

Court No. - 71

Case :- MATTERS UNDER ARTICLE 227 No. - 2884 of 2020

Petitioner :- Google Llc

Respondent :- Shri Arun Kumar Mishra And Another

Counsel for Petitioner :- Vinayak Mithal

Case :- MATTERS UNDER ARTICLE 227 No. - 2885 of 2020

Petitioner :- Google India Private Limited

Respondent :- Shri Arun Kumar Mishra And Another

Counsel for Petitioner :- Raghuvansh Misra

Hon'ble Mahesh Chandra Tripathi,J.

Heard Shri Anoop Trivedi, learned Senior Counsel assisted by Shri Vinayak Mithal as well as Shri Manish Goyal, learned Senior Counsel assisted by Shri Avi Tandon and Shri Raghuvansh Mishra appearing for the petitioners.

Since the controversy involved in both the petitions are similar, they have been heard together and common order is being passed.

The facts of MATTERS UNDER ARTICLE 227 No. - 2884 of 2020 are being taken as a leading case for passing the present order.

Present petition has been preferred for setting aside the order dated 14.09.2020 passed by the trial court and for a further direction to allow the stay application filed by the petitioner under Section 151 of Code of Civil Procedure, 1908 before the trial court.

This much is reflected from the record that respondent no.1 (Shri Arun Kumar Mishra) had filed Civil Suit No.700 of 2019 for permanent injunction, mandatory injunction and damages before the Civil Judge (SD) against respondent no.2 (Google India Private Ltd.) and YouTube inc. (a subsidiary of the petitioner i.e. Google LLC. The said suit sought takedown/ removal of videos on the YouTube platform and the deindexing of search results from Google Search. An ex-parte decree dated 15.2.2020 was passed in the said suit by the trial court granting permanent injunction, a mandatory injunction and cost in favour of respondent no.1. It is alleged that summons in the said suit were never served either upon YouTube Inc. (renamed to YouTube LLC) or the petitioner. Thereafter, the petitioner filed an application under Order IX Rule 13 read with Section 151 CPC seeking setting aside of ex-

parte decree. While moving the said application precise ground has been taken that summons in the said suit were not duly served on the defendant no.2-Google LLC (petitioner herein) and as such the petitioner did not have knowledge of the said suit proceeding prior to passing of the said decree. The defendant no.2-Google LLC does not have any office at the address mentioned for the defendant no.2 in the memo of parties and the plaintiff deliberately had not mentioned the publicly available address of defendant no.2-Google LLC instead of mentioning the address of defendant no.1, which is different juristic entity and which is not appointed agent of defendant no.2-Google LLC. While pressing the aforesaid application plea was also taken by the applicant that it had received knowledge of the suit and the exparte decree dated 15.2.2020 for the first time on 28.4.2020 upon receipt of a request for blocking of certain URLs, through the webform publicly available at [https:// support. google.com/ legal/ troubleshooter/ 1114905?hl=en](https://support.google.com/legal/troubleshooter/1114905?hl=en), sent by the plaintiff's counsel intimating the applicant of the ex-parte decree dated 15.2.2020 and requiring compliance with the said exparte decree. However, on account of lock down prevalent at that time and consequent closure of courts the application could not be pressed well within time. By an order dated 14.9.2020 the trial court issued notice on the said application and directed the respondent to respond the same. The petitioner had also filed an application under Section 151 of CPC seeking stay on the effect and operation of the exparte decree till the disposal of the application under Order IX Rule 13 read with Section 151 CPC. Vide impugned order dated 14.9.2020 the trial court has dismissed the said stay application.

It is contended that the impugned order dismisses the petitioner's application in limine and without even providing an opportunity to the petitioner to be heard on its merits. The impugned order suffers from non-application of mind and is manifestly unreasonable. By exparte decree the trial court has passed a permanent and mandatory injunction, the effect of which would be the blocking of videos of news organization and de-indexing of news articles, without the relevant authors and publishers of these videos and news articles and reports being a party to the suit. The ex-parte decree also raises important questions of public interest, insofar as it has the

effect of removal/takedown (from YouTube) and deindexing (from Google Search) of news articles, reports and news videos, which the exparte decree does not even find to be defamatory, false or factually incorrect as on the date that they were published. The exparte decree also amounts to a prior restraint on speech, which is contrary to established principles of law. It is contended that in case the interim order is not passed by this Court, the petitioner would suffer irreparable loss and injury.

The matter requires consideration by this Court.

Issue notice to respondent no.1 on both the petitions, returnable at an early date. Steps may be taken within a week.

The respondent is accorded six weeks time to file counter affidavit. One week, thereafter, is accorded to file rejoinder affidavit. List in week commencing 23.11.2020.

Till the next date of listing, parties shall maintain status quo in the matter as on today.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the petitioner alongwith a self attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 5.10.2020

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