

(2019) 12 DEL CK 0448

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 1587 Of 2018, First Appeal From Order No. 121 Of 2019, Civil Miscellaneous Application No. 53754 Of 2018, 53090, 13262, 36212, 53093 Of 2019

M/S Alliance Business School & Anr

APPELLANT

Vs

Madhukar G Angur & Anr

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 39 Rule 2, Order 39 Rule 3(a), Order 39 Rule 3(b)

Alliance University Act, 2010 — Section 23

Citation : (2019) 12 DEL CK 0448

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Anand Sanjay, Suraj Kaushik, Jayant K. Sud, Priyanshu Upadhyay, Saniya Sud, Amit Kumar

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. The proceedings arise out of a suit for permanent injunction filed by Respondent No. 1 - Mr. Madhukar G. Angur against ERNET India, which is the registrar of the domain name 'www.alliance.edu.in'. The dispute relates to Alliance University (hereinafter, "University"), which is a private University constituted under the Alliance University Act, 2010 passed by the State of Karnataka.

2. Disputes have arisen between the two brothers who were in control of the University, namely, Mr. Madhukar G. Angur and Mr. Sudhir G. Angur. There are various civil and criminal proceedings pending between them and the entities/companies controlled by them. The dispute in the present case is, however limited to the domain name.

3. One of the suits, in respect of the same domain name, is pending

consideration before the Court of Additional City and Sessions Judge at Bengaluru. In the said suit, an order dated 25th February, 2017 has been passed by the Additional City and Sessions Judge at Bengaluru. The operative portion of the same reads as under:

"11. Point No.4 in view of my finding on the above Points No.1 to 3, I proceed to passing the following:

Order

IA. I filed under Or. XXXIX Rules &2 r/w Sec.151 CPC by the Plaintiff is hearby partly allowed as against the 1st defendant.

The 1st defendant or anybody acting on it's behalf are restrained from receiving any requests from any other person or entity other than the plaintiff and the registrant owner of the website www.alliance.educ.in M/s Alliance Business School represented by Mr. Sudhir Aungur and causing any changes in the website, parting with access keys or passwords, changing the admin ID and password or acting in any other manner that would give access to any third party other than the plaintiff and registrant owner of the website M/s. Alliance Business School represented by Mr. Sudhir Angur, pending disposal of the suit.

No order as to costs."

4. The suit continues to remain pending. Another suit is also pending in respect of the same domain name being Vivek Srivastava v. M/s Ernet India before the Additional City and Sessions Judge at Bengaluru. In the suit, order dated 12th August, 2017 has been passed in the following terms:

"6. On perusal of all these facts and material, it appears that the Plaintiff has got prima facie case in his favour. So, at this stage it is suffice that the Plaintiff is entitled for grant of an Ex-parte temporary injunction against the Defendants as prayed for in IA No.1 till the next date of hearing. If not, the very purpose of the suit will be frustrated by delay. As such, I am of the opinion to grant an Ex-parte T.I against the Defendant, as prayed in IA. No.1 till the next date of hearing.

According, I proceed to pass the following:

ORDER

Issue Ex-pate T.I. as prayed for in I.A. No. 1 against the Defendant till the next date of hearing.

Issue notice of I.A. NO. 1 & Suit summons to the Defendant, if PF is paid.

The Plaintiffs to comply the provisions of Order

39 Rule 3(a) and (b) of CPC

CALL ON:18.09.17"

5. The domain name in issue is www.alliance.edu.in, over which both the parties

claim control. All the allegations and counter allegations are that the said domain name and the website posted thereon are being used by the parties to malign each other. The university has been established under the Alliance University Act, 2010 and has a Board of Governors. It has thousands of students enrolled, who are pursuing various courses in the University. While the disputes between the two brothers ensue and are not resolved, it is clear that the domain name and the website hosted by the University cannot be misused by either of the parties for publication of any objectionable material against each other. Under Section 23 of the Act, the Board of Governors of the University is as under:

"The Board of Governors and its powers:-(1) The Board of Governors shall consist of the following, namely:

(i) The Chancellor - Chairperson

(ii) The Vice-Chancellor - Member

(iii) The Principal Secretary/ Secretary to the State Government in the Higher Education Department - Member

(iv) One eminent educationist and Academician preferably a Woman from the panel of Names to be recommended by the Visitor

(v) Three persons each of whom may be nominated by the Sponsoring Body - Member

(vi) one eminent educationist nominee of the University Grants Commission - Member"

6. In view of the fact that there are several independent persons on the Board, and in any event the domain name needs to be controlled by an independent person, and the content on the website ought to be periodically monitored, the suit before the Id. Trial Court is decreed in the following terms:

i. Neither Mr. Madhukar G. Angur nor Mr. Sudhir G. Angur, nor anyone acting for or on their behalf shall publish any objectionable, defamatory, libellous or maligning material against each other on the website and domain name www.alliance.edu.in

ii. The domain name shall be exclusively used for the activities of the University and not for airing any personal grievances of the two brothers against each, other including their families.

iii. The content currently on the website is being monitored by the IT Head of the University - Mr. Santosh Kawari. He shall continue to monitor the content on the website. An affidavit of compliance shall be filed before the Id. Trial Court by Mr. Santosh Kawari undertaking to abide by the directions.

iv. The content on the website shall be monitored on a periodic basis by Dr. V. B. Coutinho, Ex-Dean, Faculty of Law, Bangalore University (9311263035) who is appointed as an 'Administrator' in respect of the website and domain name

www.alliance.edu.in. The content shall be transmitted on a periodic basis to the Id. Administrator by Mr. Santosh Kawari.

v. If either party has any objections to any content on the website they are permitted to approach the Administrator who shall now be the Administrative contact even for the domain name.

vi. Mr. Santosh Kawari shall handover to the Administrator the user name and password of the domain name on or before 20th January, 2020 and the administrator shall change the password so as to ensure that the control of the domain name remains with the Administrator until the disputes between the parties are resolved.

vii. If any objection is received in respect of any content on behalf of any party by the Administrator, the Administrator shall direct the modification or removal of the said content within a period of one week after receiving the objections.

viii. The fee of the Administrator is fixed at Rs.2 lakhs per month, to which the parties have consented. The role of the Administrator would be restricted to monitoring of the website, retaining control of the website and to deal with any complaints or objections received by either party.

ix. The parties are permitted to expand the role of the Id. Administrator, who is a well-acknowledged academician, by mutual consent of both brothers and the University, on agreed terms.

x. The mandate of the Administrator would end upon the University and the warring brothers submitting a letter that they have resolved their disputes finally. In these terms, the suit shall stand decreed.

7. An affidavit shall be filed by Mr. Santosh Kawari before this Court within four weeks undertaking to comply with the above directions. The Id. Trial Court shall draw up the decree sheet in the above terms.

8. In case any further directions are required to be passed in respect of the Administrator / his role, the parties are permitted to approach this Court. The present order shall be placed in the other two suits pending before the Additional City and Sessions Judge, Bangalore for passing of appropriate orders.

9. Upon a request by the Administrator, ERNET shall make the necessary changes in respect of the administrative contact of the domain name.

10. With these observations both the petitions and all pending applications are disposed of. Dasti.