



\$~34

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 109/2024**
SEQUOIA CAPITAL OPERATIONS LLC & ORS. Plaintiffs

Through: Ms. Shwetasree Majumder, Ms. Priya Adlakha, Mr. Vardaan Anand and Mr. Shiv Mehrotra, Advocates for P-1.
Mr. Akshay Maloo and Mr. Rajit Ghosh, Advocates for P-2 & 3.

versus

SEENE TRADER & ORS Defendants

Through: Ms. Anushka Sharda, Mr. Madhav Khosla, Ms. Smriti Nair and Ms. Moha Paranjpe, Advocates for D-3.
Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Advocate with Mr. Rahul Kumar Sharma, G.P. for D-7 & 8-DOT/ MEITY.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

%

ORDER
26.04.2024

I.A. 9242/2024 (seeking modification of order dated 5th February, 2024)

1. Through this application, Defendant No. 3 seeks a clarification/ modification of order dated 5th February, 2024.
2. Issue notice. Ms. Shwetasree Majumder, counsel for the Plaintiff No.1, accepts notice. Mr. Akshay Maloo, counsel for Plaintiff no.2, accepts notice. Considering the nature of the prayer made in the application, the Court has not called for a reply and has instead extensively heard the



counsel for the parties.

3. On 5th February, 2024 (“Injunction Order”), directions were issued to Defendant No. 3 to the following effect:

“18.5. Defendant No. 3, Telegram FZ-LLC, is directed to remove/ block Telegram channels/accounts as mentioned in DOCUMENT-C annexed with the plaint. They shall further delete all other groups/community groups created by/ administered by the administrators of the channels/ accounts listed in the aforementioned DOCUMENT-C. Further, they shall file in a sealed cover the necessary information pertaining to the identity of the admins of the groups/ channels mentioned in Document-C annexed to the plaint, as is available with them, within a period of four weeks from today.”

4. Ms. Anushka Sharda, representing Defendant No. 3/Applicant, has confirmed compliance with part of the afore-noted direction, specifically regarding the blocking of accounts listed in Document-C annexed to the plaint (“Document-C”) and also filing in sealed cover the necessary details of the admins of the group/channels mentioned in Document-C. However, she raises concerns about the additional direction to “delete all other groups/community groups created by/ administered by the administrators of the channels/ accounts listed in the aforementioned DOCUMENT-C”. Ms. Sharda contends that as an intermediary, Telegram FZ-LLC is not equipped nor legally obligated to proactively monitor, search, and remove content that might misuse the Plaintiff’s trademarks on its platform. Ms. Sharda argues that such an obligation put on Defendant No. 3, would be inconsistent with the law relating to intermediaries who are entitled to safe harbour protections under the Information Technology Act, 2000 and the rules framed thereunder. Moreover, Ms. Sharda emphasizes that the said additional directions necessitate Defendant No.3, Telegram FZ-LLC, to engage in the legal determination of trademark infringement—a role that is



beyond their capabilities and inappropriate for an intermediary. This, she argues, would not only place an undue burden on the Applicant but also be inconsistent with the legal protections granted to intermediaries. Ms. Sharda also highlights the technical and privacy considerations inherent in Defendant No. 3's platform architecture, to argue that they ought not to be subjected to a direction which is impractical to comply with.

5. Ms. Majumder on the other hand, states that in the event, the Applicant/ Defendant No. 3 were to identify any accounts which are created with any of the phone numbers mentioned in Document C, the Plaintiff can be intimated about the same, so that appropriate action can be taken.

6. Heard. The relief sought in the Plaintiff's suit against Defendant No. 3 concerns the specific Telegram accounts mentioned in Document B. To that extent the directions issued by the Court, have been complied with by Defendant No.3. In the opinion of this Court the other directions in paragraph no. 18.5, which the Plaintiff had requested and the court has granted at *ad-interim ex-parte* stage, has much wider ramifications. Ms. Anushka Sharda has highlighted technical and privacy constraints faced by Defendant No.3/Applicant, due to the inherent design of their application's architecture and data storage systems. She has explained that their systems are specifically engineered to uphold stringent user privacy standards, which prevent even the Applicant/Defendant No. 3 from accessing detailed user data. Thus, it is technically unfeasible for the Applicant to definitively identify all groups or channels that are created or administered by a particular user. Nonetheless, Ms. Sharda also acknowledged that while it is technically feasible for the Defendant No. 3 to attempt to identify groups and/or channels created by a specific user, this capability is strictly



contingent upon having precise identifiers such as usernames or phone numbers. She qualifies this point by emphasizing the inherent limitations of the Applicant's data storage systems and other technical factors that impact their operations. Consequently, even when provided with user identifiers, the Applicant/Defendant No. 3 cannot assure that the results of such a search would be exhaustive or definitive in determining all groups or channels associated with a particular user. In light of the above, finding merit in the contention urged by counsel for Defendant No. 3, the direction in paragraph no. 18.5 of the Injunction order needs to be modified.

7. The direction issued paragraph no. 18.5 of the Injunction order, shall now read as under:

“18.5. Defendant No. 3, Telegram FZ-LLC, is directed to remove/ block Telegram channels/accounts as mentioned in DOCUMENT-C annexed with the plaint. Further, they shall file in a sealed cover the necessary information pertaining to the identity of the admins of the groups/ channels mentioned in Document-C annexed to the plaint, as is available with them, within a period of four weeks from today. Defendant No.3 shall also provide a list of the channels/groups created by accounts/phone numbers enlisted in Document-C, to the extent possible, to the Court. The Plaintiffs shall thereafter be entitled to identify and supply proof of the content infringing their intellectual property rights within the identified groups, to the satisfaction of this Court and seek appropriate orders.”

8. With the above directions, the application is disposed of.

SANJEEV NARULA, J

APRIL 26, 2024

as