

ODC-4

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
[Commercial Division]

IA NO: GA/1/2023
CS/41/2023

DABUR INDIA LIMITED
VS
DHRUV RATHEE AND ORS.

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 24th March, 2023.

Appearance:
Mr. Sudipta Sarkar, Sr. Adv.
Mr. Debnath Ghosh, Adv.
Mr. Sudhakar Prasad, Adv.
Mr. Pradipta Bose, Adv.
Mr. Biswarup Mukherjee, Adv.
...for the petitioner

Mr. Utpal Bose, Sr. Adv.
Mr. Phiroze Edulji, Adv.
... for the respondent nos. 2 and 3

Mr. Sakabda Roy, Adv.
...for the respondent no. 4

The Court:- Affidavit of Service filed by the petitioner be kept with the records.

This is a suit for protection of the intellectual property rights of the petitioner. The petitioner is aggrieved by a video which had been uploaded on 14th February, 2023 (the impugned video) by the respondent no. 1.

By an order dated 15th March, 2023, this Court had, inter alia, directed as follows:

“Prima facie, at the ad interim stage even though the underlying intent of the impugned video may not be objectionable, in making repeated direct and brazen references to the product Real of the petitioner, the Lakshamanrekha or the Rubicon has been crossed. In my view, the petitioner’s product Real has been specifically targeted, denigrated and discredited in the impugned video. Accordingly, the petitioner has been able to make out a strong prima facie case on merits. The balance of convenience and irreparable injury is also in favour of orders being passed.

In view of the aforesaid, the respondent no.1 is permitted to air, circulate or upload the impugned video only after removing the offending portions in the impugned video which makes any reference to the petitioner’s product Real and also not to make any use of the trademark, copyright content, trade dress, packaging label and logo of the petitioner’s Real brand of products.

The respondent no.1 is directed to carry out the aforesaid changes within a period of 7 days from the date of communication of this order. In default, appropriate orders would be passed on the respondent nos.2, 3 and 4 to block the impugned video if necessary. Let this matter appear on 22 March, 2023. In the meantime, the petitioner is also directed to effect service afresh on the respondent no.1 and file an Affidavit of Service on the returnable date.”

Thereafter, the matter had appeared on 22nd March, 2023. Being unsatisfied with the Affidavit of Service filed on behalf of the petitioner, this Court had directed the petitioner to file a fresh Affidavit of Service.

Significantly, the petitioner had effected service on the respondent no. 1 prior to moving of the application. Notwithstanding service, the respondent

no. 1 remains unrepresented. There is also no adjournment sought for by the respondent no. 1.

It is submitted on behalf of the petitioner that notwithstanding the order dated 15th March, 2023, the impugned video continues to be aired and published in various digital platforms including those belonging to the respondent nos. 2, 3 and 4.

It is submitted on behalf of the respondent no. 3 that the offending video is shown marked as "Private" and not public on its portal. This submission is contested on behalf of the petitioner who submits that there has been non-compliance with the order dated 15th March, 2023.

On behalf of the respondent no. 4, it is submitted that the impugned video is no longer available on its portal.

I find that the directions dated 15th March, 2023 passed by this Court categorically permitted the respondent no. 1 to publish, circulate and upload the impugned video only after removing the offending portions in the impugned video which made any reference to the petitioner's product. This direction has not been complied with till date.

It is submitted on behalf of all the parties that in view of the Notification dated 25th February, 2021 issued by the Ministry of Electronics and Information Technology, there is no embargo in this Court passing an order of restraint on the other respondents.

It is the plain and unqualified obligation of any person against or in respect of whom an order is made by a Court to obey the same unless and

until the order has been set aside, modified or varied. The uncomprising nature of this obligation is fundamental to the Rule of Law.

In this case, there has been no compliance with the order dated 15th March, 2023 by the respondent no.1.

In view of the incalculable damage which the impugned video may have, in my view, the balance of convenience and irreparable injury is overwhelmingly in favour of further orders being passed.

In view of the aforesaid, the respondent nos. 2, 3 and 4 are directed to take down/remove/block and restrain access to the impugned video from all the URL/Web Links insofar as they are in the control and domain of the respondent nos. 2 to 4.

It is further directed that in case any other URL/Web Links contains/publishes/broadcasts the impugned video, the petitioner shall be at liberty to approach this Court to seek appropriate reliefs if necessary.

Let this matter appear on 30th March, 2023 for appropriate orders.

(Ravi Krishan Kapur, J.)