

\$~Suppl.-14

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 392/2021, I.As.10543/2021, 10544/2021, 10545/2021 &  
10546/2021

X ..... Plaintiff

Through: Mr.Abhishek Malhotra and  
Ms.Atmaja Tripathy, Advocates

versus

[HTTPS://WWW.YOUTUBE.COM/WATCH?V=IQ6K5Z3ZYS0](https://www.youtube.com/watch?v=IQ6K5Z3ZYS0)

AND ORS. ....Defendants

Through: Ms.Mamta Jha, Ms.Shruttima  
Ehersa and Mr.Vatsalya Vishal,  
Advocates for D-69 and D-70

**CORAM:  
HON'BLE MS. JUSTICE ASHA MENON**

**ORDER**

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**23.08.2021**

**[VIA VIDEO CONFERENCING]**

**I.A. 10545/2021 (Exemption)**

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

**I.A. 10544/2021 (by the plaintiff u/S 151 CPC for confidentiality of the proceedings)**

1. For the reasons stated in the application, the application is allowed and it is directed that at all times, including while uploading orders, the

identity of the plaintiff shall not be disclosed.

2. The application stands disposed of.

**CS(OS) 392/2021, I.As.10543/2021 (by the plaintiff u/O XXXIX Rules 1 & 2 CPC for interim injunction) & 10546/2021 (by the plaintiff u/S 80(2) CPC seeking exemption from serving defendant)**

1. Issue summons in the suit and notices in the applications.

2. Ms.Mamta Jha, Advocate, accepts summons and notices on behalf of the defendants No.69 and 70.

3. The remaining defendants be served by all permissible modes, returnable before the Joint Registrar.

4. The written statements to the suit and replies to the applications must be filed by the defendants within thirty days from the date of receipt of the summons. The defendants shall also file affidavit of admission/denial of the documents filed by the plaintiff.

5. The plaintiff is at liberty to file replication(s) to the written statements and rejoinder(s) to the replies filed by the defendants before the next date of hearing following the filing of the written statement(s)/reply(ies). The replication(s) shall be accompanied by affidavit of admission/denial in respect of the documents filed by the defendants.

6. Mr.Abhishek Malhotra, learned counsel for the plaintiff, urges this Court to grant interim protection against the publication/streaming/broadcasting, etc., of the suit videos on the various URLs/websites/mobile applications and other online platforms, portraying the

plaintiff in a manner that infringes her privacy. Learned counsel has submitted that the plaintiff is a well-known actor, particularly in Bengali films, and had been approached by Ram Gopal Verma Studios for filming a web-series. On the promise made to her of giving her the lead role in the web-series, the plaintiff was lured into participating in a demonstration video/trailer, comprising of explicit scenes of complete frontal nudity. However, the project fell through and the web-series was never produced.

7. In December, 2020, the plaintiff came across the videos, enclosed with the suit (referred to as the “**suit videos**”), which had been uploaded by the producer on his YouTube channel and website. The plaintiff requested the producer to remove the same and the producer removed the said suit videos from his YouTube channel and website. However, without the plaintiff’s consent, the websites, namely, defendants No.1 to 36, have uploaded the suit videos. Some of them also superimposed objectionable and obscene commentaries on the suit videos. As a consequence of such action, the plaintiff was constantly subjected to anonymous callers and also subjected to insults. Thus, the suit videos have resulted in loss of reputation as also great prejudice to the plaintiff’s professional endeavours.

8. It may be noted at this juncture that both the learned counsel had sought and were granted an opportunity to send through email to the Court Master, a short note along with the judgments they wished to rely on. Both sides have emailed the same.

9. Learned counsel for the plaintiff has relied on the judgment of the

Supreme Court in *K.S. Puttaswamy (Privacy-9J.) v. Union of India*, (2017) 10 SCC 1 to submit that the plaintiff was entitled to her privacy as a fundamental right. Reliance has also been placed on the decisions of this court in *Jorawer Singh Mundy v. Union of India*, 2021 SCC OnLine Del 2306 and *Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd.*, 2019 SCC OnLine Del 8494 to submit that interim protection can be granted to the plaintiff as she also has a right to be forgotten. Reliance has further been placed on the judgment of the Orissa High Court in *Subhranshu Rout v. State of Odisha*, 2020 SCC OnLine Ori 878.

10. Learned counsel for the plaintiff has also drawn attention of this Court to the provisions of the Information Technology Act, 2000, and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**IT Rules**”, for short), to submit that the defendants were obligated to remove the suit videos. Specific reliance has been placed on Rule 3(2)(b) of the IT Rules, which requires intermediaries, such as, the websites/defendants No.1 to 36, internet service providers/defendants No.37 to 68 and search engines/defendants No.69 and 70, to, within 24 hours of receipt of the complaint made by any individual/person in relation to any content, which shows the individual in partial or full nudity or in some sexual act or conduct, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it.

11. Ms.Mamta Jha, learned counsel for the defendants No.69 and 70, however, has opposed the grant of any interim relief, contending that the defendants were not aware of any agreement that permitted the broadcast

of the suit videos and involving consideration. It is also submitted that since the plaintiff had consented to the filming of the scenes in question, it would be necessary to see whether the defendants were under any obligation to prevent its further publication. Learned counsel also submitted that there were several judgments dealing with similar issues, where interim relief was not granted.

12. Learned counsel for the defendants No.69 and 70 has further opposed the grant of interim relief on the ground that the suit itself was not maintainable on the basis of the right to be forgotten. She has also relied on the judgment of the Madras High Court in *Karthick Theodore v. Registrar General*, 2021 SCC OnLine Mad 2755 declaring that there was no such right to be forgotten, since there was no statutory law in this regard. The learned counsel has also relied on *Dharamraj Bhanushankar Dave v. State of Gujarat*, 2017 SCC OnLine Guj 2493 and *Anchit Chawla v. Google India and Ors.* [Order dated 21<sup>st</sup> December, 2018 in WP(C) 13921/2018] to submit that the right to seek disablement of search results in the manner sought by the plaintiff, has been rejected by the courts. Learned counsel has submitted that the judgment in *Zulfiqar Ahman Khan (supra)* was not applicable to the facts of the present case, as it related to alleged defamation on account of alleged fake “#MeToo” claims and in any case, the case was ultimately settled. In the case of *Subhranshu Rout (supra)*, the court had recognized that currently there was no right to be forgotten in this country and had directed the petitioner in that case to approach the publishing platforms to take down the objectionable rape videos.

13. The learned counsel for the defendants No.69 and 70 has further submitted in the written note that Rule 3(2)(b) of the IT Rules had to be read in juxtaposition with Sections 67 and 67A of the Information Technology Act, 2000, which excluded material that was published in the interest of science, literature, art or learning or other objects of general concern. Learned counsel has submitted that since the suit videos related to a film and the videos were shot with the consent of the plaintiff, the case did not fall within the parameters of said Rule 3(2)(b). In any case, Rule 3(2)(b) requires a complaint from the victim or authorized representative, which was absent in the present case and therefore, Rule 3(2)(b) may not be strictly applicable.

14. In view of the submissions made, it is clear that the matter requires consideration in greater depth. Suffice it to note, at this juncture, that the suit videos contain explicit material, as included under Rule 3(2)(b) of the IT Rules. Whether the suit is maintainable or not, is a question that can wait for a later stage when pleadings are completed inasmuch as, *Jorawer Singh Mundy (supra)* was a writ petition while *Zulfiqar Ahman Khan (supra)* was filed as a suit. The submission made by learned counsel for the defendants No.69 and 70 that the suit videos had been shot with the consent of the plaintiff and therefore, she would not be entitled to any relief, is a submission that does not find favour with this Court.

15. Even if it were true, as submitted by learned counsel for the defendants No.69 and 70, that the plaintiff may have participated in the filming of the scenes in question voluntarily and for consideration, she has clearly stated that she has not licensed any of the URLs/websites and

the search engines to publish and transmit the same on YouTube. She has also clearly stated in the plaint that the producer had actually uploaded the suit videos on his YouTube channel and the website, but as soon as she objected to it, he had taken them down. Now, if others were circulating the same for obvious monetary and other prurient benefits, the plaintiff cannot be denied any relief during the pendency of the suit.

16. This court in *Zulfiqar Ahman Khan (supra)* had taken note of the impact of publication on the personal and professional life of the plaintiff and had issued interim orders to prevent further irreparable damage by stopping republication. There it was the publication of articles. In the present case, it is explicit videos that are being circulated, having a clear and immediate impact on the reputation of the person seen in the videos in a state of nudity. The plaintiff in this case has not permitted even the producer of the videos to publish them on his YouTube channel and website and the producer has respected her decision and protected her sentiments by taking down the videos. The producer could have at least claimed that she had consented to filming her in the nude. But, he has acted on her request. The defendants have no such consent in their favour.

17. It is true that the High Courts of Madras and Orissa have held that there is no statutory right to be forgotten. However, at this stage, this Court is not coming to any final conclusions. But, following the view taken by a co-ordinate Bench of this court in *Zulfiqar Ahman Khan (supra)* that the “right to privacy” includes the right to be forgotten and the right to be left alone as “inherent aspects”, this Court is also of the opinion that the right to privacy of the plaintiff is to be protected,

especially when it is her person that is being exhibited, and against her will.

18. In the circumstances and in view of the fact that the plaintiff is entitled “to be left alone” and “to be forgotten”, she is entitled to protection from invasion of her privacy by strangers and anonymous callers on account of such publication/streaming/transmission of the suit videos by the defendants.

19. Thus, till the next date of hearing, the defendants are directed to remove/pull down the suit videos, footage, clip audio only and/or any part of the suit videos and to stop uploading/publishing/streaming/transmitting/broadcasting/communicating to the public the suit videos, footage, clip audio only and/or any part of the suit videos on their web portals/electronic/digital platforms/mobile applications/online platforms, including YouTube channels as well as any mirror/redirect/alphanumeric websites created by Defendant Nos. 1-36. The defendants No.37 to 68 are further directed to disclose the details of all servers being used by the defendants No.1 to 36 and any other websites/mobile applications/electronic/digital platforms that are found to be indulging in the broadcast/communication/transmission to the public the suit videos or clips. The defendants No.69 and 70/search engines are also directed to take down/delete the suit videos/clips from their search results pages, listings of websites/URLs/mobile applications/electronic/digital platforms. The compliance by the defendants, i.e. the defendants No.1 to 36, the defendants No.37 to 68 and the defendants No.69 and 70, be made within a period of 36 hours, after receiving the communication of this



order. The plaintiff is also permitted to communicate this order to the other electronic/digital platforms, if found publishing/streaming/transmission, etc., of the suit videos/clips.

20. Provisions of Order XXXIX Rule 3 CPC be complied with.

21. List on 22<sup>nd</sup> September, 2021 before the Joint Registrar for completion of service and pleadings.

22. The order be uploaded on the website forthwith.

**ASHA MENON, J**

**AUGUST 23, 2021/s**