

(2014) 09 DEL CK 0441
In the Delhi High Court
Case No : CS(OS) No. 2975/2014

Fox Star Studios India Ltd.

APPELLANT

Vs

John Ceedge and Others

RESPONDENT

Date of Decision : 20-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3

Citation : (2015) 61 PTC 134

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Saikrishna Rajagopal, Sneha Jain, Savni Dutt and Avijit Sharma,
Advocates for the Appellant; Sudeep Chatterjee and Jaya Mandelia, Advocates
for the Respondent

Judgement

Manmohan Singh, J.

I.A. Nos. 19028/2014 & 19029/2014 (exemption)

Exemption allowed, subject to just exceptions.

The application is disposed of.

CS(OS) No. 2975/2014

Learned counsel for the plaintiff states that the plaintiff intends to file certain additional documents. Copies of the same have been handed over by him before Court at the time of hearing. Let the said documents be filed during the course of the day.

Let the plaint be registered as a suit.

Issue summons to the defendants, on filing of process fee and Regd. A.D. Covers within a week as well as through all modes including e-mail etc., returnable on 21st November, 2014.

Learned counsel appearing on behalf of defendant No. 23 accepts summons.

Hence, issuance of summons to said defendant is dispensed with.

I.A. No. 19027/2014 (u/o XXXIX R. 1 & 2 CPC)

1. Issue notice to the defendants, for the date fixed. Learned counsel appearing on behalf of defendant No. 23 accepts the notice. Hence, issuance of notice to said defendant is dispensed with.

2. The plaintiff has filed the present suit for permanent injunction for infringement of copyright, accounts of profits, delivery up, damages, etc. The plaintiff apprehends violation of its copyright by various websites, in relation to its upcoming film Bang Bang, scheduled to release on 2nd October, 2014.

As per averments made in the plaint, it appears that the plaintiff is the producer/copyright owner of various cinematograph films, including without limitation, the upcoming film (hereinafter referred to as "suit film") and its past releases, Bullett Raja, Citylights, Finding Fanny, Humshakals, Mundaasupatti, My Name is Khan etc. By virtue of being the producer/author, the plaintiff has the exclusive rights to communicate the films and distribute them to the public through various modes on various platforms including on the internet, mobile, television, satellite, in cinemas etc. It is stated that in view thereof, no person can thus communicate the said films on any platform through the internet for viewing on any device such as computers, mobiles, tablets etc. without the plaintiff's permission.

3. In order to protect its exclusive copyright in the films, the plaintiff has engaged an investigating agency to monitor the internet and identify websites which infringe the plaintiff's copyright in its films. Based on the evidence provided by the said investigating agency in respect of content provided by the websites over a period of few months, it has been learnt that a number of websites have, in the past, indulged in streaming/making available for download and viewing of the plaintiff's films and of other third party content.

4. The plaintiff has submitted a list of 72 websites, along with evidence, as a support of its apprehension that these websites would indulge in the unauthorized making available of the plaintiff's upcoming Film Bang Bang, either for the purpose of download or streaming on the internet and thereby completely destroying/interfering the theatrical exploitation/release of the suit film on 2nd October, 2014.

5. It is submitted that most of the 72 websites mentioned in the list handed over in c Court today, which include the defendants No. 1 to 18 websites, appear to be operating under a veil of secrecy/anonymity, and were found to be illegally providing plaintiff's content. Plaintiff has, in the past, through its representative, issued Take Down notices in respect of unauthorized streaming/making available of the plaintiff's copyright content on these websites. It is submitted that these websites are vehicles of infringement since not only are members of the public in a position to watch such unauthorized streaming of plaintiff's content on these

websites, but members of the public are also in a position to download the said content so that this content can thereafter be burnt on CDs and sold in the marketplace illegally.

6. It is argued by Mr. Saikrishna, learned counsel for the plaintiff that in view of the veil of secrecy/anonymity under the cover of which the said 72 websites operate, it is imperative that a direction be issued to internet and telecom service providers that access to the list of 72 websites be blocked in the territory of India.

7. It is submitted that it is necessary that access to the whole websites, which may be characterized as rogue websites, itself be blocked as opposed to URLs since URLs/links could very easily be changed to overcome/circumvent an order of injunction passed against such URLs. It is necessary that access to such websites itself be blocked as opposed to mere URLs being restrained.

8. This Court has, in the suits filed by Multi Screen Media Pvt. Ltd. (Suit No. 1860 of 2014) and Star India Pvt. Ltd. (Suit No. 2243 of 2014), passed directions to the Department of Electronics and Information Technology (DEITY), Department of Telecommunications (DOT) and the internet and telecom service providers to block access to the list of websites identified in those suits as rogue websites. Copies of the orders have been placed on the record.

9. The plaintiff has arrayed internet and telecom service providers as defendants No. 19 to 35, the Department of Telecommunication as defendant No. 36 and the Department of Electronics & Information Technology as defendant No. 37 in the instant suit. The said defendants No. 19 to 37 have been impleaded to ensure compliance with any order of injunction that this Court may be inclined to pass in the instant application/suit. It is submitted that no other formal relief/remedy is being sought against the said defendants No. 19 to 37.

10. The submission of Mr. Saikrishna is that the websites in question are to be considered as "rogue" and the persons be accused who are hosting the said sites, movies and collecting illegal profits by providing video on demand. Therefore, it is imperative to block the websites. The justification given by the learned counsel for the plaintiff is that it is impossible to get the details of the owners due to over-changing the user name and websites' addresses. There is only this medium to prevent piracy by blocking access to these websites for Indian users.

11. It is always said that the dishonest motive of filching of goodwill of rightful owner should be restrained. The plaintiff has made a strong case of rank dishonesty against the defendants. When the Court sees dishonesty, an interim order normally may not be refused and rather, it should be granted in favour of a person who is the rightful owner of the legal rights.

12. This Court finds force in the submissions of Mr. Saikrishna, learned counsel for the plaintiff. Earlier, the plaintiff was seeking the relief against more than two hundred and fifty websites, but during the course of hearing, the plaintiff has

produced prima-facie evidence against the 72 owners of websites" to establish that the owners of those websites are also previously involved in the piracy of the copyright in the various movies. Despite of communication by the producer(s), they continue with their illegal activities and bad practices which cannot be allowed by this Court who is totally against the piracy of copyright including movies; it is almost equivalent to duplicate the currencies. In the present case, the websites owners are committing piracy and collecting illegal profits, who are peeping behind the curtain and laughing at the producers of the movies. If this is not fraud, what else? In fact, piracy in copyright cases is a curse to the well-established system of the country and it should be curbed and dealt with iron hands.

13. In view of averments made in the plaint, documents placed on record and similar orders referred by the learned counsel for the plaintiff, a prima-facie case for the grant of an injunction is made out. In case, the interim orders are not passed, the plaintiff would suffer an irreparable loss and injury.

14. Thus, till the next date, it is directed that the websites arrayed as defendants No. 1 to 18, their partners, proprietors, officers, servants, employees, and all others acting in the capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, as also the 72 websites identified by the plaintiff in the list handed over in Court today and filed on record, the details of which are reproduced below or any other website identified by the plaintiffs as infringing their exclusive rights, are restrained from, in any manner, hosting, streaming, broadcasting, rebroadcasting, retransmitting, exhibiting, making available for viewing and downloading, providing access to and/or communicating to the public, displaying, uploading, modifying, publishing, updating and/or sharing (including to its subscribers and users), on their websites, through the internet in any manner whatsoever, the plaintiff's suit film and content related thereto, so as to not infringe the Plaintiff's copyright.

15. The defendants No. 19 to 35, their directors, partners, proprietors, officers, servants, employees, and all others in the capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, are directed to ensure and secure compliance by blocking access to the 72 websites identified by the plaintiff or such other websites that may subsequently be notified by the plaintiff to be infringing of its exclusive rights.

16. The defendants No. 36 and 37 to ensure and secure compliance by calling upon the various internet and telecom service providers registered under it to block access to the 72 websites identified by the plaintiff in the list filed in the Registry or such other websites that may subsequently be notified by the plaintiff to be infringing of its exclusive rights.

17. The list of said 72 websites is given as under:--

18. Compliance of Order XXXIX Rule 3 CPC be made within three days. Dasti, under the signatures of the Court Master.