
(2020) 02 DEL CK 0542

In the Delhi High Court

Case No : Civil Suit (COMM) No. 321 Of 2019

HT Media Limited & Anr

APPELLANT

Vs

WWW.Theworldnews.Net & Ors

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 3, Order 1 Rule 10

Citation : (2020) 269 DLT 167

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Sidharth Chopra, Asavari Jain, Abhiti Vachher, Amit Mahajan, Arjun Dev, Anuj Aggarwal, Anshuman Kumar

Final Decision : Disposed Of

Judgement

Prateek Jalan, J

1. The plaintiffs are part of the Hindustan Times group of companies ("HT Group"), which has various media related businesses, including publication of newspapers. Its newspapers are available in print, as well as online. The English daily, Hindustan Times, was founded in 1924 and, according to the plaintiffs, has a daily readership of over 8 million readers today. The plaintiffs' other publications include a business newspaper - Mint, and Hindi publications - Hindustan, Nandan and Kadambini, as also radio channels and online businesses.

2. In the present suit, the plaintiffs allege infringement of copyright, trademark and passing off against defendant Nos. 1 and 2 (collectively referred to as "the principal defendants"). The said defendants own and operate a website which, according to the plaintiffs, has been reproducing and making available online content from the plaintiffs' publication. According to the plaintiffs, the operation of defendant No.1 involves aggregation of news content from the world over and publication thereof on its own platform. Defendant No. 2 is the entity which manages defendant No. 1. Defendant No. 3 is a German company on which

defendant No. 1 - website is hosted, and defendant No. 4 is the privacy service provider. Defendant No. 5 is the erstwhile registrar of defendant No.1 - website. Defendant Nos. 6 to 14 are internet service providers ["ISPs"], whose assistance the plaintiffs seek to block the concerned website. Defendants No. 15 and 16 are the departments of the Government of India, which are required to issue notifications with regard to blocking of the impugned website.

3. The plaintiffs have also placed on record registration certificates showing that they are the registered proprietors of various trademarks, including "Hindustan Times", for various classes of goods and services which include newspapers, magazines, etc. The plaintiffs also operate websites, including www.hindustantimes.com, on which news articles are continuously uploaded. The plaintiffs claim copyright in the articles and images uploaded thereupon.

4. According to the plaintiffs, defendant No.1 is a "rogue website" within the meaning of the judgment of this Court in *UTV Software Communication Ltd. & Ors. vs. 1337x.to & Ors.*, 2019 (78) PTC 375 (Del) [CS(COMM) 724/2017 and connected matters, decided on 10.04.2019], as its principal activity involves reproduction, publication and communication of infringing material. An investigation undertaken by the plaintiffs between 21.05.2019 and 24.05.2019 disclosed an average of approximately 20 articles from the plaintiffs' website being uploaded by defendant No.1-website each day. The defendants, in fact, do acknowledge and attribute the article to the plaintiffs, but do not permit a user to link to the plaintiffs' own website. The plaintiffs have placed screenshots of the impugned website to demonstrate the availability of large scale infringing content. Defendant No.1 website also has a "bill payment" option, which indicates that its activities are of a commercial nature. The plaintiffs claim that the aforesaid activity of the defendant No.1 - website violates the statutory protection to the plaintiffs' intellectual property rights granted by the Trade Marks Act, 1999 and the Copyright Act, 1957.

5. On the basis of the above allegations, the plaintiffs seek the following relief in the suit: -

"97. In light of the above, it is humbly prayed that this Hon"ble Court may be pleased to grant the following reliefs in favour of the Plaintiffs:

a) Issue an order and decree of permanent injunction restraining Defendant Nos. 1 and 2, its owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, from, in any manner copying, reproducing, hosting, storing, making available, communicating and publishing or facilitating the same on their website www.theworldnews.net or any other website or online location owned or operated by them, in any manner whatsoever, the Plaintiffs' Original Content amounting to infringement Plaintiffs' copyright therein;

b) Issue an order and decree of permanent injunction restraining Defendant Nos. 1 and 2, its owners, partners, proprietors, officers, servants, employees, and all

others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, from, in any manner using directly or indirectly the name/mark "HINDUSTAN TIMES" or any other mark identical/deceptively similar to the Plaintiffs' trademark "HINDUSTAN TIMES" amounting to trademark infringement, passing off and unfair competition of the Plaintiffs' registered trademark "HINDUSTAN TIMES";

c) Issue an order and decree directing Defendant Nos. 3 and 5, their directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on their behalf, or anyone claiming through, by or under it, to block/ suspend access to Defendant No. 1 website www.theworldnews.net;

d) Issue an order and decree directing Defendant Nos. 6-14, their directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on their behalf, or anyone claiming through, by or under it, to block/suspend access to Defendant No. 1 website www.theworldnews.net;

e) Issue an order directing the Defendant Nos. 15 and 16 to issue a notification calling upon the various internet and telecom service providers registered under it to block/suspend access to Defendant No. 1 website www.theworldnews.net;

f) Issue an order and decree directing Defendant Nos. 3, 4 and 5, their directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by of under it, to disclose the contact details and other details of the owner/Registrant of the domain name of the Defendant No. 1 website such as name, email address, physical address, phone number, all IP addresses used by Defendant No.1, invoices issues by Defendant No. 3, 4 and 5 to the owner/ Registrant of Defendant No. 1, details regarding credit card or bank account of owner/Registrant of Defendant No.1;

g) Issue an order for damages of Rs 2,00,01,000/- be passed in favour of the Plaintiffs and against the Defendant Nos. 1 and 2 on account of the unauthorized use of the Plaintiffs' Original Content and the mark "HINDUTAN TIMES" and a decree for the said amount be passed in favour of the Plaintiffs;

h) An order for the costs of these proceedings against Defendant Nos. 1 and 2 and in favour of the Plaintiffs;

Any other order(s) as this Honble Court may deem fit and proper in the facts and circumstances of the case"

6. The suit was first listed on 31.05.2019, when summons were issued and an ex-parte ad interim order was granted in the following terms:-

"xxxx xxxx xxxx

14. The Court has seen various infringing articles and printouts from the

Defendant No.1 website. The Defendant No.1 has violated the statutory rights of the Plaintiffs and has also gone to the extent of claiming copyright in the content while using the expression "Copyright © World News". This is nothing but blatant violation of rights in the Plaintiffs' content and copyrighted material. The Defendant No.1's whereabouts are unknown as the domain name is privacy protected. According to the inquiries made by the Plaintiffs, various e-mail addresses given on the platforms themselves are not operational as e-mails to the said addresses have bounced back. Independent inquiries have also revealed that the Defendant No.1 website may be operated by World News LLP which is a Florida based company, USA, which is Defendant No.2 herein.

xxxx xxxx xxxx

16. Owing to the peculiar nature in which the Defendant No.1 has taken extraordinary steps to hide its identity, the Plaintiffs also seek an injunction against all the ISPs arrayed as Defendants No.6 to 14 to block access to the Defendant No.1 website - www.theworldnews.net in India.

17. A perusal of the print outs of the Defendant no.1 website reveals that the said website targets Indian customers and viewers specifically as it uses the Indian flag, has booked India specific advertisements such as of GoAir, etc. It is clear that Defendant No.1 is earning revenues from the website and by using the Plaintiffs' mark and its content. The name Hindustan Times is prominently displayed on the website and the Plaintiff's publishing content has been brazenly lifted. Defendants No.15 and 16 are the Department of Telecommunications and Ministry of Electronics and Information Technology respectively.

18. The Plaintiffs have made out a prima facie case for grant of an injunction. Accordingly, till the next date of hearing, Defendant No.1 website is restrained from copying, re-producing or storing, communicating, publishing any copyrighted content of the Plaintiffs and also from using the trademark "Hindustan Times" on its website. Defendant No.3 hosts the website of the Defendant No.1. Defendant Nos.3 to 5 are directed to block the domain names and to block the server access to the website of Defendant No.1. The Defendants No.6 to 14 are the ISPs providing internet services in India and are directed, with immediate effect, to block access to the websites. Defendants No.15 and 16 shall give effect to the said order by an appropriate notification. The Plaintiffs are permitted to approach Defendants No.15 and 16 in case Defendant No.1 starts using any other alternate domain name or a modified domain name containing the "Hindustan Times" trademark and content. Compliance of Order 39 Rule 3 within one week."

7. Despite service of summons, defendant Nos. 1 to 5 have neither entered appearance, nor filed written statements. Defendant Nos. 1 to 5 are therefore set ex parte. The other defendants complied with the order of injunction dated 31.05.2019, as recorded in the order dated 03.12.2019. By the order dated 03.12.2019, the ad interim order of injunction was also made absolute.

8. In view of the fact that the access to the impugned website has, in fact, been blocked in accordance with the orders of this Court, and the principal defendants have not appeared to contest the suit, Mr.Sidharth Chopra, learned counsel for the plaintiffs, limits the reliefs sought to a decree against defendants No. 1 and 2 in terms of paragraph 97(a) and (b) of the plaint, and against defendants No. 3 and 5 in terms of paragraph 97(c) of the plaint. No other relief is pressed.

9. Mr.Chopra relies upon the judgment of this Court in Satya Infrastructure Ltd. & Ors. vs. Satya Infra & Estates Pvt. Ltd., 2013 (54) PTC 419 (Del) [CS(OS)1213/2011, decided on 07.02.2013], to submit that in an uncontested suit of this nature, it is not necessary to require the plaintiffs to lead evidence, and a summary disposal of the suit on the basis of the contents of the plaint, supported by the statement of truth and declaration under the Commercial Courts Act, 2015 are sufficient. In Satya Infrastructure Ltd. (supra), this Court held as follows: -

"4. The next question which arises is whether this Court should consider the application for interim relief and direct the plaintiffs to lead ex parte evidence. The counsel for the plaintiffs states that the plaintiffs are willing to give up the reliefs of delivery, of rendition of accounts and of recovery of damages, if the suit for the relief of injunction alone were to be heard today.

5. I am of the opinion that no purpose will be served in such cases by directing the plaintiffs to lead ex parte evidence in the form of affidavit by way of examination-in chief and which invariably is a repetition of the contents of the plaint. The plaint otherwise, as per the amended CPC, besides being verified, is also supported by affidavits of the plaintiffs. I fail to fathom any reason for according any additional sanctity to the affidavit by way of examination-in-chief than to the affidavit in support of the plaint or to any exhibit marks being put on the documents which have been filed by the plaintiffs and are already on record. I have therefore heard the counsel for the plaintiffs on merits qua the relief of injunction."

In the facts and circumstances aforesaid, I find the view taken in Satya Infrastructure Ltd. (supra) to be squarely applicable, and have heard learned counsel for the plaintiffs finally.

10. In UTV Software (supra), the Court laid down the following illustrative factors to determine whether a particular website is liable to be declared as a "rogue website", and injuncted accordingly: -

"59. In the opinion of this Court, some of the factors to be considered for determining whether the website complained of is a FIOL/Rogue Website are:-

a. whether the primary purpose of the website is to commit or facilitate copyright infringement;

b. the flagrancy of the infringement, or the flagrancy of the facilitation of the infringement;

- c. Whether the detail of the registrant is masked and no personal or traceable detail is available either of the Registrant or of the user.
- d. Whether there is silence or inaction by such website after receipt of take down notices pertaining to copyright infringement.
- e. Whether the online location makes available or contains directories, indexes or categories of the means to infringe, or facilitate an infringement of, copyright;
- f. Whether the owner or operator of the online location demonstrates a disregard for copyright generally;
- g. Whether access to the online location has been disabled by orders from any court of another country or territory on the ground of or related to copyright infringement;
- h. whether the website contains guides or instructions to circumvent measures, or any order of any court, that disables access to the website on the ground of or related to copyright infringement; and i. the volume of traffic at or frequency of access to the website;
- j. Any other relevant matter."

11. With regard to the communications exchanged between the plaintiffs and the principal defendants, Mr.Chopra has drawn my attention to the cease and desist notice addressed by the plaintiffs to defendant No.2, which did not elicit a response, and to the e-mail address available on "WHOIS" details of the domain name, which could not be delivered. Further communication with defendant No.3 revealed that the said defendant has, by communication dated 01.05.2019, offered to take down any specified links, but declined to reveal customer information, except to German law enforcement authorities upon official request.

12. Mr.Chopra submits that such a course is impracticable and cumbersome in the extreme, inasmuch as the defendants are uploading new infringing content on a large scale, on a daily basis. In my view, Mr.Chopra's submission is correct. It is not efficacious or practical to require the plaintiffs to communicate specified URLs to the defendants for each specific instance of infringement, while permitting the defendants to continue the infringing activities unchecked. The nature of news articles also implies a relatively short shelf life, which make post facto take down of the infringing content an unsatisfactory remedy.

13. Even after the ex parte ad interim order was passed, the plaintiffs have received an e-mail, purportedly from defendants No. 1 and 2, dated 08.06.2019, offering to enter into a commercial arrangement with the plaintiffs for redirecting 15,00,000 users every month to the plaintiffs' website. Although the plaintiffs' attempt to respond to the aforesaid e-mail was not successful, this communication also demonstrates the defendants' awareness of the present suit, and indicates that their non-appearance is deliberate.

14. The plaintiffs have placed on record several print outs from the defendants'

website, and the corresponding articles published by the plaintiffs to show that the defendants are indulging in large scale infringement of the plaintiffs' copyright. The plaintiffs' registered trademark "Hindustan Times" and their registered domain name "www.hindustantimes.com" also appear on the defendants' website for the purpose of identification of the infringing articles. A perusal of the website shows that its acknowledged purpose is to aggregate content from various news services across the world. The plaintiffs have also demonstrated that the defendants have categorised and indexed content according to the country of origin, enabling users to access the infringing content readily. The plaintiffs' attempt to contact the defendants and communicate with them has been rendered unsuccessful, as stated above. The contact details of the registrant of the defendants' website are also masked, and have not been revealed to the plaintiffs. The communications placed on record show that the defendants have not given any effective assurance against future infringement, and have not appeared to defend this suit, despite their knowledge of these proceedings.

15. In view of the above, the plaintiffs have succeeded in establishing that the defendant No.1-website falls within the parameters laid down in UTV Software (supra). The suit is therefore decreed in terms of paragraphs 97(a) and (b) of the plaint, against defendant Nos. 1 and 2, and in terms of paragraphs 97(c) of the plaint, against defendant Nos. 3 and 5. Decree sheet be prepared accordingly. No other relief is pressed.

16. In UTV Software (supra), this Court permitted subsequent impleadment of mirror/redirect/alphanumeric websites - which provide access to defendant websites - by filing an application under Order I Rule 10 of the Code of Civil Procedure, 1908, before the Joint Registrar, alongwith an affidavit and supporting evidence, confirming that the proposed defendant/website is a mirror/redirect/alphanumeric website of the injuncted defendant-websites. At Mr.Chopra's request, the same directions are made in this case as well. Any mirror/redirect/alphanumeric website impleaded by reason of this order will also be subject to the decree in terms of paragraphs 97 (a) and (b) of the plaint.

17. Plaintiffs are also entitled to actual costs of the suit, including court fees and counsel's fees. The plaintiffs will file an affidavit of actual costs within two weeks.

18. The suit and pending applications are disposed of in these terms.