

**In the Court of Civil Judge (Jr. Divn), 1<sup>st</sup> Court, Contai**

**Present : Miss Rupama Banerjee.**

**Civil Judge (Jr. Divn), 1<sup>st</sup> Addl. Court, Contai (In-Charge)**

**O.S. 31 of 2021**

**C.I.S No. 16 of 2021**

**J.O. Code: WB01407**

**CNR: WBEMOB0000962021**

**Order No. 02**

**02.02.2021**

The record is taken up by way of put up for hearing application of ad interim injunction U/O 39 Rule 1 & 2 of CPC supported by an affidavit filed by the plaintiff today.

From the endorsement made by the Sherestader, it is found that no caveat has been lodged in connection with the instant suit.

Accordingly, the said application for temporary injunction is taken up for hearing.

The Ld. Advocate for the plaintiff moves the said application. The Ld. Advocate for the plaintiff files certain documents by *Firisty*. Let the same be kept with the record.

Heard Ld. Advocate for the plaintiff.

Perused the said temporary injunction application, the plaint and the documents filed by *firisty*.

This is a suit for declaration and permanent injunction.

Ld. Advocate of the plaintiff submitted that plaintiff lives in the jurisdiction of this Court and he has a business of cashew nut. During lockdown his business got affected and he is using WhatsApp, messenger to conduct his business. In January 2021 WhatsApp announced update privacy policy which states that WhatsApp will share user's data with facebook. The new privacy policy does not apply in Europe since it is illegal under GDPR. Ld. Advocate of the plaintiff submitted that the the plaintiff is feeling embarrass to see his business related transaction to be advertised unauthorzedly in other application like facebook. There was no open link for the plaintiff to update the policy but to agree with the terms and conditions levied by the WhatsApp. Ld. Advocate of the plaintiff is praying for ad interim injunction against the WhatsApp so that no third party interest is created in respect of the data and / or information of the plaintiff having WhatsApp No. 7908941664 stored under his server by sharing or displaying or advertising the same by someone else.

Plaintiff has filed various documents like screenshot of WhatsApp profile of plaintiff, screenshot of facebook profile of plaintiff, screenshot of WhatsApp privacy policy update, impugned privacy policy of WhatsApp, legal notice dated 20.01.2021, screenshot of tweets of made by WhatsApp dated 12<sup>th</sup> January and 16<sup>th</sup> January, 2021, screenshot of apps permission of WhatsApp messenger and details, report of the Telegraph online dated 20.01.2021, report of Indian express Edex live dated 15.01,2021, order of Hon'ble Apex Court of India dated 10.07.2020, Photocopy of plaintiff's Aadhar Card.

On perusal of the record the Court has observed that the privacy policy case regarding WhatsApp has already been filed under Art. 32 in the Supreme Court and such has

been filed by the Internet Freedom Foundation. Such matter is a res- subjudice issue. Another plea has been filed in the Apex Court by the Confederation of All India Traders. *This Court is of the opinion that the encrypted data falls under the concepts of metadata theory. The Court is of the opinion 1.39 Billion people lives in India and there is a Apex Court who is actually the custodians of the fundamental rights of all the citizens. The Court is of the opinion that Personal Data Protection Bill is pending in the Indian Parliament and the Indian Government already served a notice to WhatsApp CEO Will Chatcart, saying that any unilateral change in service, privacy terms is not appropriate and acceptable. The government also said that the proposed changes in the WhatsApp privacy policy cause serious concerns and that they should be withdrawn. This Court is of the opinion that all this matters are in a preliminary stage and under the surveillance of both the Apex Court and the Government of India. The Court is of the opinion that though the suit is filed in this Court to about a civil right but the Court is of the view that there is no obligation of the plaintiff to use such application for his business only. He could use other domain or create blog for purpose of his business. The matter has been looked by the Ministry of Electronics and Information Technology and further two cases are also filed in the apex Court and pending. There are other methods which could the plaintiff applied for protection his right. There are public interest litigation which the plaintiff could have filed before the Apex Court India and also before the Hon'ble High Court at Calcutta.* The urgency has made out in the plaint is not so convincing. The plaintiff could not bring out the prima facie case to show that his rights have been infringed at this stage.

The facts and circumstances of the case makes this Court believe that the object of granting order of ex-parte ad interim injunction would not be defeated by delay.

Hence, it is

**ORDERED**

**that the prayer for ad interim injunction is refused ex-parte at this stage.**

*Issue notice upon the principal defendant directing him to show cause as to why the plaintiff's prayer for temporary injunction shall not be granted, within 15 days from the date of service of notice.*

Sd/-

Civil Judge (Jr. Divn),

1<sup>st</sup> Court, Contai

(In-charge)

J.O. Code: WB01407

Sd/-

Civil Judge (Jr. Divn),

1<sup>st</sup> Court, Contai.

(In-charge)

J.O. Code: WB01407