



The Hon'ble Delhi

High Court in its recent judgment in *Swami Ramdev and another v. Facebook, Inc.*

and others^[1]

held that Indian Court can grant a global injunction in respect of the offending material or content, in order to disable or block the content

on a global basis.

Factual

Matrix

The suit was initiated by the Plaintiffs- Swami Ramdev and Patanjali Ayurved Ltd. against Facebook Inc., Google Inc., YouTube LLC, Google Plus, Twitter International Company and Ashok Kumar (*John Doe*) (Defendant Nos.1 to 6 respectively) praying for a permanent and mandatory injunction and damages.

The gist of the allegation is that

based on a book titled '*Godman to Tycoon-*

the Untold Story of Baba Ramdev', various defamatory remarks have been disseminated over the Defendants' platforms. The defamatory content contained in the said book was the subject matter of a judgment passed in CM (M)

556/2018

wherein a Learned Single Judge had restrained the publisher and author from publishing, distributing and selling the book without deleting the offending portions. The said judgment has also been challenged by the publisher before the Hon'ble Supreme Court and the same is pending. However, there is no order of stay in respect of the said judgment.

It is also pertinent to note that none

of the Defendants had any objection for blocking the URLs for the Indian Domain

but strong objections were raised by all the Defendants for the removal/blocking/ disabling of the impugned content on a global basis. On the other hand, according to the Plaintiffs, an order of global-blocking is ought to be passed for an effective remedy.

Arguments

Advanced

Plaintiff's

Submissions: Mr. Darpan Wadhwa, Ld. Senior Counsel, appearing on behalf of the Plaintiffs, submitted that the Defendants had sought protection under Section 79 of the Information Technology Act, 2000 ('Act') the ground that they are intermediaries. Relying upon the judgment in *Shreya Singhal v. Union of India*^[2],

he submitted that the phrase "actual knowledge" in Section 79 of the Act 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.

The Ld. Senior

Counsel had further submitted that under the Information Technology (Intermediaries Guidelines) Rules, 2011 ('Rules') an intermediary's role cannot be to adjudicate or decide as to whether the content is defamatory or not, but to remain passive and obey the orders of the Court.

Defendants' Submissions:

Submissions by Facebook Inc.

Facebook Inc., submitted before the

Hon'ble Court that the suit is bad in law for misjoinder/non-joinder of the persons whose details have been provided in the Basic Subscriber Information ('BSI').

He further placed his reliance on the judgments in *Google Inc. v. Equustek Solutions*, *Robert Angus and Clarma Enterprises*

Inc.^[3] ('Equustek-I') and *Google LLC v. Equustek Solutions Inc., et al.*^[4] ('Equustek-II') and submitted that the defamation

laws differ from jurisdiction to jurisdiction, and therefore, passing of global

disabling order would be contrary to the principle of Comity of Courts and would result in conflict of laws.

Submissions by Google Inc. and YouTube LLC

Google Inc.

and YouTube LLC respectively submitted that there is no mention as to what part

is offensive in the video. They placed reliance on the judgment of the Supreme

Court in *R. Rajagopal v. State of Tamil Nadu*^[5]

wherein it was held that the specific words which are defamatory have to be pointed out. They further placed reliance on the decision in *Playboy v. Chuckleberry*^[6]

to argue that a U.S. Court in the said case held that there could not be an injunction by a U.S. Court against the publication of a magazine titled 'Playmen' in Italy.

Submissions by Twitter

Twitter

submitted that the grant of a global injunction can have a regressive effect even in India and that the principles of the Comity of Nations and Comity of Courts require courts to respect the territoriality of their jurisdiction. To buttress its argument in support of geo-blocking, Twitter placed reliance on the

Judgment of High Court of Justice in Northern Ireland in *George Galloway v.*

William Frederick Frazer[7]

wherein it was held that no global injunction can be granted. It further placed

reliance on Suresh Jindal v. Rizosli

Corriere Della sera Prodzioni T.V. S.p.a.[8]

wherein the Supreme Court being conscious of the limitations, granted an injunction against dissemination only in India.

Analysis and Observations

Whether the

suit is liable to be dismissed for Mis-joinder/Non-joinder of parties

The Court

observed that in so far as the objection to non-impleadment of the author & publisher is concerned, the Plaintiffs have already availed their legal remedies against them and a detailed judgment has already been passed by the Ld. Single Judge in CM (M) 556/2018. With regard to the issue of non-impleadment of the individuals who have uploaded the videos and other offending contents, placing reliance on Ramesh

Hirachand Kundanmal v. Municipal Corporation of Greater Bombay[9]

the Court opined that the suit is not liable to be dismissed for non-joinder of

the alleged uploaders of the offending video or the publishers/author of the book.

Issue of 'Defamatory content'

The Hon'ble

Court perused the judgment in CM (M) 556/2018 dated 29-09-2018 and after a detailed

analysis of the relevant portions of the transcript of the offending video, the

Hon'ble Court opined that a perusal of the transcript of the video shows that the same is nothing but a summary of the book. Thus, the Court opined the similarity between the book and the video transcript prima facie establishes that the video is derived from the book and hence the same is defamatory.

Whether the Defendants are intermediaries and if

so, what should be the form of injunction order that is to be passed?

CONCEPT OF 'GEO-BLOCKING': which means 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.

Answering the

question of 'geo-blocking', the Hon'ble Court interpreted the provisions of the

Act in consonance with the Rules and observed that Defendants have argued in one voice that they are intermediaries under Section 79 of the Act. 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". And as per Rule 3(2) of the Rules, the access would have

to
be disabled to any material or information which falls in any of the
categories
from (a) to (i).
Thereafter, the
Hon'ble Court observed that the judgments cited by the Defendants do not lay
down a proposition that Indian Courts cannot give injunctions that have a
global effect. It was further observed that any order passed by the Court has
to be effective and the parties before the Court (i.e. the Defendants) are
sufficiently capable to enforce an order of global blocking.

Judgement- Geo-Blocking

After the remarkable
analysis of the foreign jurisprudence regarding 'geo-blocking', Justice
Pratibha M. Singh also observed that "*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*". Having
considered the entire facts on the touchstone of the provisions of the Act,
national and international precedents, the Hon'ble Court ruled that Indian
Courts can grant a global injunction in respect of the offending material or
content, in order to disable or block the content on a global basis.
Consequently, the Defendants were
directed to take down, remove, block, restrict/disable access, on a global
basis, to all the videos/weblinks/URLs as prayed by the Petitioners. Thus,
geo-blocking
of the offending content was ordered by the Hon'ble Court along with a global
injunction in respect of the same.

Conclusion- Geo-Blocking

In respect of the present case, in order to fully and effectively
implement the Court's order, a global injunction was the need of the hour.
Mere
geo-blocking the content would have rendered the order of the Court
completely
toothless. In the present scenario, the internet as we know has changed the
world indelibly. With the advent and rise of technology, the risks of its
misuse and exploitation have also irrefutably amplified. The dissemination of
views on the internet is an essential ingredient of an individual's freedom
of
speech and expression but at the same time its misuse may have
extra-territorial implications that need to be addressed and adjudged
effectively. In such a situation, jurisprudence of 'global injunction' which
is
still at the nascent stage, comes to the rescue which strikes a balance
between
the right to privacy, freedom of speech & expression and national
sovereignty.

Interestingly, Facebook Inc. has appealed against
the judgment of the Delhi High Court. The Hon'ble Division Bench comprising
of
Justice Muralidhar and Justice Talwant Singh has admitted the appeal and the
matter now stands posted for hearing on 7th December 2019. No
interim order is granted by the Hon'ble Bench, however, it was clarified that

the respondents of the said case would not be allowed to move a contempt application pending disposal of the appeal.

- [\[1\]](#) 2019 SCC OnLine Del 10701.
- [\[2\]](#) (2015) 5 SCC 1
- [\[3\]](#) 2017 SCC 34 (Supreme Court of Canada).
- [\[4\]](#) United States District Court, Northern District of California, San Jose Division, case No. 5:17-cv-04207-EJD, December 14, 2017.
- [\[5\]](#) (1994) 2 SCC 524.
- [\[6\]](#) 939 F. Supp. 1032 (S.D.N.Y. 1996)
- [\[7\]](#) [2016] NIQB 7
- [\[8\]](#) 1991 Supp (2) SCC 3.
- [\[9\]](#) (1992) 2 SCC 524.

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