. The injunction ought to be restricted to India, and only to the identified URLs. It is further stated that the platforms have complied with the order dated 24<sup>th</sup> January, 2019. The relevant extract from the written statement reads as under:

*“4. Without prejudice to the submissions made herein, it is submitted that the Answering Defendants have duly complied with the order dated 24.01.2019 passed by this Hon’ble Court and the Defendant No. 3 has duly disabled the web links/URLs complained of by the Plaintiffs in the present matter, to the extent that they pertained to YouTube (hereinafter, “Impugned URLs”), from the country domain.*

*...*

*20....It is submitted that the said prayers are untenable and contrary to settled law for the following reasons:*

*(i) To the extent the Plaintiffs seek in its prayers a blanket order to remove “any other URLs/links containing the Video or part thereof” without identifying such videos or specifying their location, the prayer is vague, excessive and incapable of being complied with;*

*(ii) To the extent the Plaintiffs seek in its prayers a blanket direction to block/disable “any other URLs/links containing the Video or part thereof” that defame or disparage the alleged goodwill and reputation of the Plaintiffs, without there being any examination and/or adjudication by the Court on whether each such video is indeed defamatory or disparaging or not, the prayers are contrary to settled law and cannot be granted;*

*(iii) To the extent that the Plaintiffs seek in its prayers a blanket direction to block/disable videos from its websites “across the globe” which is beyond the territorial jurisdiction of the Hon’ble Court. It is respectfully submitted that every country has its own standards of Free Speech and Expression – what is lawful in one country may not be lawful in another country and every country has its own standards of Free Speech within its territorial limits. It is pertinent to mention that the said right is not affected by the nature of media use for communication. Therefore, any attempt by the Plaintiffs to seek implementation of orders passed by this Hon’ble Court (which are undisputably based on the Indian Legal Framework) beyond Indian borders and thus, enforce Indian legal standards of defamation and Free Speech across the world, would outright contradict critical international law presumptions of territoriality and principles of international comity. It is submitted that courts across the world and in India have consistently held that orders passed by them ought to be limited to the territorial jurisdiction of the country. It is respectfully submitted that the Answering Defendants are intermediaries that operate in several countries under the local domain to such countries, in compliance with the respective legal framework of those countries and targeting the local citizenry. Any order for global removal would expose the Answering Defendants to liability for censoring content in a particular country, in contravention to the free speech standards of those jurisdictions.”*

***Written statement of Twitter***

43. Twitter claims that it is a social media platform. Further, the description of the Twitter service is pleaded as under:

*“3. The present suit is not maintainable against the answering Defendant, which makes available the*

*Twitter Service ( which includes enabling users to (a) create and share short messages up to 280 characters; and (b) sharing images and videos through a real-time global information network) to the users living outside the United States of America, including India through the social media platform at [www.twitter.com](http://www.twitter.com). Being only a service provider, the answering Defendant does not control or participate in or select the content uploaded by its users on [www.twitter.com](http://www.twitter.com), a social media platform. Further, the answering Defendant does not directly post any content on the said website. The answering Defendant, thus, qualifies as an “intermediary” within the meaning of Section 2(1)(w) of the Information Technology Act, 2000 (the Act). In fact, it is an admitted position that the answering Defendant is an “intermediary”. Being an intermediary, the answering Defendant is exempted from any liability in relation to any third-party information or data made available or hosted by it in terms of Section 79 of the IT Act.”*

44. Twitter states that it complies with the 2011 Rules. It relies on the judgment in ***Shreya Singhal (supra)*** to argue that the only manner in which knowledge can be attributed to an intermediary is through a Court order. Twitter has no partisan role and is bound by the Act and the Rules framed thereunder. No order in the form of a prospective injunction can be passed against unidentified future content as Twitter does not have any policy to monitor, detect and remove content. Reliance is placed on the judgments in ***Myspace Inc. v Super Cassettes Industries Ltd. 2017 (69) PTC 1 (Del)*** and ***Kent RO Systems Ltd. & Ors. v Amit Kotak and Ors. 2017 (69) PTC 551(Del.***

45. With respect to the prayer for global injunction, it is pleaded that such an order would run contrary to the principles of state sovereignty in international law and the principle of international comity, since the laws

relating to free speech and defamation are not co-extensive and differ from country to country. Any order for a global takedown or global blocking would interfere with the rights of the people over whom the Court has no jurisdiction. The local laws of every country cannot apply to the internet globally. National courts thus have to restrict their orders only to geo-blocking of the content i.e. blocking of content only in the country where the content is in breach of local law, since what is illegal in one country need not be illegal in another.

### ***Analysis***

46. On the basis of all the above pleadings of the platforms, it is clear that the platforms do not deny that they are disseminating the content. It is also not denied that they are bound by the provisions of Section 79 of the Act. Further, the Court had specifically directed the Defendants to throw some light on how geo-blocking is done and to keep a technical person present in Court to seek clarification on geo-blocking. None of the platforms have given a detailed explanation as to how geo-blocking is done. In fact, Defendants 2 and 3 sought exemption from having a technical person present in Court. Thus, the Court has no option but to adjudicate the issue of geo-blocking on the basis of the material available on record and the submissions made before the Court.

47. One of the platforms i.e. Facebook, has placed on record its response to the queries raised by the Court on 5<sup>th</sup> April, 2019. According to Facebook, it follows the Facebook Community Standards, which address various issues like bullying, harassment, hate speech, violence, etc. Facebook's categorical position is that if any content is violative of Facebook Community

Standards, such content is not made available on its platform at all. The relevant part of the note by Facebook is extracted herein below:

***“ When intermediaries action content because the content violates their terms of service/policies is the content geo-blocked or globally blocked?***

*Response: Facebook’s “Community Standards (annexed herein as DOCUMENT A hereto) outline what type of content is and is not allowed on Facebook. The Community Standards are in place to ensure a safe environment for all users globally. As such, the Community Standards apply around the world to all types of content. The Community Standards address globally relevant issues such as bullying, harassment, hate speech, credible violence, protection of minors, and spam. Thus, if content violates Facebook’s Community Standards, Facebook considers that such content should not be available on its platform at all and therefore renders such content inaccessible for all users globally.*

48. Insofar as Google, YouTube and Twitter are concerned, from the pleadings which have been filed on record, it is clear that the content is uploaded on their platforms by users. What is however not clear is as to how the content uploaded from a particular geographical location is immediately transmitted across the world without any geographical limitation. It is a matter of public knowledge, and is also clear from the various judgments which have been cited before the Court, that all these platforms maintain a global network of computer systems, which transmits the content, information and data on an almost instantaneous basis. Thus, any content uploaded from India, would be available, within a matter of seconds, across the globe and would be accessible to users or viewers across the globe. The same would only be disabled or blocked upon a Court order being received,



subject to local laws of that particular jurisdiction.

49. Insofar as the global dissemination of information, content or data is concerned, there is no doubt that platforms disseminate the same by either copying the data on multiple servers, or providing access to the source of the data / information / content through a network of servers. This entire process could be even without human intervention.

***What is geo-blocking?***

50. As per all the platforms, geo-blocking is a method by which the platforms ensure that any content is blocked from a particular jurisdiction. Facebook has given a brief description how geo-blocking is done. As per the note filed by Facebook, geo-blocking is done in the following manner:

*“With respect to the Facebook platform, content is geo-blocked in the following manner:*

*(i) To determine where an individual is located, Facebook relies on a number of data points and signals, including:*

*a. An individual’s internet protocol (“IP”) address at the time they are accessing the Facebook service;*

*b. Information a user specifically shares with Facebook, including a Facebook user’s self-reported location; and/or*

*c. Location information if a user has consented to GPS/location tracking services on his/her smartphone settings- this means of determining location is common among Internet platforms.*

*(ii) Using such data points, Facebook geo-blocks content based on an individual’s location.”*

Along with their written submissions Google and Twitter have also submitted a note on geo-blocking. No oral submissions were made in respect thereof.

51. Defendants No. 2 and 3- Google and YouTube, state that their Terms of Service and Community Guidelines, which are binding on users are aimed at “*striking a proper balance between enabling free expressions and maintaining a responsible and safe community of users.*” It is stated that the Policies are developed on the basis of internationally accepted norms that are not known to deviate across various jurisdictions. Content that is reported to Google and found to violate the Policies is removed from the platform as it goes against the “*principle on which the Platform is founded.*” Such removal is stated to be global in nature.

52. Defendant No. 5-Twitter’s note on geo-blocking states that when an order is passed by a court of a particular country to block any content, Twitter disables the access to the reported content for all such Twitter users whose user settings indicate the name of the country of which they are residents as the country in which the content is to be blocked. It further states that Twitter automatically determines the location of a particular user at the time of creation of his/her Twitter account on the basis of the IP address through which the user logs in and reflects the same in the accounts settings of the user’s profile. By way of example, it is stated that if an Indian court was to direct blocking of a particular tweet, Twitter would disable the access to such tweet for all account holders whose account settings indicate that their place of residence is India. However, if content is found to violate Twitter’s terms of service, it is taken down globally.

53. From the above discussion, in non-technical terms, ‘geo-blocking’ appears to be a short form for ‘geographical blocking’ i.e. blocking of content from country to country or from one region to another. If the content is geo-blocked, the same would still be available on the other global

platforms but not on the platforms of the country where geo-blocking has been carried out. Thus, geo-blocking is partial blocking of content, information and data, restricted by territory. The question as to whether geo-blocking is justified and sufficient under Section 79 of the Act, is the question that arises for determination.

***International Legal position on Geo-blocking/Global Injunctions***

54. A review of the case law on the question of geo-blocking and global injunctions in the context of internet platforms shows that the same has been a raging debate across jurisdictions. While some courts have taken the view that granting of global injunctions is not appropriate, other courts and forums including in recent decisions, have taken a view that if the circumstances warrant, global injunctions ought to be granted. Issues relating to comity of courts, conflict of laws etc. have been raised even in these proceedings.

55. One of the earliest cases cited by the Defendants is ***Playboy Enterprises, Inc v. Chuckleberry Publishing Inc. (supra)*** which involved an internet site publishing a “male sophisticate” magazine under the name “*Playmen*” operating from Italy. The magazine had commenced publication in 1967 in the print form, and in 1996 it had expanded to an internet site. The U.S. District Court for the Southern District of New York, in 1981 had directed Tattilo Editrice S.P.A, the Italian publisher to either shut down its internet site completely and or refrain from accepting any new subscriptions from customers residing in the U.S. It further directed payment of all the gross profits earned from customers residing in the U.S. to the Plaintiff. The injunction, which was granted on 26<sup>th</sup> June 1981 was pressed by the

Plaintiff, and a contempt petition was filed against Tattilo. The Court held that Tattilo had violated the injunction order and accordingly sanctioned the company for civil contempt, directing the website to either shut its internet site completely, or prohibit US users from accessing the site. In the contempt proceedings, the Tattilo had challenged the jurisdiction of the US Court, however the court held that it had the jurisdiction to enforce the 1981 injunction. The relevant observation in respect of extraterritorial jurisdiction is as under:

*“Tattilo may of course maintain its Italian Internet site. The Internet is a world-wide phenomenon, accessible from every corner of the globe. Tattilo cannot be prohibited from operating its Internet site merely because the site is accessible from within one country in which its product is banned. To hold otherwise “would be tantamount to a declaration that this Court, and every other court throughout the world, may assert jurisdiction over all information providers on the global World Wide Web. Such a holding would have a devastating impact on those who use this global service. The Internet deserves special protection as a place where public discourse may be conducted without regard to nationality, religion, sex, or to monitors of community standards of decency. See generally American Civil Liberties Union v. Reno, 929 F. Supp. 824 (E.D. Pa.1996)”*

Vide the operative portion of the injunction however, the Court directed Tattilo either to:

*“(1) either shut down its Internet site completely or refrain from accepting any new subscriptions from customers residing in the United States;”*

In this case, however, what deserves to be noted is the fact that the Defendant was actually an Italian company doing business in Italy, and it

had been publishing the magazine for more than 3 decades. Moreover, the magazine was being operated from Italy and the court enjoined the magazine from permitting acceptance of subscriptions from the United States

56. In the case of *Macquarie Bank Limited & Anr. vs. Berg (supra)*, the New South Wales Supreme Court was seized with an action for defamation. The Defendant was an ex-employee of the Plaintiff bank. He started publishing defamatory content on websites from outside New Zealand, it was reasonably understood that the Defendant was doing so from the United States. Thus, there was a serious issue of jurisdiction. In this case, the court held that the injunction sought for disabling access ought not to be granted. *Prima facie* the Court found that the publication could not be called scurrilous. In respect of the question as to whether the Defendant could be restrained from publishing anywhere in the world via the internet, the Court observed as under:

*“14...Such an injunction is not designed to superimpose the law of NSW relating to defamation on every other state, territory and country of the world. Yet that would be the effect of an order restraining publication on the Internet. It is not to be assumed that the law of defamation in other countries is coextensive with that of NSW, and indeed, one knows that it is not. It may very well be that, according to the law of the Bahamas, Tazhakistan, or Mongolia, the defendant has an unfettered right to public the material. To make an order interfering with such a right would exceed that proper limits of the use of the injunctive power of this court.*

*15. For this reason alone, I would refuse the order sought.”*

It can be noticed that in the above judgment, the Defendant was not a resident of New Zealand. The uploading had not taken from New Zealand and the court also found that while the language was strong, the content could not be termed as “scurrilous.” The relevant portion from the judgment is extracted hereinbelow:

“24. Another matter argued by counsel was that freedom of expression does not extend to the freedom to engage in scurrilous abuse and properly analysed, that is what the material on the website amounts to. It is true that the content of the website is at times couched in strong language, and make serious allegations against the plaintiffs. In the last few pages there are thumbnail sketches of a number of individuals involved in the engagement between MBL and the defendant, and these are not only critical of some of those individuals, but are illustrated by reference, apparently, to notable characters from the world of entertainment. The illustrations, are, apparently, designed to ridicule some of the individuals named. I am not persuaded that they, or any other parts of the publication warrant the epithet “scurrilous.”

57. The Supreme Court of New South Wales had the opportunity to consider this very issue of global injunctions in *X v. Twitter Inc. (supra)*. This case involved confidential information being leaked on the Twitter platform and in the said context, the Court observed that Twitter ought to have a mechanism for filtering information on the Twitter service, especially keeping in mind issues of national security and classified intelligence etc. The Court holds that a direction to apply some degree of filtering would not be unreasonable. The Court further observed that an order could also be directed towards future tweets, and that there cannot be a right to post

offending tweets. The observations of the Court is as under:

*“I have taken into account the assertion in the Twitter email that it is ‘not feasible to proactively monitor user content for Offending material’. But the defendants chose not to put evidence before the Court to explain their systems and processes or the factual basis for their contention. As counsel for the plaintiff stated ‘Unfortunately, we just don’t have the defendants here to explain what is involved’ and ‘That’s a deficit brought about by the position taken by the defendants’.”*

Thus, the Supreme Court of New South Wales holds that worldwide orders would be required to be passed against Twitter, if compliance with such orders cannot be guaranteed in those jurisdictions. The Court expresses confidence in Twitter being an organisation with social responsibility, so as to ensure that the offending tweets are removed.

58. A classic case of jurisdictional conflict on the internet has arisen in the litigation between ***Equustek Solutions Inc. and Google***. Equustek had filed a suit in Canada against a company called Datalink seeking an injunction against violation of intellectual property. Datalink had launched various products on the internet, which according to Equustek, mislead the customers into believing that they were Equustek’s products. An injunction was granted against Datalink, with which Datalink did not comply. To make matters worse Datalink removed itself from the jurisdiction of Canadian courts. Despite arrest warrants been issued, the order could not be effected. Equustek then sought an order against Google to remove Datalink websites from its search results which was refused by Google. Once Datalink was enjoined by the Canadian Court Google blocked 300 Datalink websites from appearing in the Canadian specific domain i.e. [www.google.ca](http://www.google.ca).

However, the references to Datalink's websites, which appeared in the search results outside Canada retained. At that stage, Equustek sought an injunction from the Canadian court to direct Google to remove Datalink websites from all its global search results. The Trial Court granted the order for delisting the search results, which was complied with by Google. The Court of Appeals of British Columbia affirmed the order.

59. Google, thereafter approached the United States District Court in the Northern District of California seeking a declaratory judgement that the Canadian court order was not enforceable in the United States. The United States District Court in *Equustek -II (supra)* granted Google preliminary relief of injunction on the ground that would be deprived of the benefits of U.S. Federal law that protects free speech on the internet. The observations of the District Court are as under:

*“Google is harmed because the Canadian order restricts activity that Section 230 protects. In addition, the balance of equities favours Google because the injunction would deprive it of the benefits of U.S. federal law. See, e.g., Arizona Dream Act Coal. v. Brewer, 757 F.3d 1053, 1069 (9<sup>th</sup> Cir, 2014) (“[I]t is clear that it would not be equitable or in the public’s interest to allow the state... to violate the requirements of federal law, especially when there are no adequate remedies available.”)(quoting Valle del Sol Inc. Whiting, 732 F.3d 1018, 1029 (9<sup>th</sup> Cir.2013))*  
*An injunction would also serve the public interest. Congress recognized that free speech on the internet would be severely restricted if websites were to face tort liability for hosting user-generated content. See Zeran, 129 F. 3d at 330. It responded by enacting Section 230, which grants broad immunity to online intermediaries. See, e.g., Batzel v. Smit, 333 F. 3d 1018, 1027 (9<sup>th</sup> Cir. 2003)(“Congress wanted to*



*encourage the unfettered and unregulated development of free speech on the Internet.”); 47 U.S.C. § 230(a)(3),(b)(2),(b)(3)(“The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity... It is the policy of the United States... to promote the continued development of the Internet and other interactive computer services and other interactive media [and] to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”)*

*The Canadian order would eliminate Section 230 immunity for service providers that link to third-party websites. By forcing intermediaries to remove links to third-party material, the Canadian order undermines the policy goals of Section 230 and threatens free speech on the global internet.*

#### **IV. CONCLUSION**

*Google’s motion for preliminary injunctive relief is GRANTED.)”*

60. It is interesting to note that this judgment has been relied upon by the Defendants to argue that any order passed, which may have a global impact could result in a conflict of law situation and may also hurt free speech. It is however relevant to note that the judgment in ***Equustek-I*** related to an issue of piracy of intellectual property, and was not a free speech case. Thereafter, the Supreme Court of British Columbia, in its judgment ***Equustek Solutions Inc. v Jack 2018 BC SC 610 (hereinafter, Equustek-III)*** dated 16<sup>th</sup> April, 2018 noted that Google had taken a position before the U.S. District Court, which was contrary to its position before the Canadian court. Google argued that its right of free speech includes its right to decide as to which website it can link to, which is different and distinct from the content which appears on

the said links. The Court in *Equustek -III* thereafter observed as under:

*“[19] I find it is not open to me to revisit all issues relating to extra-territoriality and judicial comity that were before all three levels of court in the prior proceedings. On those issues, the Supreme Court of Canada has defined in advance the change of circumstance that will justify a reconsideration: Google could apply to vary on the basis of evidence that the injunction would “require it to violate the laws of another jurisdiction, including interfering with freedom of expression.” Google says that should be interpreted broadly, noting that the Supreme Court of Canada cited Groberman J.A’s reference to “core values”. It says the injunction violates core American values by interfering with freedom of speech.*

*[20] The U.S. decision does not establish that the injunction requires Google to violate American law. That would be the case if, for example, the Datalink Defendants obtained an order from a U.S. court requiring Google to link to their websites. But there is no suggestion that any U.S. law prohibits Google from de-indexing those websites, either in compliance with the injunction or for any other reason. Absent the injunction, Google would be free to choose whether to list those websites and the injunction restricts that choice, but injunctions frequently restrain conduct that would otherwise be prima facie lawful. A party being restricted in its ability to exercise certain rights is not the same thing as that party being required to violate the law. I interpret the words of Abella J. as being primarily limited to the latter situation.*

*[21] But even if I am wrong in that, Google has not demonstrated that the injunction violates core American values. I assume rights guaranteed by the First Amendment can be regarded as core values, but Judge Davila expressly declined to rule on Google’s submissions that its First Amendment rights were violated by the injunction. Google argues the First*

*Amendment was engaged because it drives the policy underlying both the statute and the decision. In my view, the decision of Judge Davila should not be interpreted to mean more than it actually says, particularly as Google's application was unopposed and the Court did not have the benefit of any contrary arguments.*

*[22] The effect of the U.S. order is that no action can be taken against Google to enforce the injunction in U.S. courts. That does not restrict the ability of this Court to protect the integrity of its own process through orders directed to parties over whom it has personal jurisdiction."*

The request of Google to set aside the injunction was thus, rejected on the ground that the Canadian courts had the ability to protect the integrity of their own process through orders directed against parties over whom the Canadian courts had personal jurisdiction.

61. In *Niemela v. Malamas (supra)*, an interlocutory injunction was sought by a Canadian lawyer, against whom various defamatory statements had appeared on the internet. A Canadian court had directed the removal of the URLs from the Canadian domain. The Plaintiff had then sought a global mandatory removal order. The question that was considered was as to whether the removal from the Canada domain name was inadequate to protect the interests of the Plaintiff. The Supreme Court of British Columbia observed that voluntary removal by Google from the Canada domain was sufficient. The observation of the Court is as under:

*"[31] I conclude that Google's voluntary removal of URLs identified by Mr. Niemela has provided an effective means of preventing searchers in Canada from finding the links to the offending websites. An injunction is not therefore required to prevent the vast*

*majority of the potential harm complained of by Mr. Niemela.*

*[33] Finally, the Court is reluctant to make an order that cannot be complied with. Mr. Niemela acknowledges that Google is not able to comply with an order compelling it to block defamatory search results in the United States. Two federal statutes, the Communications Decency Act of 1996, 47 USC (1996), and the Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act, 28 USC (2010), protect internet providers such as Google and block enforcement orders that would infringe on the First Amendment right to free speech.*

*[34] While United States courts will generally recognize and enforce foreign judgments, they will not do so if enforcement of the foreign court's order would violate the corporation's constitutional rights to free speech: Yahoo! Inc. v. La Ligue Contre Le Racisme et L' Antisemitisme, 169 F Supp 2d 1181 (ND Cal 2001) at 1191-1193, rev'd on other grounds 379 F 3d 1120 (9th Cir 2004)."*

The Court, discussed the manner in which search results appear on the internet, and observed that prior to being issued a notice, Google is not a publisher of the snippets. However, the Court holds that the question as to whether Google is a publisher or not once a notice is issued was not considered by the Court. The findings of the Court are as under:

*"[102] There are hundreds of millions of active websites over the internet and trillions of webpages. Search engines make the internet a viable and effective information and communication resource. The internet cannot be successfully navigated without search services such as those Google provides. If hyperlinks are the pathways search engines are the maps. Without snippets, which give a sample of the text in which the search terms are imbedded, navigating the*

internet would be much more difficult. Users would have to click on each URL, access the hyperlinked webpage, and examine its contents to determine relevance.

[103] Adoption of the passive instrument test for publication in British Columbia was addressed by Burke J. in *Weaver v. Corcoran*. The plaintiff in that case sued over reader comments posted about him on a forum hosted by the National Post. After referring to *Bunt v. Tilley* and *Metropolitan* as well as *Tamiz v. Google Inc.*, [2013] EWCA Civ 68, Burke J. concluded at para. 282 that the jurisprudence establishes that “some awareness of the nature of the reader post is necessary to meet the test of publication.” She continued at para. 284:

Until awareness occurs, whether by internal review or specific complaints that are brought to the attention of the National Post or its columnist, the National Post can be considered to be in a passive instrumental role in the dissemination of the reader postings. It has taken no deliberate action amounting to approval or adoption of the contents of the reader posts. Once the offensive comments were brought to the attention of the defendants however, if immediate action is not taken to deal with these comments, the defendants would be considered publishers as at that date. [Emphasis added]”

[104] In *Weaver* Burke J. found that it was reasonable to expect the defendant to pre-vet thousands of visitors’ comments for defamatory content and that the defendant did not therefore have the awareness of the words necessary to meet the test of deliberate publication: at paras. 273, 282. That reasoning applies all the more to a search engine that automatically trawls trillions of webpages in seconds.

[105] Added to the sheer volume of material is the obvious difficulty of developing programming to detect and screen out defamatory word. It is apparent that a

*search engine could not simply by programmed to block every site containing, for example, the words “scam artist” or “steals” without blocking millions of pages of non-defamatory content.*

*[106] Google programs its search algorithm so that it locates URLs likely to relate a user’s search query. It is not aware of the snippets and hyperlinks produced, nor can it be, realistically. In the words of Eady J. in Metropolitan, Google does not authorize the appearance of the snippets on the user’s screen “in any meaningful sense” but “has merely by the provision of its search service, played the role of a facilitator: at para 51.”*

*[107] In summary on this issue, I conclude that Google is a passive instrument and not a publisher of snippets. There is accordingly no issue for trial in relation to defamation.*

*[108] I emphasize that I have not been asked in this case to consider whether Google could be a publisher of snippets and search results after notice of defamatory content. In the present case, Mr. Niemela initially raised this issue in his notice of application but abandoned the argument when Google voluntarily blocked the URLs that produced the offending snippets. Accordingly, the issue does not arise on the facts of this case.”*

62. In ***Vladimir Ivanovich Telnikoff v. Vladimir Matusevitch*** the Court of Appeals of Maryland observed that the laws of defamation vary from country to country. Foreign judgments would be recognised, unless contrary to the public policy of the enforcing State. This judgment, however, did not dealt with publication on the internet.

63. In ***Ajitabh Bachchan V. Indian Publications (supra)*** again the difference in defamation and libel laws between the U.K and the U.S. was emphasized by the Supreme Court of New York County.

64. The *Id.* counsel for Facebook relied upon the *Id.* Attorney General's opinion in ***Google v. CNIL***. The case before the CJEU was pending when judgment was reserved in the present case. However, recently on 24<sup>th</sup> September, 2019 the Grand Chamber of the CJEU has pronounced its judgment. Google had appealed to the CJEU against the penalty imposed on it by the French data protection authority- CNIL, which was imposed as Google had refused to remove the offending search results (termed as "de-referencing") from all its domain name extensions. The Court considered various provisions of the E.U. Directive 95/46 and Regulation 2016/679. The Court noted that the CNIL had regarded as insufficient Google's geo-blocking proposal in the context of privacy of citizens. Google had taken the stand that all links cannot be removed without geographical limitation, as such removal would result in "*disregard of the principles of courtesy and non-interference recognised by public international law*" and would disproportionately infringe the "*freedoms of expression, information, communication and the press guaranteed, in particular, by Article 11 of the Charter.*"

65. Thus, the Court was considering the following three questions:

- (i). Should the right to de-referencing extend to all domain names used by the search engine so that the links no longer appear, irrespective of the place from where the search is initiated and even if it is conducted from a place outside the territorial scope of the EU Directive 95/46?
- (ii) If the answer to the above question is in the negative would it require the search engine operator i.e. Google only to remove the links in issue on the domain name corresponding to the State in which

the requests is deemed to have been made i.e. for example a country specific domain?

(iii) Should the right to de-referencing only mean that the results have to be removed using the geo-blocking technique conducted on the basis of the requestor's name from an I.P. address located in the State of residence of the person who sought enforcement of the right to de-referencing i.e. to the territory where the Directive 95/46 is applicable?

66. The Court, in the context of the above question observes as under:

*“56. The internet is a global network without borders and search engines render the information and links contained in a list of results displayed following a search conducted on the basis of an individual's name ubiquitous (see, to that effect, judgments of 13 May 2014, Google Spain and Google, C-131/12, EU:C:2014:317, paragraph 80, and of 17 October 2017, Bolagsupplysningen and Ilsjan, C-194/16, EU:C:2017:766, paragraph 48).*

...

*70. In addition, it is for the search engine operator to take, if necessary, sufficiently effective measures to ensure the effective protection of the data subject's fundamental rights. Those measures must themselves meet all the legal requirements and have the effect of preventing or, at the very least, seriously discouraging internet users in the Member States from gaining access to the links in question using a search conducted on the basis of that data subject's name (see, by analogy, judgments of 27 March 2014, UPC Telekabel Wien, C-314/12, EU:C:2014:192, paragraph 62, and of 15 September 2016, McFadden, C-484/14, EU:C:2016:689, paragraph 96).*

...



71. It is for the referring court to ascertain whether, also having regard to the recent changes made to its search engine as set out in paragraph 42 above, the measures adopted or proposed by Google meet those requirements.

72. Lastly, it should be emphasised that, while, as noted in paragraph 64 above, EU law does not currently require that the de-referencing granted concern all versions of the search engine in question, it also does not prohibit such a practice. Accordingly, a supervisory or judicial authority of a Member State remains competent to weigh up, in the light of national standards of protection of fundamental rights (see, to that effect, judgments of 26 February 2013, Åkerberg Fransson, C-617/10, EU:C:2013:105, paragraph 29, and of 26 February 2013, Melloni, C-399/11, EU:C:2013:107, paragraph 60), a data subject's right to privacy and the protection of personal data concerning him or her, on the one hand, and the right to freedom of information, on the other, and, after weighing those rights against each other, to order, where appropriate, the operator of that search engine to carry out a de-referencing concerning all versions of that search engine."

67. Finally, the Court holds that the search engine is not required to "carry out that de-referencing on all versions of its search engine, but on the versions of that search engine corresponding to all the Member States, using, where necessary, measures which, while meeting the legal requirements, effectively prevent or, at the very least, seriously discourage an internet user conducting a search from one of the Member States on the basis of a data subject's name from gaining access, via the list of results displayed following that search, to the links which are the subject of that request."

68. Thus, the opinion of the Court was that the national Court of each member state in the EU would have to adjudicate the right to privacy and the personal data of the citizens on the one hand and the right to freedom of information on the other and while weighing the two, the Court would have to direct as to whether the search engine has to de-reference only specific country domain name extensions or all versions of the search engine. In effect, therefore, the language of the provisions of the EU directive and regulations was interpreted by the Court to hold that the language as it exists does not require a global de-referencing.

69. More recently i.e. on 3<sup>rd</sup> October, 2019 the CJEU ***Eva Glawischnig-Piesczek v. Facebook Ireland Limited***<sup>6</sup>, has ruled on the interpretation of EU Directive 2000/31 in the context of the Plaintiff's plea that statements harmful to her reputation appeared on the social network of Facebook, which she sought removal of. In the said context, the Court holds that national courts of a member state can order blocking of access to the information on a worldwide basis. The court's conclusions are as under:

*“53 In the light of all the foregoing, the answer to the first and second questions is that Directive 2000/31, in particular Article 15(1), must be interpreted as meaning that it does not preclude a court of a Member State from:*

- ordering a host provider to remove information which it stores, the content of which is identical to the content of information which was previously declared to be unlawful, or to block access to that information, irrespective of who requested the storage of that information;*
- ordering a host provider to remove information*

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<sup>6</sup> Case C-18/18

*which it stores, the content of which is equivalent to the content of information which was previously declared to be unlawful, or to block access to that information, provided that the monitoring of and search for the information concerned by such an injunction are limited to information conveying a message the content of which remains essentially unchanged compared with the content which gave rise to the finding of illegality and containing the elements specified in the injunction, and provided that the differences in the wording of that equivalent content, compared with the wording characterising the information which was previously declared to be illegal, are not such as to require the host provider to carry out an independent assessment of that content, or*

*– ordering a host provider to remove information covered by the injunction or to block access to that information worldwide within the framework of the relevant international law.”*

70. The position in India, insofar geo-blocking and global injunctions is concerned, is not fully settled. In ***You Tube v. Geeta Shroff*** **FAO 93/2018 (Decided on 17<sup>th</sup> May, 2018)**, a ld. Single Judge of this Court was dealing with an offensive post, which was only removed from the India domain and not from global platforms. In this context, the Court considered the ***Equustek*** litigation as also the Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act, 2010 of the USA. The Court thereafter, observed as under:

*“The Court would note that it was never the case of Google that the contents of the offending post had been uploaded from a place outside India. It held that the contents have been uploaded from India, hence they were ordered to be removed from the internet so as to restore the position as it was prior to the uploading of*

*the contents. The impugned order went on to hold that the contents which were uploaded from India, if transposed outside the jurisdiction of the country, cannot be said to be beyond the jurisdiction of India, and it could well be blocked or removed following the path by which it was uploaded. The Court is of the view that in the first instance, the injunction order dated 04.06.2015, which has not been challenged, has attained finality. It holds that on the basis of the pleadings and/or lack of denial from Google that the offending post had been uploaded from India, Google was required to remove it so as to restore status quo ante.”*

In fact, the Court observed that even if the post was uploaded from outside India, the same ought to have been disclosed to the Court at the initial stage and not after the interim order had attained finality. Thus, the appeal of Google was dismissed as withdrawn. The said order dated 17<sup>th</sup> May, 2018 was challenged before the Supreme Court in SLP 24089/2018, which was dismissed as withdrawn on 26<sup>th</sup> October, 2018. Thus, in ***You Tube v. Geeta Shroff (supra)***, Google was directed to globally block the offending content.

71. Recently, in ***Subodh Gupta v. Herdscene & Ors. CS(OS) 483/2019 Order dated 18<sup>th</sup> September, 2019***, in the context of defamatory content, a Id. Single Bench has directed removal of all the defamatory posts pertaining to the Plaintiff, without any geographical limitation.

### **Interpretation of the provisions of the Act**

72. The main provision relied upon by all the platforms is Section 79 of the Act. The said provision has been interpreted in various judgments including the Supreme Court judgment in ***Shreya Singhal*** (supra). In ***Shreya Singhal***, the Supreme Court was concerned with the question as to

whether Section 79 and other provisions i.e. Sections 66A and 69A were Constitutionally valid. The Court, while balancing the rights of citizens under Article 19(1)(a) with the provisions of the IT Act deals with the chilling effect which could result if the provisions of the same are interpreted broadly. On the question of chilling effect, the court observes as under:

***“Chilling Effect And Overbreadth***

*87. Information that may be grossly offensive or which causes annoyance or inconvenience are undefined terms which take into the net a very large amount of protected and innocent speech. A person may discuss or even advocate by means of writing disseminated over the internet information that may be a view or point of view pertaining to governmental, literary, scientific or other matters which may be unpalatable to certain sections of society. It is obvious that an expression of a view on any matter may cause annoyance, inconvenience or may be grossly offensive to some. A few examples will suffice. A certain section of a particular community may be grossly offended or annoyed by communications over the internet by “liberal views”—such as the emancipation of women or the abolition of the caste system or whether certain members of a non-proselytizing religion should be allowed to bring persons within their fold who are otherwise outside the fold. Each one of these things may be grossly offensive, annoying, inconvenient, insulting or injurious to large sections of particular communities and would fall within the net cast by Section 66-A. In point of fact, Section 66-A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the section and if it is to withstand the test of constitutionality, the chilling effect on free*

*speech would be total.”*

73. The Court further holds that if a statute is invalid, the fact that it could be administered in a reasonable manner cannot save it. After applying the doctrine of severability, the Court holds that Section 66A is severable and the provision as a whole was held to be unconstitutional. However, insofar as Section 79 is concerned, the Court examined the provisions of Section 79 along with the due diligence provisions required under the Rules. After considering the said two provisions, the Court held as under:

*“121. It must first be appreciated that Section 79 is an exemption provision. Being an exemption provision, it is closely related to provisions which provide for offences including Section 69-A. We have seen how under Section 69-A blocking can take place only by a reasoned order after complying with several procedural safeguards including a hearing to the originator and intermediary. We have also seen how there are only two ways in which a blocking order can be passed—one by the Designated Officer after complying with the 2009 Rules and the other by the Designated Officer when he has to follow an order passed by a competent court. The intermediary applying its own mind to whether information should or should not be blocked is noticeably absent in Section 69-A read with the 2009 Rules.*

*122. Section 79(3)(b) has to be read down to mean that the intermediary upon receiving actual knowledge that a court order has been passed asking it to expeditiously remove or disable access to certain material must then fail to expeditiously remove or disable access to that material. This is for the reason that otherwise it would be very difficult for intermediaries like Google, Facebook, etc. to act when millions of requests are made and the intermediary is then to judge as to which of such requests are*

*legitimate and which are not. We have been informed that in other countries worldwide this view has gained acceptance, Argentina being in the forefront. Also, the Court order and/or the notification by the appropriate Government or its agency must strictly conform to the subject-matters laid down in Article 19(2). Unlawful acts beyond what is laid down in Article 19(2) obviously cannot form any part of Section 79. With these two caveats, we refrain from striking down Section 79(3)(b).”*

From the above decision of the Supreme Court, it is clear that the intermediary need not apply its own mind as to whether the information should be blocked or not. However, the actual knowledge that can be attributed to an intermediary is only by a Court order asking it to “*expeditiously remove or disable access*”. Thus, Section 79(3)(b) was read down by the Supreme Court in the manner as extracted herein above.

74. The question that has arisen in the present case is what would constitute removal or disabling access within the meaning of Section 79. Can removal or disabling access be geographically limited or should it be global?

75. All the platforms have unanimously agreed in their pleadings that they have already blocked or disabled access to the URLs specified by the Plaintiffs insofar as the India domain is concerned. The question is whether the platforms can be directed to block the content on a global basis, or would the jurisdiction of Indian courts only extend to directing blocking in the country domain. In order to appreciate this argument raised by the platforms, the provisions of the Act, read with the Rules are relevant. The same are extracted below:

**The Information Technology Act, 2000**

**Section 2(j)**

*“computer network means the interconnection of one or more computers through—*

*(i) the use of satellite, microwave, terrestrial line or other communication media; and*

*(ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;”*

**Section 2(k)**

*“computer resource” means computer, computer system, computer network, data, computer data base or software;*

**Section 2(l)**

*“computer system” means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;*

**Section 2(w)**

*“intermediary” with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message;”*

**Section 79**

***“79. Exemption from liability of intermediary in certain cases.—(1) Notwithstanding anything contained in any law for the time being in force but subject to the***



*provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.*

*(2) The provisions of sub-section (1) shall apply if–*

*(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or*

*(b) the intermediary does not–*

*(i) initiate the transmission,*

*(ii) select the receiver of the transmission, and*

*(iii) select or modify the information contained in the transmission;*

*(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.*

*(3) The provisions of sub-section (1) shall not apply if–*

*(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;*

*(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.*

*Explanation–For the purposes of this section, the expression “third party information” means any information dealt with by an intermediary in its capacity as an intermediary.”*

**Information Technology (Intermediaries Guidelines) Rules, 2011**

**Rule 3**

“3. The intermediary shall observe following due diligence while discharging his duties, namely : —

...  
(2) Such rules and regulations, terms and conditions or user agreement shall inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information that —

...  
(b) is grossly harmful, harassing, blasphemous defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever;”

76. All the platforms i.e. Facebook, Google, YouTube and Twitter argue in one voice that they are intermediaries under Section 79. A perusal of their written statements shows that they claim that they do not either initiate, select or modify the transmission, and that they observe due diligence. Thus, sub-sections (1) and (2) of Section 79 are relied upon by the platforms. However, in order to avail of the exemptions provided under Section 79(1) and (2), the intermediaries have a duty to “expeditiously remove or disable access”. The intermediaries have to remove or disable access to “that material”. The said material would be the information or data “residing in or connected to a computer resource”. What would be the material to which access is to be disabled or expeditiously removed? The answer to this is in the 2011 Rules. Under Rule 3(2), the information or data which constitutes “that material” would be ‘the material or information that is grossly

harmful, harassing, blasphemous, defamatory.... or otherwise unlawful in any manner whatsoever’. Thus, the access would have to be disabled to any material or information which falls in any of these categories from (a) to (i). If a material or information falls in this category, upon receiving a Court order, the intermediary has to remove expeditiously or disable access to the same.

77. From which locations is the removal or disabling to take place? The answer to this is again in Section 79(3)(b). The removal or disablement to the offending material has to take place “on that resource”. What constitutes “that resource”? It is a computer resource in which the “information, data or communication link” is “residing in” or is “connected to”.

78. Computer resource is defined as a computer, a computer system or a computer network. It is not merely a single computer. It encompasses within itself a computer network, which would include a maze or a network of computers. Such a computer network could be a global computer network. Thus, a proper reading of Section 79(3)(b) would mean that if any information, data is residing in or connected to a computer network, i.e. a computer resource, the intermediary has to remove or disable access to the said information or data on that resource. The use of the words “that material” and “that resource” shows that the same is intricately connected to the initial part of the provision which deals with “any information, data or communication link” and “a computer resource.” Thus, if any information or data has been uploaded or is residing in a computer resource i.e. a computer network, the information or data which has to be removed or disabled from that very computer resource or network. The computer resource in the initial part of the Section is the same computer resource as

used in the later part of the Section. The latter resource cannot be a sub-set or a species of the former. It has to be the entire computer resource which was initially connected when the uploading of the information or data took place. Thus, if an information or data has been uploaded on a computer network, the platforms would be bound to remove it and disable it from that computer network completely. Any other interpretation of Section 79(3)(b) would not give proper meaning to the use of the words “that material” and “that resource”.

79. Thus, the removal and disablement is intricately connected to the information that is uploaded and the system upon which it is uploaded, where it resides.

80. There is no doubt that when the uploading of information or data takes place by a user upon any computer resource of these platforms, the same is made available on a global basis by the platforms.

81. The act of uploading vests jurisdiction in the Courts where the uploading takes place. If any information or data has been uploaded from India on to a computer resource which has resulted in residing of the data on the network and global dissemination of the said information or data, then the platforms are liable to remove or disable access to the said information and data from that very computer resource. The removal or disabling cannot be restricted to a part of that resource, serving a geographical location.

82. Thus, if uploading of data which the Court considers defamatory or offensive has taken place from IP addresses located in India, then Indian Courts would have jurisdiction to direct the platforms to remove and disable access to the said information or material, from the computer network of these platforms on to which the said information and data has been

replicated. The material/information having originated from India, courts in India would have jurisdiction to direct removal of the same. After uploading of the data or information if the same has been replicated or disseminated or stored in different servers/computers in different geographical locations, the same would not mean that Courts would lose jurisdiction on the same, as the data/material/information was uploaded from India, in the first place. So long as the uploading from India led to the data or information ‘residing in’ the network or being ‘connected to’ the network, the same ought to be disabled or blocked globally. Any other interpretation of Section 79 would result in reducing the efficacy of the provision which equates the computer resource which initially created the information and the resource from where it is to be disabled or removed.

83. The term “access” is defined extremely broadly under Section 2(a) and means “gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network.” Thus, by geo-blocking and disabling access to viewers from India with the offending material continuing to reside in global platforms which users can gain entry into, access would not be fully disabled. There is an obligation upon the intermediary to disable access, which would have to be read as meaning to completely disable access and not partially disable access. Further, expeditiously remove or disable access casts not just a negative obligation, but a positive obligation on the platforms to remove the offending content from that computer resource in a manner so as to ensure that access is fully disabled.

84. Removal or disabling of access under Section 79(3)(b) of information or data uploaded from India is not restricted as meaning removal or

disabling or access only to users located in India. The removal or disabling is linked with “that resource” and not with the location of the user or viewer. Thus, geo-blocking as is being suggested by the platforms would not be in consonance with Section 79 or with the purport and intent of the Supreme Court in the judgment of *Shreya Singhal (supra)*.

85. The question then arises as to what should be the exact order of injunction that is to be passed in the present case. As observed earlier, all the Defendant platforms have agreed to disable the access to the URLs in the India domain thus, they do not have an objection if the injunction is restricted to the India domain by availing of geo-blocking. They only object to the injunction being extended on a global basis.

86. Insofar as the argument that the Act only applies to the territory of India is concerned, a perusal of Section 75 of the Act shows that the IT Act does have extra territorial application to offences or contraventions committed outside India, so long as the computer system or network is located in India. Thus, so long as either the uploading takes place from India or the information/data is located in India on a computer resource, Indian courts would have the jurisdiction to pass global injunctions.

87. The capacity of these platforms to disable or block access is not really in doubt, inasmuch as any content or data or information which is violative of the platforms’ own policies is always blocked or removed on a global basis. This is admitted by all the platforms in the submissions made before the Court, as also the written statements and written submissions that have been filed before this Court. A perusal of YouTube’s Community Guidelines shows that the platform asks users to refrain from posting content with nudity/sexual content, “harmful or dangerous content”, which is described as

videos that “*encourage others to do things that might cause them to get badly hurt*”, hate speech, violent or graphic content, harassment and cyberbullying, spam, threats and content that violates copyrights. The YouTube Terms of Service further state as under:

*“YouTube reserves the right to decide whether Content violates these terms of service for reasons other than copyright, such as, but not limited to, pornography, obscenity, or excessive length. YouTube, may at any time, without prior notice and in its sole discretion, remove such Content and/or terminate a user’s account for submitting such material in violation of these Terms of Service.”*

Twitter’s Terms of Service state that all content is the sole responsibility of the uploader, and that Twitter may not monitor or control the content posted via its services, and cannot take responsibility for it. However, it states that it reserves the right to remove content that violates the User Agreement, including copyright/trademark violations, impersonation, unlawful conduct or harassment. Facebook’s Community Standards forbid “credible statements of intent to commit violence”, content from “dangerous organizations and individuals”, promoting/publicising crime, calling or advocating physical and/or other harm, content related to “regulated goods” such as drugs, firearms etc, content that encourages suicide or self-injury, content with child nudity/sexual exploitation of children, hate speech, violence and graphic content, sexual solicitation, “cruel and insensitive” content, spam, false news and content violating intellectual property. Thus, the policies of these platforms permit them to block and disable access in terms thereof. It is not disputed that blocking and disabling access when the platforms do it voluntarily is on a global basis.

88. The Defendants have relied upon the judgment in **Suresh Jindal (supra)** to argue that the Court ought not to grant an injunction against exhibition in foreign countries. On the basis of this judgment, it is argued that the injunction should be restricted only to a medium available in India. In this judgment, the Supreme Court has observed as under:

*“7. We have pondered on the nature of the relief that should be given to the petitioner. As we have already said, there is no doubt in our minds that, whether there was a concluded contract as claimed by the appellant or not, the appellant did play some part in making the film possible and that the respondents are acting unreasonably in denying him the benefit of the limited acknowledgment he is entitled to have. In view of respondent's disinclination to extend even this courtesy to the appellant, we were initially inclined to issue directions to the respondents to effect necessary changes in the title shots and introduce an acknowledgment of the appellant's services in appropriate language before distributing or exhibiting the film and its copies. We have no doubt that the grant of such a direction would be absolutely within the scope of suit and would mete out proper justice to the appellant. On second thoughts, however, we refrain from doing this. We learn that, though the picture was shot in India, it is being exhibited only in foreign countries. Even if we give a direction as proposed, it might be difficult for this Court to ensure that the respondents carry out these directions. Even the appellant would not be in a position to ensure that such directions are complied with. It is well known that a court will not issue directions over the compliance of which it has no control. In view of this we think that we should not issue such general directions as indicated above. We, therefore, restrict the scope of the interim relief and direct, in the interests of justice, that in case the film is proposed to be, or is exhibited either on the*



*T.V. or in any other medium in India, it shall not be so exhibited by the respondent or their agents unless it carries, in its title shots, an acknowledgment of the services rendered by the appellant to the producers in some appropriate language. We direct accordingly.”*

A perusal of this paragraph shows that the Supreme Court clearly holds that the grant of an injunction which would have a global effect would be absolutely within the scope of the suit and meet out proper justice. However, the said relief was not granted by the Supreme Court “on second thoughts” as it would have been difficult to enforce such an injunction.

89. In ***Modi Entertainment Network and Another v. W.S.G. Cricket PTE Ltd (2003) 4 SCC 341***, the Supreme Court clearly confirms the principles that even an anti-suit injunction can be granted which will have an impact in a foreign shore so long as the parties are subject to *in personam* jurisdiction. However, such a power should be exercised sparingly and in exceptional circumstances as also for good and sufficient reasons and to prevent any injustice. Thus, both the judgments cited before the Court do not lay down a proposition that Indian Courts cannot give injunctions which have a global effect.

90. Applying these very principles to the present case, it is clear that any order passed by the Court has to be effective. The parties before this Court i.e. the platforms are sufficiently capable to enforce an order of global blocking. Further, it is not disputed that the platforms are subject to *in personam* jurisdiction of this Court. The argument of the platform is that owing to the disparity in the law of defamation in the different jurisdiction, such an order ought not to be passed.

### ***Final conclusions***

91. *The race between technology and the law could be termed as a hare and tortoise race - As technology gallops, the law tries to keep pace.*

92. This Court is of the opinion that any injunction order passed by the Court has to be effective. The removal and disablement has to be complete in respect of the cause over which this Court has jurisdiction. It cannot be limited or partial in nature, so as to render the order of this Court completely toothless. If geo-blocking alone is permitted in respect of the entire content, there cannot be any dispute that the offending information would still reside in the global platforms of the Defendants, and would be accessible from India, not only through VPN and other mechanisms, but also by accessing the international websites of these platforms. It is not unknown that the Canadian, European and American websites of Google, Facebook, YouTube and Twitter can be accessed in India through various technological means. This would thus result in partial disabling and partial removal.

93. Orders of Courts are meant to be implemented fully and effectively. While the Defendant - platforms are raising issues in respect of comity of Courts, conflict of laws and the right of freedom of speech and expression under Article 19(1)(a), what is to be borne in mind is also the rights of privacy, the right of reputation of a citizen, national security, national integrity, threats to sovereignty, etc. The balance is always hard to seek, however, Courts can only endeavour to strike the balance. Ld. counsels for the parties have rightly raised various concerns on both sides. This Court has to implement the statute in its letter and spirit.

94. The interpretation of Section 79 as discussed hereinabove, leads this Court to the conclusion that the disabling and blocking of access has to be

from the computer resource, and such resource includes a *computer network*, i.e., the whole network and not a mere (*geographically*) *limited network*. It is not disputed that this resource or network is controlled by the Defendants. When disabling is done by the Platforms on their own, in terms of their policies, the same is global. So, there is no reason as to why court orders ought not to be global. All offending material which has therefore, been uploaded from within India on to the Defendants' computer resource or computer network would have to be disabled and blocked on a global basis. Since the unlawful act in case of content uploaded from India is committed from within India, a global injunction shall operate in respect of such content. In case of uploads which take place from outside India, the unlawful act would be the dissemination of such content in India, and thus in those cases the platforms may resort to geo-blocking.

95. Insofar as Google Plus is concerned, considering that it is only a product of Google, the said Defendant is deleted from the array of parties.

96. Under these circumstances, the following directions are issued to the platforms:

- i. The Defendants are directed to take down, remove block, restrict/disable access, on a global basis, to all such videos/ weblinks/URLs in the list annexed to the plaint, which have been uploaded from I.P. addresses within India.
- ii. Insofar as the URLs/links in the list annexed to the Plaint which were uploaded from outside India are concerned, the defendants are directed to block access and disable them from being viewed in the Indian domain and ensure that users in India are unable to access the same.

- iii. Upon the Plaintiffs discovering that any further URLs contain defamatory/ offending content as discussed in the present order, the Plaintiffs shall notify the platforms, which shall then take down/ block access to the said URLs either on a global basis, or for the India domain, depending on from where the content has been uploaded in terms of (i) and (ii) above.
- iv. If the Defendant - platforms, upon receiving notice from the Plaintiffs are of the opinion that the material/ content is not defamatory or violative, they shall intimate the Plaintiffs and the Plaintiffs would seek their remedies in accordance with law.
97. I.A. 855/2019 is disposed of in the above terms. Needless to add, that the views expressed herein are *prima facie* in nature.

**PRATHIBA M. SINGH, J.  
JUDGE**

**OCTOBER 23, 2019**  
*Rahul/dj*