
(2014) 12 DEL CK 0274
In the Delhi High Court
Case No : CS (OS) 4037/2014

Independent News Service Pvt. Ltd.

APPELLANT

Vs

Crazi Mobapps

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, 149, 151
Copyright Act, 1957 — Section 13, 2(f)

Citation : (2015) 61 PTC 255

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Pratibha M. Singh, Senior Advocate, Sudeep Chatterjee, Jaya Mandela, Karan Bajaj and Rukma George, Advocate for the Appellant

Judgement

Manmohan Singh, J.

I.A. No.26291/2014

This is an application filed by the plaintiff under Section 151 CPC seeking exemption from filing original documents and to file dim documents with insufficient left side margin.

For the reasons stated in the application, the same is allowed, subject to the same being produced at the time of admission/denial of the documents.

The application is disposed of.

I.A. No.26292/2014 (U/s 149 CPC)

Learned senior counsel for the plaintiff states that she would be filing the Court fee within one week. In view of the statement made by the learned Senior counsel, the application is disposed of.

CS(OS) No.4037/2014

Let the plaint be registered as a suit.

Issue summons to the defendants through all modes of service including e-mail in addition, returnable on 30th January, 2015.

I.A. No.26290/2014 (u/o XXXIX R. 1 & 2 CPC)

1. Issue notice to the defendants, returnable on 30th January, 2015.

2. Plaintiff has filed the present suit against the defendants seeking permanent injunction restraining violation and infringement of copyright of the plaintiff in the television show "aap ki adalat", infringement of trade mark "aap ki adalat", misrepresentation, fraud, passing off, dilution, damages/ rendition of accounts, delivery-up, etc.

3. Brief facts leading to the present case are that the Plaintiff is a company incorporated in the year 1997 by Mr. Rajat Sharma a well-known Indian journalist and TV Anchor who is also the Chairman and Editor-in-Chief of the plaintiff Company. Initially, the Plaintiff Company was producing news bulletins for Star News channel and Doordarshan.

4. Mr. Rajat Sharma, recipient of various awards for his contribution to the field of journalism in India, has hosted a large number of television programmes apart from the television show "AAP KI ADALAT" which is the longest running television show in India.

5. It is stated that vide its letter dated 17.06.03, the Ministry of Information and Broadcasting, Government of India granted permission, which was sought in the year 2002, to the plaintiff Company to uplink its 24 hours Hindi news channel "INDIA TV", which was coined by Mr. Rajat Sharma as a platform for depicting India for the global television audience. The launch of the said News Channel i.e. INDIA TV in March 2004 was widely reported in the media.

6. Since India TV is a 24 hour Hindi news channel and the viewership extends to the entire footprint of the satellite through which this is telecasted, the fame and reputation achieved within a short span of time was unparalleled. The footprint of India TV since launched, extends to around 150 countries in Europe, Middle East, Asia & Africa including United Kingdom, France, Germany, Italy, Spain, Switzerland, Portugal, Greece, Netherlands, Ireland, Turkey, Sweden, UAE, Saudi Arabia, Iraq, Iran, Kuwait, China, Japan, Singapore, Sri Lanka, Malaysia, Indonesia, Pakistan Nepal, South Africa, Zimbabwe, Kenya etc.

7. It is averred that since its launch in 2004, the channel has grown in strength and has become one of the leading Hindi news channels in India. The channel has evolved in this period and has produced a large number of well-known programmes on news, current affairs etc. It has had the unique credit of having raised issues of public concern including consumer rights and programmes highlighting public importance.

8. Some of the programmes of said news Channel are extremely popular among

the viewers which are dedicated to inform and empower viewers with latest news and taking up issues related to public interest and welfare. Owing to India TV's interactive style, during its live shows, millions of viewers from all over the world call to express their opinions, their problems, and seek advice. India TV has a number of experts including doctors, lawyers, social scientists, crisis management experts to help it's viewers in solving problems.

9. The plaintiff Company's news channel India TV also has a YouTube page i.e. [http://www.youtube.com/user/ India TV](http://www.youtube.com/user/IndiaTV) and a Facebook page viz., <https://www.facebook.com/indiatvnews>. The popularity of the India TV channel is evident from the fact that this page receives the maximum number of hits as compared to any other Indian news channel.

10. As per the TAM ratings for the year 2013-14 the Plaintiff Company's news channel "India TV" was a leader in the top news channels in the 4 Metros, TAM being the established television ratings company in the country. As per the TAM data, the plaintiff's relative market share has increased from 8.7% in 2006-07 to 13.9% as recorded in 2013-14. In the same comparison, India TV channel's reach increased from 13 million to 31 million. As per the said data the plaintiff's news channel has been amongst the top 3 Hindi News channels in India since the year 2007-2008. Moreover, during this general election India TV got a record breaking viewership (65%) on Aap ki Adalat with Narendra Modi.

11. It is stated that the television show "AAP KI ADALAT", conceptualized by Mr. Rajat Sharma, is an interactive talk show hosted/anchored by Mr. Rajat Sharma and recorded in front of a live audience, wherein celebrities from various fields are invited and interviewed by Mr. Rajat Sharma in the presence of a dignified personality as a judge. The first episode was recorded with Shri Lalu Prasad Yadav, the then Chief Minister of Bihar and the television show was started on Zee TV in the year 1993 and thereafter was telecasted on Star Plus which is now telecasted on India TV .

12. It is stated that the said television show is the longest running television show in India and has gained immense popularity, reputation and viewership since its inception.

13. The Hon''ble President Mr. Pranab Mukherjee has been a guest on the show twice, once as the Opposition Leader in Rajya Sabha and then as the Finance Minister during the UPA regime. The show has witnessed several tall leaders who subsequently went on to become the Prime Minister of the country. Late Shri v. P Singh, Shri HD Deve Gowda, Shri Atal Behari Vajpayee, Dr Manmohan Singh, Shri Narendra Modi, all have appeared on the show. Union Ministers Arun Jaitley, Rajnath Singh, Nitin Gadkari, Sushma Swaraj, Uma Bharti, Vekkaiya Naidu, Smriti Irani, V K Singh , Najma Heptullah and many others have been on the Plaintiff's show "Aap Ki Adalat". Former ministers like Sushil Kumar Shinde, Veerappa Moily, Salman Khursheed, Arjun Singh, Ghulam Nabi Azad and several others have been asked questions by Mr. Rajat Sharma on this show.

14. It is contended that the element that sets AAP KI ADALAT apart from other interview based shows is that it has featured legends who never gave interviews to TV channels, such as Shri Bal Thackeray, Shri Biju Patnaik, Shri Bansi Lal and Late Shri Rajesh Khanna. The show has also witnessed cricketers who won the World Cup for India such as Yuvraj Singh, Gautam Gambhir, Virat Kohli, Suresh Raina, Harbhajan Singh. Several social activists like Swami Ramdev, Anna Hazare, Medha Patkar have appeared on the show. Current and former Chief Ministers like Sushree Mamata Banerjee, Shri Mulayam Yadav, Shri Akhilesh Yadav, Shri Sharad Pawar, Smt. Sheila Dikshit, Shri ND Tiwari, Sushree Mayawati, Shri Bhupinder Singh Huda have all been on the show.

15. It is contended that the plaintiff's show "Aap Ki Adalat" over the years has become a forum for personalities to candidly share their experiences in life, their innermost thoughts and their views that people were never aware of. The immense popularity and reputation of the plaintiff's television show is evidenced by the high TRP ratings consistently garnered by it.

16. Recently the plaintiff celebrated the completion of 21 years of its television show "AAP KI ADALAT" by way of a large scale event which was attended inter alia by many popular celebrities and political figures that have previously been part of the "AAP KI ADALAT" show such as Hon'ble President of India Mr. Pranab Mukherjee, Hon'ble Prime Minister Mr. Narendra Modi, celebrities such as Shah Rukh Khan, Salman Khan, Aamir Khan, etc. and the said event broadcasted on the Plaintiff's television channel and also on Star Plus received widespread media and press coverage.

17. Besides being broadcasted and rebroadcasted on the plaintiff's television channel, the videos of broadcasts of the television show "AAP KI ADALAT" are available for viewing on the plaintiff's website <http://www.indiatvnews.com> and also published by the plaintiff on the website www.youtube.com and have been uploaded thereon vide the plaintiff's official YouTube channel "India TV".

18. Plaintiff claims to be the creator and broadcaster of the well-known and popular television show "AAP KI ADALAT" thereby being the exclusive owner of the copyright in the television show "AAP KI ADALAT" by virtue of Section 2(f) and Section 13 of the Copyright Act. It is contended that the television show AAP KI ADALAT is an original work and is liable to be protected under the Copyright Act.

19. It has been stated that the plaintiff adopted the trademark "AAP KI ADALAT" on 1st May, 2004 and have since been using the said mark continuously, extensively and uninterruptedly. Plaintiff has obtained trademark registration for the mark "AAP KI ADALAT" dating back to 22.06.2004 and bearing the registration number 1291714 under Class 38 in relation to services of Broadcasting and Diffusion of Television Programme, Current Affairs Programmes, Talk Shows, Oral and Visual Communication through Television and Entertainment Programmes on Electronic or Other Media Falling in Class 38. The

said registration is a valid and subsisting registration. Plaintiff is the exclusive owner and proprietor of mark "AAP KI ADALAT".

20. It is averred that the plaintiff's trademark/name "AAP KI ADALAT" is "well-known" mark which enjoys enormous amount of reputation and fame and the same is exclusively identified with plaintiff. It is contended that the show AAP KI ADALAT has become synonymous to the plaintiff and no one else. A mere mention of the show AAP KI ADALAT relates only to the plaintiff Company and no one else. Therefore, no other party has the right to use the said mark or any similar mark or name in any manner whatsoever.

21. It is averred that the unique combination of the words "AAP KI ADALAT" put together in the context of television show, has acquired a secondary meaning and is completely protectable in law. The common law rights in the trademark "AAP KI ADALAT" by reasons of long and extensive use have come to vest exclusively in the plaintiff.

22. It is stated that the segment, in which the plaintiff enjoys unparalleled reputation, recognizes and associates the trademark/name "AAP KI ADALAT" only with the plaintiff and none else.

23. It is the case of the plaintiff that sometime in December, 2014, the plaintiff came to know about an application/ computer program launched by the name of "Aap Ki Adalat-TV Show Video". On further enquiry, it was revealed that not only was the said application/computer program named "Aap Ki Adalat-TV Show Video" thereby infringing the registered trademark of the plaintiff, but is also engaged in piracy of the plaintiff's copyrighted works inasmuch as the same contains and makes available to the public videos of the broadcasts of the plaintiff's television show titled "AAP KI ADALAT".

24. Defendant No. 1 appears to be the creator, publisher and uploader of the impugned application/ computer program named "Aap Ki Adalat-TV Show Video" that is being distributed by defendant No. 3 on its website <https://play.google.com/store/apps>. defendant No. 2 appears to be the parent entity of defendant No. 1 and defendant No. 4 is the Indian subsidiary of the defendant No. 3.

25. As per the website www.play.google.com, the said impugned application/ computer program is of the defendant Nos. 1 and 2 and has been installed approximately 1000-5000 times and is available to everyone around the world. The impugned application appears to be re-publishing the videos already published by the plaintiff of its broadcasts of its television show AAP KI ADALAT, either from YouTube or from the plaintiff's website. The description provided by the defendant Nos. 1 and 2 for the impugned application/ computer program is as under:

"Here we are presenting the android application for Aap Ki Adalat TV Show video. Now its been really very easy for you to watch new Aap Ki Adalat TV Show

episode video.

[Awesome Features]

- Best HD quality new Aap Ki Adalat TV show video will reach you as soon as it will be released.
- Easy to use, very attractive and beautifully designed application
- No need for external video player
- Facebook: Share your favorite videos on your facebook
- Twitter: Share your favorite videos on your twitter
- Favorite: You can favorite videos and seen it in different screen.
- No need to update application for new video."

26. It is contended by the plaintiff that defendant Nos. 1 and 2 have created and launched the aforesaid application/computer program, without permission and any license from the plaintiff, in absolute brazen disregard of the plaintiff's intellectual property and common law rights in its registered well known trademark as well as its copyrighted works, and solely with the malafide intention of deceiving the public and to ride upon the reputation and goodwill of the plaintiff and its trademark and television show "AAP KI ADALAT".

27. It is averred that the defendants are well aware of the plaintiff's trademark/ name "AAP KI ADALAT" as well as the plaintiff's copyright in its television show titled the same and its broadcasts thereof. The immense reputation of the plaintiff under the said registered trademark in India and worldwide is indisputable. The defendants are illegitimately exploiting the registered trademark and copyrighted works of the plaintiff, knowing fully well that same belong exclusively to the plaintiff.

28. It is stated that the application/ computer program is downloadable on almost all handy devices including Mobile Phones, Tablets, etc. that run on various operating systems such as Android and include devices inter alia manufactured by Apple, Samsung, Sony Ericsson, LG, Blackberry, Nokia, HTC, etc. The application/ computer program is run and is available on different platforms including Android Market now known as Google Play.

29. The defendants are indulging in acts of piracy, which is completely illegal, unlicensed and malafide, of the plaintiff's TV Show content and broadcasts thereof upon which the Plaintiff has exclusive copyright as such as the said television show falls within the definition of the cinematograph film as contained in the Copyright Act, 1957. The publication and upload of the plaintiff's broadcasts of its television show "AAP KI ADALAT" on the defendant's application is in violation of the plaintiff's intellectual property rights.

30. It is averred that the illegal acts of the defendants not only result in

infringement of the exclusive copyrighted content of the plaintiff inter alia amounting to Piracy but also infringement of the registered trademark of the plaintiff as also in dilution, misrepresentation, fraud and passing off.

31. It is evident from pleadings made in the plaint and the material placed on record, that the registered trademark/name of the plaintiff and its copyrighted works are being commercially exploited by the defendants in an illegal and unlawful manner. There could be confusion as to association, sponsorship or affiliation with the plaintiff. The consumer may also be attracted towards the application/computer program "Aap Ki Adalat-TV Show Video" under the belief that they are related to the Plaintiff.

32. Considering the facts of the present case as well as settled law applicable to the present case, this Court is of the opinion that the plaintiff has been able to make out a strong prima facie case in its favour and the balance of convenience also lies in favour of the plaintiff and against the defendants. The use of the application/computer program "Aap Ki Adalat-TV Show Video" by the defendants would cause irreparable loss and injury to the plaintiff, in case the interim order is not passed.

33. Accordingly, till the next date of hearing, the defendants, their subsidiaries, agents, distributors, advertising agencies, acting for them on all electronic medium are restrained from:

? making available for downloads/broadcasting/re- broadcasting or in any manner unauthorizedly using the plaintiff's copyrighted works on its television show AAP KI ADALAT using the impugned application/ computer programme available on the defendant No.3's website or any other application, of the plaintiff so as to result in infringement of plaintiff's copyrighted works.

? broadcasting/ re-broadcasting/ telecasting/ downloading the copyrighted content of the plaintiff Company so as to result in acts of infringement of the plaintiff's copyright.

? using the trademark AAP KI ADALAT either as a application software/ computer programme, trademark, trading style, name, logo, part of name or in any other manner or any other mark or name or domain name, identical to or deceptively similar to the plaintiff's mark AAP KI ADALAT in relation to any services especially for broadcast, re- broadcast, telecast, downloads and in any other form whatsoever so as to result in violation of plaintiff's statutory and common law rights including infringement of trademark, dilution and/or passing off.

34. Compliance of Order XXXIX Rule 3 CPC be made within one week. Copy to plaintiff be given dasti under the signatures of Court Master.