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O.A.No.366 of 2023
in C.S (COMM DIV) No.98 of 2022
S.SOUNTHAR, J.

The instant application has been filed by the applicant/plaintiff seeking injunction restraining the respondents from removing/delisting the mobile applications (mobile apps) owned and operated by the applicant in Google Play Store for its refusal or failure to accept or subscribe to the Google payments in terms of Service-Seller (IN) posted on 02.06.2022, Payment Policies, Policies relating to service fees, terms etc.

2. According to the applicant/plaintiff, it is engaged in the business of online matchmaking and it is an internationally renowned provider of online services for individuals looking to meet and marry. The applicant's app is listed in the Google Play Store app pre-loaded in mobile phone operating system android owned and operated by the respondents. The applicant entered into a Developer Distribution Agreement with 3rd respondent for listing of applicant's App in Google Play store.



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3. The 7th respondent is a company incorporated under the laws of India and it operates as an online "Payment Aggregator" facilitates e-commerce sites and merchants to accept various payment instruments from customers for completion of payment obligations without a need for merchants to create a separate payment integration system of their own.

4. According to the applicant, around the year 2020, the respondents herein made the use of Google Play Billing System "GPBS" mandatory and exclusive for processing payments for downloading paid Apps, In-App Purchases.

5. It is also asserted by the applicant that on the basis of subsequent Investigation Report, the Competition Commission of India by order dated 25.10.2022 directed the respondents not to restrict app developers from using any third party billing/payment processing services, either for in-app purchases or for purchasing apps. The respondents were also directed not to discriminate or otherwise take any adverse measures against such apps using third party billing/payment process service in any manner.



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6. It was also asserted by the applicant that the respondents instead of complying with the orders passed by the Competition Commission of India in its letter and spirit, in order to circumvent the same, permitted the app developers in India to use “Alternative Billing System/User Choice Billing” along side and in addition to the GPBS. In effect, integrating of “GPBS” by app developers was made mandatory.

7. The applicant also asserted in the affidavit that as per the payment policy of the respondents they proposed to charge service fee at the rate of 15% for the first \$1M (USD) revenue earned by the app developer every year. For the revenue earned in excess of \$1M(USD), the service fee proposed by the respondents is at 30%. It is also stated that in cases where app developers offer alternative billing system in addition to Google Play Billing System for transaction in India, the service fee for such transaction using the Alternative Billing System is equal to the transaction via Google Play's Billing System reduced by 4%. In other words, even if customers make payment for app purchase or In-app purchase by utilizing Alternative



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Billing System, the respondents proposed to charge 11% or 26% as service charge, depending on revenue generated. It is stated by the applicant that when customers make payment by using Alternative Billing System levy of service fee by the respondents at the rate of 11% or 26% depending on the size of revenue generated by app developers in a year, without doing any service with regard to the payment, is on the face of it, unconscionable.

8. The learned Senior Counsel for the applicant by taking this Court to the Guidelines on Regulation of Payment of Aggregator and Payment of Gateways issued by Reserve Bank of India in DPSS.CO.PD.No.1810/02.14.008/2019-20, dated 17.03.2020 submitted that settlement of funds with merchants shall not be co-mingled with other business of the “Payment Aggregator”.

9. It is the contention of the applicant that taking advantage of the fact that the respondents android platform enjoys monopoly in the mobile phone usage, the respondents are compelling the applicant and other app developers to integrate “GPBS” and make them to agree to their payment



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policy of charging service fee at the rate of 11% and 26%, even in respect of the payments made by the customers through Alternative Billing System. In case applicant failed to agree for new payment policy of respondents, the respondents would delist the applicant's app from Google Play Store. It is submitted that if the standard form billing policy of the respondents is imposed on the applicant and the applicant's app are delisted from Google Play Store, the applicant would be put to very great and irreparable loss. The payment policy of the respondents in charging 11% to 26% (depending on Revenue) for the payments made by the customers by using Alternative Billing System is unconscionable on the face of it and hence the applicant has made out a *prima faice* case for grant of injunction. If the applicant's are delisted from Google Play Store for their failure to toe in line with the payment policy of the respondents, they would be put to irreparable loss and hardship. Therefore, the balance of convenience is also in favour of the applicant for grant of an order of injunction against delisting, till the respondents are heard.



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S.SOUNTHAR, J.

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10. Accordingly, there shall be an order of interim injunction restraining the respondents /defendants from removing/delisting the mobile applications (mobile apps) owned and operated by the applicant in Google Play Store in India till 01.06.2023.

11. Notice to the respondents returnable by 01.06.2023. Private notice is also permitted.



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24.04.2023

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Note: Issue Order Copy on 25.04.2023.

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