

(2012) 12 DEL CK 0020

In the Delhi High Court

Case No : Regular First Appeal (OS) 114 of 2012, C.M. No. 19590 of 2012 and C.M. No. 19768 of 2012 (Cross-objections) and RFA (OS) 125 of 2012

Star India Private Limited

APPELLANT

Vs

Piyush Agarwal and Others
 Board of Control for
Cricket in India (BCCI) Vs Onmobile Global Ltd. and Another

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 18, Order 7 Rule 11

Citation : (2012) 12 DEL CK 0020

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Parag Tripathi and Mr. Maninder Singh, Instructed by Mr. Saikrishna Rajagopal, Mr. Gopal Jain, Mr. Sidharth Chopra, Ms. Sneha Jain, Mr. Shadan Farasat and Mr. Krishan Mohan, in RFAOS 114/2012, C.M. No. 19590/2012 and C.M. No. 19768/2012 Cross-objections, RFAOS 115/2012, RFAOS 116/2012, Mr. Abhinav Vasisht, Instructed by Mr. Amit Sibal, Ms. Radha Rangaswamy, Ms. Rohini, Ms. Akhila Kaushik and Mr. Raman Kumar, in RFAOS 125/2012, Mr. Amit Sibal, Ms. Radha Rangaswamy, Ms. Rohini, Ms. Akhila Kaushik and Mr. Raman Kumar, in RFAOS 126/2012 and Mr. C.A. Sundaram, Instructed by Mr. Amit Sibal, Ms. Radha Rangaswamy, Ms. Rohini, Ms. Akhila Kaushik and Mr. Raman Kumar, in RFAOS 127/2012, for the Appellant; Sudhir Chandra Instructed by Ms. Gayatri Roy, Himanshu Bagai, Thomas George and Mr. Udit Sood, Advocates for R-1 and R-2 and Mr. C.A. Sundaram Instructed by Mr. Amit Sibal, Ms. Radha Rangaswamy, Ms. Rohini, Ms. Akhila Kaushik and Mr. Raman Kumar, Advocates for R-3(BCCI) in RFA(OS) 114/2012, C.M. No. 19590/2012 and C.M. No. 19768/2012 (Cross-objections), Mr. Sanjay Jain Instructed by Mr. Hardeep Singh Anand, Ms. Vandana Sehgal, Rohan Thawani, Ms. Noor Anand, Ms. Kirti Singh and Ms. Ruchi Jain, Advocates for R-1 and Mr. Abhinav Vasisht Instructed by Mr. Amit Sibal, Ms. Radha Rangaswamy, Ms. Rohini, Ms. Akhila Kaushik, Prem Kumar and Mr. Raman Kumar, Advocates for R-2 in RFA(OS) 115/2012, Mr. Rajiv Nayyar and Mr. N.K. Kaul Instructed by Mr. Naveen Chawla, Ms. Sonali Jaitley, Ms. Subha Chauhan, Ms. Parul Yadav and Ms. Nidhi Mohan Parashar, Advocates for R-1 and Ms. Radha Rangaswamy, Ms. Rohini, Ms. Akhila Kaushik, Prem Kumar and Mr. Raman Kumar, Advocates for R-2 in RFA(OS) 116/2012, Mr. Sanjay Jain Instructed by Mr. Hardeep Singh Anand, Ms. Vandana Sehgal, Rohan Thawani, Ms. Noor Anand, Ms. Kirti Singh and Ms. Ruchi Jain, Advocates for R-1 and Mr. Parag Tripathi and Mr. Maninder Singh Instructed by Mr. Saikrishna Rajagopal,

Gopal Jain, Sidharth Chopra, Ms. Sneha Jain, Shadan Farasat and Mr. Krishan Mohan, Advocates for R2 in RFA(OS) 125/2012, Mr. Rajiv Nayyar and Mr. N.K. Kaul Instructed by Mr. Naveen Chawla, Ms. Sonali Jaitley, Ms. Subha Chauhan, Ms. Parul Yadav and Ms. Nidhi Mohan Parashar, Advocates for R-1 and Mr. Parag Tripathi and Mr. Maninder Singh Instructed by Mr. Saikrishna Rajagopal, Gopal Jain, Sidharth Chopra, Ms. Sneha Jain, Shadan Farasat and Mr. Krishan Mohan, Advocates for R2 in RFA(OS) 126/2012 and Mr. Sudhir Chandra Instructed by Ms. Gayatri Roy, Hihanshu Bagai, Thomas George and Mr. Udit Sood, Advocates for R-1 and R-2 and Mr. Parag Tripathi and Mr. Maninder Singh Instructed by Mr. Saikrishna Rajagopal, Gopal Jain, Sidharth Chopra, Ms. Sneha Jain, Shadan Farasat and Mr. Krishan Mohan, Advocates for R-3 in RFA(OS) 127/2012, for the Respondent

Judgement

Pradeep Nandrajog, J.—Three captioned appeals have been filed by Star India Pvt. Ltd. and three by Board of Control for Cricket in India (hereinafter referred to as the "BCCI") against the judgment and decree dated 8th November, 2012 passed in three suits; being CS(OS) No. 2722/2012, 2780/2012 & 3232/2012 filed by Star India Pvt. Ltd. against the respondents which included BCCI as a common defendant in all the suits; being defendant No. 3 in CS(OS) No. 2722/2012 and defendant No. 2 in CS(OS) Nos. 2780/2012 & 3232/2012. Suits filed by Star India Pvt. Ltd. have been dismissed subject to the observations made in para 25 of the impugned decision dated November 08, 2012, which grant a limited injunction. Pithily stated, subject matter of the suits was the same i.e. a claim by Star India Pvt. Ltd. under an agreement entered into between it and BCCI and the complaint was that the activities of the contesting defendants transmitting match updates through MMS and SMS; alleging that the same were eating into the revenue of the plaintiff.

2. It would be relevant to note the dates on which the three suits filed by Star India Pvt. Ltd. were listed before the learned Single Judge or the learned Joint Registrar attached to the Court.

CS(OS) No. 2722/2012

3. CS(OS) No. 2722/2012 was the first suit filed by Star India Pvt. Ltd. impleading Piyush Agarwal and Akuate Internet Services Pvt. Ltd. as defendants No. 1 and 2, against whom relief of injunction and damages was claimed. Board of Control for Cricket in India (BCCI) was impleaded as a defendant No. 3 but without any relief claimed against said defendants for the reason the plaintiff was claiming a right under an agreement with defendant No. 3. An application for interim injunction was filed along with the suit. The suit along with the interim application was listed for admission before the learned Single Judge on 7th September, 2012 on which date defendants No. 1 & 2 appeared before the learned Single Judge and as recorded in the order-sheet accepted summons in the suit and notice in the interim application and vehemently opposed grant of any ad-interim injunction. Granting time to file written statements it was directed

that the defendants would deposit Rs. 15 lakhs with the Registrar General of this Court. The suit and the interim application were adjourned for September 25, 2012, expressly recording that on said date the application for interim injunction would be heard. It was directed that the plaintiff shall produce the original contract on the next date.

4. On 25th September, 2012, it was realized that defendant No. 3, who undisputedly had a vital stake in the litigation, inasmuch as rights in favour of the plaintiff were claimed through said defendant, was not served because summons were not issued to said defendant, as recorded in the order dated September 25, 2012, summons were issued to defendant No. 3 returnable for November 05, 2012. It was recorded that counsel for the plaintiff had produced the contract under which it was claiming a right through defendant No. 3 but stated that it contained confidential clauses to which defendants No. 1 and 2 have no right of access, accordingly directions were issued that the redacted contract would be filed by the plaintiff in a sealed cover and that the defendants can inspect the same. It was directed that the Registry will allow inspection of the said document to defendants No. 1 and 2.

5. Thus defendants No. 1 and 2 filed I.A. No. 19780/2012 under Order XI, Rule 18 CPC for being permitted to inspect the document filed by the plaintiff, which application was listed before the learned Joint Registrar on October 31, 2012, who recorded that defendants No. 1 and 2 insist that they required the complete document for preparing the written statement. The learned Joint Registrar noted that the suit was already listed before the learned Single Judge on November 05, 2012 and accordingly directed that the said application would be placed before the learned Single Judge.

6. It stands recorded in the order-sheet dated November 05, 2012 that after some arguments counsel for the plaintiff stated that the original contract would be made available to defendants No. 1 and 2. Presence of counsel for defendant No. 3 was recorded inasmuch as said defendant had been served with the summons in the suit on November 01, 2012. The matter was adjourned to November 08, 2012 for arguments on the injunction application.

7. We highlight that with respect to the completion of pleadings in the main suit nothing was recorded in the order-sheet.

CS(OS) No. 2780/2012

8. CS(OS) NO. 2780/2012 was filed by Star India Pvt. Ltd. impleading On Mobile Global Limited and Board of Control for Cricket in India (BCCI) as defendants No. 1 and 2 respectively. Averments in the plaint were identical as the earlier suit save and except with respect to the description of the defendants; and similar relief was prayed for. The suit was listed before the learned Single Judge on September 12, 2012 when counsel appeared for defendant No. 1 and accepted notice of summons in the suit and the application seeking interim relief. 30 days' time was granted to defendant No. 1 to file the written statement and matter

was listed before the Joint Registrar for admission/denial for October 30, 2012. It was made clear that summons in the suit would be returnable for defendant No. 2 for October 30, 2012. Application for interim injunction was directed to be listed on November 16, 2012 before the Court.

9. Order dated October 30, 2012 passed by the learned Joint Registrar simply records admission/denial conducted by plaintiff and defendant No. 1 and admitted documents being exhibited. In spite of note put up by the Registry that there was no report regarding summons in the suit being or not being served upon defendant No. 2, the learned Joint Registrar passed no orders with respect to service on defendant No. 2. The matter was simply renotified for November 08, 2012 for further admission/denial as counsel for the plaintiff informed that along with the replication some further documents were filed.

10. On November 08, 2012, the learned Joint Registrar passed an order as under:-

This matter was listed before this Court for admission/denial of the documents. However, it has been informed that this matter has been mentioned today before Hon"ble Court by learned counsel for the parties. The Hon"ble Court has directed to list this case before Hon"ble Court today itself. The matter be sent immediately to the Hon"ble Court for further orders. However, the date already fixed in this matter before Hon"ble Court is 16.11.2012.

11. The order was probably passed by the learned Joint Registrar in view of an order passed by the learned Single Judge on the same date, which reads as under:-

This suit was listed before the Joint Registrar for admission/denial of documents. At the request of the counsel for both the parties, I have called for the suit inasmuch as the issue in the present suit is the same as the issues in connected suits being CS(OS) Nos. 2722/2012 and 3232/2012. This suit is accordingly being heard along with connected suits.

12. The record of the suit would reveal that summons issued for service on defendant No. 2 have till date not been received back, but counsel for defendant No. 2 i.e. BCCI informs us that summons in the suit were received on November 12, 2012, i.e. much after the suit was disposed of.

CS(OS) No. 3232/2012

13. CS(OS) No. 3232/2012 was filed by Star India Pvt. Ltd. impleading Idea Cellular Ltd. as defendant No. 1 and BCCI as defendant No. 2. The suit was identically worded as the previous suits with similar reliefs. The suit and the application seeking interim injunction were listed for admission before the learned Single Judge on November 07, 2012 who passed the following order:-

It transpires during arguments that another suit involving similar issue being CS(OS) No. 2722/2012 is pending before HMJ Kailash Gambhir whereas another

suit involving similar issue being CS(OS) No. 2780/2012 is pending before HMJ Valmiki J Mehta.

Hence, subject to orders of Judge Incharge (Original Side), this matter be also listed before HMJ Kailash Gambhir on 8.11.2012.

14. Since order dated November 07, 2012 required formal orders to be passed by the Judge In-Charge Original Side to list the matter before another Judge as per the judicial order passed, the Judge In-Charge Original Side called for the file of all the three suits and directed that all would be listed before one Hon''ble Judge.

15. It is due to the aforesaid administrative order passed by the Judge In-Charge Original Side that all the suits came to be listed before a learned Single Judge on November 08, 2012, when as per the impugned judgment and decree dated November 08, 2012, the suits were disposed of on merits after counsel for the parties were heard, holding that the plaintiff has not established any right either under the Copyright Law or the Common Law; and yet in spite thereof, a limited injunction has been granted as per paragraph 25 of the impugned decision.

16. The plaintiff of the three suits i.e. Star India Pvt. Ltd. as also BCCI have filed three appeals each challenging the impugned decree and defendants No. 1 and 2 in CS(OS) No. 2722/2012 have filed cross-objections vide CM No. 19768/2012 against the limited injunction granted.

17. From the facts noted aforesaid it is apparent that the learned Single Judge was pressurized, and if we may use the hard expression, virtually bulldozed by learned counsel for the plaintiff and probably supported by learned counsel for BCCI, to hear the application seeking interim injunction and counsel for contesting defendants opposing any ad-interim injunction till pleadings were completed.

18. What was the pressure about?

19. BCCI, as we all know, organizes bilateral and international cricket matches; and cricket being a craze in India, huge revenues are generated from the cricket matches organized. As per Star India Pvt. Ltd. under an agreement entered into between it and BCCI, exclusive rights with respect to cricket matches organized by BCCI were purchased by it for an astronomical sum of Rs. 3,851 crores. The duration of the exclusive rights was six years. It was the case of the plaintiff that its "Mobile Rights" and "Mobile Activation Rights" were adversely affected by the activities of the contesting defendants when through MMS and SMS match updates were being provided by the contesting defendants. The England - India Test Series was to commence in mid November 2012, and this explain the hurry.

20. Now, the procedures of the law have to be followed. The facts noted herein above would bring out that as regards CS(OS) No. 2722/2012 summons were issued to defendant No. 3 i.e. BCCI returnable for November 05, 2012 on which date counsel appeared for BCCI, but the debate before the learned Single Judge,

as recorded in the order dated November 05, 2012 was whether the plaintiff should file the original contract which it had entered into with defendant No. 3 inasmuch as the contesting defendants, as per IA No. 19780/2012 had informed the Court that unless they had access to the document on which the suit was founded they could not file a written statement; no orders were passed by the learned Single Judge with respect to written statement to be filed; and in any case as regards BCCI law grants 30 days" time to BCCI to file a written statement. Only the injunction application was listed for arguments on November 08, 2012. The suit was not even listed. As regards CS(OS) No. 2780/2012 summons were issued to BCCI for October 30, 2012. As regards defendant No. 1 after directing written statement to be filed the application for interim injunction was directed to be listed on November 16, 2012. In the meanwhile the matter had to be listed before the learned Joint Registrar for admission/denial and service upon BCCI. There was no service report on said date. No orders were passed with respect to service of summons on BCCI by the learned Joint Registrar who simply re-notified the matter for November 08, 2012 recording partial admission/denial. As regards CS(OS) No. 3232/2012, it was listed for the first time on November 07, 2012 and noting that two earlier suits were pending before two other learned Single Judges, it was directed that the matter be listed before one of the two learned Single Judges. The Judge In-Charge Original Side called for all the three files and listed the same before one learned Single Judge.

21. BCCI had not been served with summons in two suits on November 08, 2012. It had been served with summons in only one suit. Pleadings had yet to be completed. CS(OS) No. 2780/2012 was scheduled to be listed on November 16, 2012.

22. The learned Single Judge before whom all three suits were listed and who had not received the file of CS(OS) No. 2780/2012 because the suit was listed before the learned Joint Registrar on said date, summoned the file for that very date and we find that without pleadings being completed the suit has been disposed of.

23. It may be true that where a plaint does not disclose a cause of action, at any stage of the proceedings the plaint can be rejected. But a distinction has to be maintained with respect to the procedure to be followed when this is done.

24. If a suit is listed for preliminary hearing and summons have yet to be issued, it would be perfectly open to a Judge to consider the averments made in the plaint and decide whether an actionable cause has been pleaded or whether the suit on the face of it is barred by any law. The plaintiff has not to be put to any notice. But where summons have been issued in the suit and thereafter a learned Single Judge opines that summons were wrongly issued inasmuch as the plaint does not disclose an actionable cause or is barred by law, the plaintiff has to be put to notice. Creative surprises cannot be sprung at any party.

25. Learned counsel for the contesting respondents insisted before us that the

impugned decision dated November 08, 2012 may be treated as rejection a plaint under Order VII Rule 11 CPC, but could not overcome the problem that if this was so, the learned Single Judge could not have issued the limited permanent injunction against which limited relief granted to Star India Pvt. Ltd., even the contesting respondents had filed cross objections.

26. We remind ourselves of the ringing words expressed in the decision reported as (1924) 1 KB 296 R v. Sussex : "Not only must Justice be done; it must also be seen to be done."

27. We therefore do not deal with the merits of the matter at all and express no opinion on the impugned decision inasmuch as we find a serious procedural flaw, in that, when the suits were disposed of BCCI had not been served with summons in two suits. The contesting defendants of CS(OS) No. 2722/2012 had yet to file a written statement. Their application under Order XI Rule 18 CPC for supply of the complete agreement on which the suit was founded was still pending. Only the application seeking injunction was listed for hearing on November 08, 2012. BCCI had been served with summons in the suit on November 01, 2012 and 30 days' time available for filing the written statement was not over by November 08, 2012. In the other two suits BCCI had not even been served with the summons in the respective two suits.

28. What has happened is obvious. We have already opined thereon in paragraph 18 to 20 above.

29. With as many as 12 senior counsels breathing down the neck of the Judge; docket explosion breaking the back of the judicial system, it was a rush-rush affair, and regretfully has resulted in a situation of precious time, far from being saved, being lost.

30. A self-contradictory decision, which on the one hand holds that law does not recognize the right sought to be asserted by the plaintiff, on the reasoning as we read that merely because one owns the broadcast (including re-broadcast) rights in an event, pertaining thereto law does not recognize any ownership in any underlying thing in relation to the event; concludes by issuing a limited injunction and in respect of the reason pertaining to the limited injunction, would recognize a proprietary right. A paradoxical situation.

31. This inherent contradiction would make it obvious that it is not a case where the learned Single Judge has rejected the plaint invoking power under Order VII Rule 11 CPC of the Code or the inherent powers of the Court. That apart, the plaintiffs concede that it is not their case in the plaint that the action is founded on any right under the Copyright Law; and we find the impugned decision replete with the discussion on Copyright Law. There are stray observations in the impugned decision on whether the right could be founded in Common Law. The magnitude of the procedural problem with respect to BCCI not being served and the suits being dismissed needs to be highlighted by us for the reason the decision is declaratory of the ownership right of BCCI under whom, by way of a

contract, Star India Pvt. Ltd. asserts a right to maintain the action. It could be possible to argue that where a plaint discloses no cause of action, notwithstanding there being a necessary party impleaded as a defendant, the plaint can be rejected; but not with a finding that law does not recognize any right of the kind asserted in the plaint in the said necessary party without hearing the necessary party and having its version in the form a written statement for the reason it may happen that the plaintiff does not make complete pleadings with respect to the proprietary/ownership right of the party through whom, under a contract it claims a right, but the said party who gave the right may plead facts showing the existence of its proprietary/ownership rights.

32. In the instant case(s) the foundation of the claim was a contract under BCCI i.e. an assignment of a proprietary right of BCCI in favour of the plaintiff and if the view taken is that BCCI did not have any proprietary right which was capable of being assigned and hence the plaintiff had no cause of action to sue, the finding being declaratory of the proprietary right of BCCI, ought to have awaited a written statement filed by BCCI.

33. We only remind ourselves of the proverb : "Haste makes waste" and its counterpart : "Look before you leap".

34. Sensing, and indeed smart counsels do when arguments are heard (probably from the questions posed by the learned Judges), that in all probability on account of procedures not being followed the impugned decision would be set aside learned counsel for Star India Pvt. Ltd. urged that since valuable rights of his client were adversely affected by the continuing offending activities, we i.e. the Division Bench must grant an ad-interim injunction till the learned Single Judge re-decides the application seeking injunction.

35. We declined to hear arguments on said issue for the reason we were inclined to set aside the impugned decision and remand the matter by restoring the suits and applications seeking interim injunctions for re-adjudication by the learned Single Judge; but would simply observe that what the learned senior counsel was requiring this Court to do was to apply itself on the limited aspect : Whether pending hearing of application for interim injunction, should an ad-interim injunction ensue; and for which, in the paradoxical situation faced by us : of the learned Single Judge holding in one breath that the plaintiffs had no right and at the same time granting a limited injunction, we thought that we would be better advised to not even deal with the subject of the power of the Court, in the given situation, to consider exercising its very limited power to issue an ad-interim injunction, more so for the reason, prima facie, what is being transmitted to the customers by the cellular operators with respect to the game of cricket are facts; and it needs a serious jurisprudential debate to determine : Whether a fact is capable of being owned, and hence a proprietary right being claimed with respect to a fact relating to operations in an event. As described by N. Luhmann : Die Politik der Gesellschaft, operations which are single events without duration

vanish as soon as they appear. Therefore, an observing operation is unable to observe its own observation - that is to say that the respective operation is not in the position to observe its own execution, and at the same time it is not even able to see that it is not able to see. How, this can be applied to the jurisprudence pertaining to a cricket match where a ball bowled is a single event without duration and vanishes as soon as it appears and similar is the situation to every ball played. The event, being without duration, vanishes as soon as it appears : Would the same hold true to the duration of it being news? If yes, to what effect? Whether the fact of this vanishing event is capable of being owned? If yes, for what duration? If the fact of this vanishing event is not capable of being owned, would the fact pertaining to this vanishing event be public property capable of being used and exploited commercially by one and all? If a fact relating to such an event is "hot news" does common law of "unfair competition" confer any right in the event organizer or the assignee with respect to the fact? This is just a food for thought for the learned Single Judge and not to be treated as an expression of any opinion by the Division Bench. We highlight once again that the written statement by BCCI has yet to surface. In what manner BCCI claims a proprietary/ownership interest would have to be seen for the reason we can foresee a situation where the right to commercially exploit would necessarily require a decision on the very existence of a proprietary right capable of being owned or recognized by law as a proprietary right.

36. The appeals and the cross-objection are disposed of setting aside the impugned judgment and decree dated November 08, 2012. CS(OS) No. 2722/2012, CS(OS) No. 2780/2012 and CS(OS) No. 3232/2012 are restored along with all pending applications, which would include the application seeking interim injunction.

37. We grant two weeks time to BCCI to file written statement in all the three suits and likewise grant two weeks time to such of the contesting defendants who have not filed written statements. Replications would be filed within a week. Within a week thereof the applications for interim injunction would be taken up by the learned Single Judge for re-hearing.

38. We make it clear that in view of the pleadings of the parties, if an issue arises whether Common Law recognizes any proprietary/ownership interest in BCCI with respect to cricket matches organized by BCCI, it would be open to the learned Single Judge to settle the same by way of a preliminary issue, but only if the pleadings would evidence that the issue arises as a purely legal issue and not a mix issue of law and fact, for which we may give by example : Usages and practices in Common Law dominions with respect to accepting new form of property rights and properties themselves if pleaded in the pleadings may require evidence to be led.

39. The three suits shall now be listed before the learned Joint Registrar on December 21, 2012. The applications would be listed before the learned Single Judge on January 07, 2013. There shall be no order as to costs in the appeals.