

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5651/2022

*[FACEBOOK INDIA ONLINE SERVICES PVT. LTD., THR. ITS DIRECTOR ..VS.. TRIBHUVAN S/O
LALCHAND BHONGADE AND ANOTHER]*

AND

WRIT PETITION NO. 5652/2022

*[META PLATFORMS, INC. THR. C.E.O. ..VS.. TRIBHUVAN S/O LALCHAND BHONGADE AND
ANOTHER]*

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

WP No. 5651/2022

Mr. Vivek Reddy, Senior Advocate with Mr. Nandagopal C. with
Mr. Varun Pathak, Advocate with Mr. Akhil Shandilya, Advocate
with Mr. M.J. Kulkarni, Advocate for the petitioner
Mr. Ajit Warriar, Advocate for respondent no. 2

WP No. 5652/2022

Mr. Soli Cooper, Senior Advocate with Mr. Yohann Cooper,
Advocate with Mr. Ajit Warriar, Advocate with Mr. Bryan Pillai
with Mr. C.B. Dharmadhikari, Advocate for the petitioner
Mr. Varun Pathak, Advocate for respondent no. 2

CORAM : MANISH PITALE, J.

DATED : 15/09/2022

Heard Mr. Vivek Reddy, learned Senior Advocate
appearing for the petitioner in Writ Petition No.
5651/2022 and Mr. Soli Cooper, learned Senior Advocate
appearing for the petitioner in Writ Petition No.
5652/2022.

2. These writ petitions are filed by two opposite
parties in Consumer Complaint filed by the respondent no.
1 herein before the District Consumer Dispute Redressal

Commission, Gondia (for short the “Commission”).

3. The petitioners are aggrieved by the complaint being partly allowed and specific directions being given against them in the impugned order passed by the Commission.

4. At the outset, it is submitted by the learned Senior Advocates appearing for the petitioners that writ petitions have been filed instead of following the remedy of appeal available against the impugned order passed by the Commission for the reason that, according to the petitioners, the impugned order is passed wholly without jurisdiction. It is submitted that the Complaint in the form in which it was filed was not maintainable against the petitioners and the respondent no. 1, if at all he had any grievance, ought to have raised it against Mariya Studio i.e. the entity, which had allegedly duped him.

5. It is submitted on behalf of the petitioners that in the replies filed before the Commission, it was specifically stated and submissions were also made to impress upon the Commission that the petitioners have complete immunity in such matters under Section 79 of the Information Technology Act, 2000 (for short the “Act of 2000”) which pertains to exemption from liability of intermediary in certain cases.

6. By inviting attention of this Court to the definition of the term “intermediary” as defined in Section 2(w) of

the Act of 2000 and by relying upon the judgments of the Hon'ble Supreme Court in the cases of *Shreya Singhal Vs. Union of India [(2015) 5 SCC 1]* and *Google India Private Limited Vs. Visaka Industries [(2020) 4 SCC 162]*, it was submitted that the Commission could not have entertained the Complaint against the petitioners.

7. It was emphasized that under Section 81 of the Act of 2000, the provisions of the said Act have overriding effect and they operate notwithstanding anything inconsistent contained in any other law. The distinction between the Act of 2000 and the Consumer Protection Act, 2019 is highlighted by emphasizing upon the fact that the Consumer Protection Act, 2019 is in addition to and not in derogation of other legislations.

8. On this basis, it is submitted that the impugned order was passed without jurisdiction and therefore, this Court may entertain these writ petitions.

9. Issue notice to the respondents, returnable on **15.11.2022.**

10. Mr. Ajit Warriar, learned counsel waives service of notice for respondent no. 2 in Writ Petition No. 5651/2022 and Mr. Varun Pathak, learned Counsel waives service of notice for respondent no. 2 in Writ Petition No. 5652/2022.

11. As specific directions are given by the Commission to the petitioners to pay an amount of Rs.599/- to the respondent no. 1 for product not delivered and Rs.25,000/- towards mental agony and legal costs, there shall be stay to the impugned order passed by District Consumer Dispute Redressal Commission, Gondia, subject to the petitioners depositing the said amounts in this Court within a period of four weeks from today.

12. The respondent no. 1 would be at liberty to apply for withdrawal of the said amounts.

JUDGE