

(2020) 02 DEL CK 0544

In the Delhi High Court

Case No : Civil Suit (COMM) No. 408 Of 2019, Miscellaneous Application No. 10601, 13684 Of 2019

Star India Pvt. Ltd

APPELLANT

Vs

Moviestrunk.Com & Ors

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Copyright Act, 1957 — Section 14, 51

Citation : (2020) 02 DEL CK 0544

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Sidharth Chopra, Yatinder Garg, Vivek Ayyagari, Aasish Somasi

Final Decision : Disposed Of

Judgement

Prateek Jalan, J

1. The plaintiff, alongwith its division Fox Star Studio, is engaged in the business of production and distribution of films in India, and holds exclusive licenses in respect of various films. The present suit concerns the cinematograph film "Mission Mangal" [hereinafter referred to as "the film"], which was slated to be released on 15.08.2019, in over 2500 screens in India. It is stated that the plaintiff and defendant No. 68 - Cape of Good Films LLP jointly hold the intellectual property rights in the film under the provisions of the Copyright Act, 1957 ["the Act"].

2. The plaintiff has filed the present suit against 67 named defendant-websites [defendant Nos. 1 to 67] which, according to the plaintiff, are believed to be engaged in the business of transmitting third party content and information through the internet, and thus providing illegal content inter alia through hosting, streaming and broadcasting to the public for free. Unidentified defendants believed to be engaged in similar business have also been arrayed as Ashok Kumar (defendant No. 81). Defendant No. 69 is the registrar of the

defendant-websites Nos. 1 to 7, and defendant Nos. 70 to 78 are internet service providers ["ISPs"], whose assistance is sought to block the concerned websites. The plaintiff has also impleaded, as defendant Nos. 79 and 80, the departments of the Government of India, which issue notifications with regard to blocking of the impugned websites.

3. In the present suit, the plaintiff apprehends communication of infringing copies of the film to the public, and the same being made available for viewing and/or download without the authorization of the plaintiff, which would have a direct impact on the plaintiff's business and which, according to the plaintiff, constitutes an infringement of the exclusive rights conferred upon it by virtue of Sections 14 and 51 of the Act.

4. According to the plaintiff, defendant Nos.1 to 67 are "rogue websites" 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 their principal activity involves reproduction, publication and communication of infringing material through the internet. According to the plaintiff, the defendant-websites facilitate infringement of the plaintiff's copyright, and the anonymous nature of these websites makes it impossible to identify them effectively. The plaintiff has placed on record evidence by way of screenshots, WHOIS details, and notices to demonstrate the nature of these websites in terms of the judgment in UTV Software (supra).

5. The plaintiff conducted an investigation through a third-party investigator, and an affidavit dated 29.07.2019 has been filed in that regard, wherein it has been reported that large scale copyright infringement of the plaintiff's content as well as third party content has been ongoing on the defendant-websites. Notices were sent to the defendant-websites to take down infringing content from their pages;

however, responses to the same have not been received.

6. On the basis of the above, the plaintiff seeks the following reliefs in the suit: -

"59. In light of the foregoing, it is most respectfully prayed that this Hon'ble Court may be pleased to:

i. Pass an order and decree of permanent injunction restraining the Defendants No. 1 to 67 (and such other websites / entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiff's exclusive rights and Copyrights), their 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 communicating, hosting, streaming, and/or making available for viewing and downloading, without authorization, on their websites or other platforms, through the internet in any manner whatsoever, the Film and content related thereto, so as to infringe the Plaintiff's exclusive rights and Copyrights,

ii. Pass an order and decree directing the Defendant No. 69 , its directors,

partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on its behalf, or anyone claiming through, by or under it, to suspend the domain name registration of domain names of Defendants No. 1 to 7 by Defendant No. 69 GoDaddy as already identified by the Plaintiff in the instant suit in Memo of Parties or such other domain names that may subsequently be notified by the Plaintiff to be of Rogue Websites which infringe its exclusive rights;

iii. Pass an order and decree directing the Defendant Nos. 70 to 78, 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 access to the various websites identified by the Plaintiff in the instant suit at S. No. 2 of the Documents or such other websites that may subsequently be notified by the Plaintiff to be infringing of its exclusive rights,

iv. Pass an order and decree directing the Defendant Nos. 79 and 80 to issue a notification calling upon the various internet and telecom service providers registered under it to block access to the various websites identified by the Plaintiff in the instant suit at S. No. 2 of the Documents or such other websites that may subsequently be notified by the Plaintiff to be infringing of its exclusive rights,

v. An order for damages of Rs. 2,00,01,000/- to be paid by the Defendant Nos. 1 to 67 and such other websites / entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiff's exclusive rights, to the Plaintiff on account of their illegal and infringing activities and a decree for the said amount be passed in favour of the Plaintiff (the Plaintiff reserves its right to claim additional damages and amend the pleadings accordingly once the magnitude of the Defendants' illegal / infringing activities and the revenues earned by the Defendants' in pursuance to such illegal / infringing activities is ascertained upon discovery in the instant action);

vi. An order for costs in the present proceedings in favour of the Plaintiff;

Any other Order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the Plaintiff."

7. On 05.08.2019, summons were issued, and an ex-parte ad interim order was granted in the following terms: -

"16. The apprehension expressed by the Plaintiff is justified considering the fact that piracy on the internet has become quite rampant and therefore, if adequate orders are not passed to protect the rights of the Plaintiff, the Plaintiff would suffer enormous losses. Accordingly, it is directed that there shall be an injunction restraining Defendant Nos. 1 to 67 from in any manner unauthorizedly streaming, communicating, downloading or distributing the cinematograph film 'Mission Mangal', including any extracts/clippings thereof. Defendant No. 69 is

directed to suspend the domain names of Defendant Nos. 1 to 7. In so far as the ISPs identified as Defendant Nos. 70 to 78 are concerned, the said ISPs shall ensure that access to the websites of Defendant Nos. 8 to 67 are blocked. Defendant Nos. 79 and 80, i.e. the Department of Telecommunications and the Ministry of Electronics and Information Technology are also directed to issue, as expeditiously as possible, a notification calling upon internet and telecom service providers to block access to the rogue websites and any other website(s) which the Plaintiff notifies as illegally transmitting or broadcasting the cinematograph film 'Mission Mangal' in any manner."

8. Service of the suit was recorded as having been completed by the order of the Joint Registrar dated 14.10.2019, all of the defendants having been served through email. Despite service of summons, defendant Nos. 1 to 67 have neither entered appearance, nor have they filed written statements. Defendant Nos. 1 to 67 are therefore set ex-parte. Further, in compliance of the above order, defendant No. 79 has issued notifications dated 23.08.2019 and 16.09.2019, and defendant Nos. 69 and 77 have filed their respective affidavits of compliance.

9. In view of the fact that access to the impugned websites have been blocked, in accordance with the order of injunction dated 05.08.2019, that the film has, in fact, been released worldwide on 15.08.2019, and in view of the fact that the principal defendants have not appeared to contest the suit, Mr.Sidharth Chopra, learned counsel for the plaintiff, seeks a decree in terms of paragraph 59(i) of the plaint, as against defendant Nos. 1 to 67, a decree against defendant No. 69 in terms of paragraph 59(ii) of the plaint, and an order of costs. No other relief is pressed.

10. 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 plaintiff 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 plaintiff finally.

11. 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."

12. In support of his contention that the defendant-websites are liable to be treated as "rogue websites", Mr. Chopra has drawn my attention to the following documentary evidence in respect of each of them:-

S. No.

Defendant Website

Main File Page No.

Screenshots

Whois details

Notice

1

Moviestrunk.com

@ 102/109-110 Folder IV (Vol. 1)

@ 111-112 Folder IV (Vol. I)

@ 113 Folder IV (Vol. 1)

2

Moviesminions.net

@ 125 and 131 Folder IV (Vol. 1)

@ 132-133 Folder IV (Vol. 1)

@ 134 Folder IV (Vol. 1)

3

Bthad.net

@148/152 Folder IV (Vol. 1)

@ 153-154 Folder IV (Vol. 1)

@ 155 Folder IV (Vol. 1)

4

Moviescouch.co

@182/201 Folder IV (Vol. 1)

@ 202-203 Folder IV (Vol. I)

@ 204 Folder IV (Vol. I)

5

Desifuntv.org

@ 211/213 Folder IV (Vol. 2)

@ 214-215 Folder IV (Vol. 2)

@ 216 Folder IV (Vol. 2)

6

Cima4up.co

@ 230 Folder IV (Vol. 2)

@ 235-236 Folder IV (Vol. 2)

@ 237 Folder IV (Vol. 2)

7

Shahd4u.tv

@ 278/282 Folder IV (Vol. 2)

@ 283-284 Folder IV (Vol. 2)

@ 285 Folder IV (Vol. 2)

8

Khatrimazafull.to

@ 286 Folder IV (Vol. 2)

@ 287-288 Folder IV (Vol. 2)

@ 289 Folder IV (Vol. 2)

9

Kickassl.to

@ 290 Folder IV (Vol. 2)

@ 291-292 Folder IV (Vol. 2)

@ 293 Folder IV (Vol. 2)

10

Ettv.to

@ 294 Folder IV (Vol. 2)

@ 295-296 Folder IV (Vol. 2)

@ 297 Folder IV (Vol. 2)

11

Wsmmirror.info

@ 298 Folder IV (Vol. 2)

@ 299-300 Folder IV (Vol. 2)

@ 301 Folder IV (Vol. 2)

12

1337x.am

@ 302 Folder IV (Vol. 2)

@ 303-304 Folder IV (Vol. 2)

@ 305 Folder IV (Vol. 2)

13

Driveufr.com

@ 306 Folder IV (Vol. 2)

@ 307-309 Folder IV (Vol. 2)

@ 310 Folder IV (Vol. 2)

14

Putlocker5movies.tv

@311 Folder IV (Vol. 2)

@ 312-314 Folder IV (Vol. 2)

@ 315 Folder IV (Vol. 2)

15

Gofilms4u.io

@ 316 Folder IV (Vol. 2)

@ 317-318 Folder IV (Vol. 2)

@ 319 Folder IV (Vol. 2)

16

1337x.unblocked.lc

@ 320 Folder IV (Vol. 2)

@ 321-322 Folder IV (Vol. 2)

@ 323 Folder IV (Vol. 2)

17

Kickass.unblocked.lc

@ 324 Folder IV (Vol. 2)

@ 325-326 Folder IV (Vol. 2)

@ 327 Folder IV (Vol. 2)

18

Sanet.st

@ 328 Folder IV (Vol. 2)

@ 329-330 Folder IV (Vol. 2)

@ 331 Folder IV (Vol. 2)

19

Extratorrent.ag

@ 332 Folder IV (Vol. 2)

@ 333-335 Folder IV (Vol. 2)

@ 337 Folder IV (Vol. 2)

20

2movierulz.ac

@ 338 Folder IV (Vol. 2)

@ 339-340 Folder IV (Vol. 2)

@ 341 Folder IV (Vol. 2)

21

Yourbittorrent2.com

@ 342 Folder IV (Vol. 2)

@ 343-345 Folder IV (Vol. 2)

@ 346-347 Folder IV (Vol. 2)

22

Torrentzwealmisr.oni on.ly

@ 348 Folder IV (Vol. 2)

@ 349-350 Folder IV (Vol. 2)

@ 351 Folder IV (Vol. 2)

23

Moviemad.link

@ 352 Folder IV (Vol. 2)

@ 353-355 Folder IV (Vol. 2)

@ 356 Folder IV (Vol. 2)

24

Movcr.tv

@ 357 Folder IV (Vol. 2)

@ 358-359 Folder IV (Vol. 2)

@ 360 Folder IV (Vol. 2)

25

Cimaclub.com

@ 361 Folder IV (Vol. 2)

@ 362-364 Folder IV (Vol. 2)

@ 365 Folder IV (Vol. 2)

26

Hdfriday.desi

@ 366 Folder IV (Vol. 2)

@ 367-368 Folder IV (Vol. 2)

@ 369 Folder IV (Vol. 2)

27

1337x.unblock2.xyz

@ 370 Folder IV (Vol. 2)

@ 371-372 Folder IV (Vol. 2)

@ 373 Folder IV (Vol. 2)

28

Desiremovies.world

@ 374 Folder IV (Vol. 2)

@ 375-376 Folder IV (Vol. 2)

@ 377 Folder IV (Vol. 2)

29

Rdxhd.best

@ 378 Folder IV (Vol. 2)

@ 379-380 Folder IV (Vol. 2)

@ 381 Folder IV (Vol. 2)

30

Hdhub4u.site

@ 382 Folder IV (Vol. 2)

@ 383-384 Folder IV (Vol. 2)

@ 385 Folder IV (Vol.2)

31

9xmovie.pro

@ 386 Folder IV (Vol. 2)

@ 387-388 Folder IV (Vol. 2)

@ 389 Folder IV (Vol. 2)

32

Movie4me.win

@ 390 Folder IV (Vol. 2)

@ 391-393 Folder IV (Vol. 2)

@ 394 Folder IV (Vol. 2)

33

Kickasstvshow.club

@ 395 Folder IV (Vol. 2)

@ 396-398 Folder IV (Vol. 2)

@ 399-400 Folder IV (Vol. 2)

34

9xmovies.press

@ 401 Folder IV (Vol. 2)

@ 402-403 Folder IV (Vol. 2)

@ 404 Folder IV (Vol. 2)

35

Modernmob.in

@ 405 Folder IV (Vol. 3)

@ 406-408 Folder IV (Vol. 3)

@ 409 Folder IV (Vol. 3)

36

Mycoolmoviez.xyz

@410 Folder IV (Vol. 3)

@ 411-412 Folder IV (Vol. 3)

@ 413 Folder IV (Vol. 3)

37

8xmovies.info

@ 414 Folder IV (Vol. 3)

@ 415-416 Folder IV (Vol. 3)

@ 417 Folder IV (Vol. 3)

38

Digbt.org

@ 418 Folder IV (Vol. 3)

@ 419-420 Folder IV (Vol. 3)

@ 421 Folder IV (Vol. 3)

39

Moviegan.com

@ 422 Folder IV (Vol. 3)

@423-425 Folder IV (Vol. 3)

@ 426 Folder IV (Vol. 3)

40

Openpirate.cc

@ 427 Folder IV (Vol. 3)

@ 428-430 Folder IV (Vol. 3)

@ 431 Folder FV (Vol. 3)

41

Bolly4u.click

@ 432 Folder IV (Vol. 3)

@ 433-435 Folder IV (Vol. 3)

@ 436-437 Folder IV (Vol. 3)

42

Filmywrap.io

@ 438 Folder IV (Vol. 3)

@ 439-440 Folder IV (Vol. 3)

@ 441 Folder IV (Vol. 3)

43

Kickass.best

@ 442 Folder IV (Vol. 3)

@ 443-444 Folder IV (Vol. 3)

@ 445 Folder IV (Vol. 3)

44

World4ufree.best

@ 446 Folder IV (Vol. 3)

@ 447-448 Folder IV (Vol. 3)

@ 449-450 Folder IV (Vol. 3)

45

World4free.fun

@ 451 Folder IV (Vol. 3)

@ 452-453 Folder IV (Vol. 3)

@ 454-455 Folder IV (Vol. 3)

46

Khatrimaza.wiki

@ 456 Folder IV (Vol. 3)

@ 457-458 Folder IV (Vol. 3)

@ 459 Folder IV (Vol. 3)

47

Filmxy.live

@ 460 Folder IV (Vol. 3)

@ 461-462 Folder IV (Vol. 3)

@ 463 Folder IV (Vol. 3)

48

Thepiratebay.zone

@ 464 Folder IV (Vol. 3)

@ 465-466 Folder IV (Vol. 3)

@ 467 Folder IV (Vol. 3)

49

Thehiddenbay.com

@ 468 Folder IV (Vol. 3)

@ 469-471 Folder IV (Vol. 3)

@ 472 Folder IV (Vol. 3)

50

Todaypk.ro

@ 473 Folder IV (Vol. 3)

@ 474-475 Folder IV (Vol. 3)

@ 476 Folder IV (Vol. 3)

51

Thepiratebay.fyi

@ 477 Folder IV (Vol. 3)

@ 478-479 Folder IV (Vol. 3)

@ 480 Folder IV (Vol. 3)

52

Thepirate.live

@ 481 Folder IV (Vol. 3)

@ 482-483 Folder IV (Vol. 3)

@ 484-485 Folder IV (Vol. 3)

53

Thepiratebay.fail

@ 486 Folder IV (Vol. 3)

@ 487-488 Folder IV (Vol. 3)

@ 489 Folder IV (Vol. 3)

54

Tpb.cool

@ 490 Folder IV (Vol. 3)

@ 491-492 Folder IV (Vol. 3)

@ 493 Folder IV (Vol. 3)

55

Piratebay.icu

@ 494 Folder IV (Vol. 3)

@ 495-496 Folder IV (Vol. 3)

@ 497 Folder IV (Vol. 3)

56

Extratorrent.unblocke d.lc

@ 498 Folder IV (Vol. 3)

@ 499-500 Folder IV (Vol. 3)

@ 501-502 Folder IV (Vol. 3)

57

Bayboat.link

@ 503 Folder IV (Vol. 3)

@ 504-506 Folder IV (Vol. 3)

@ 507 Folder IV (Vol. 3)

58

Baybea.net

@ 508 Folder IV (Vol. 3)

@ 509-511 Folder IV (Vol. 3)

@ 512 Folder IV (Vol. 3)

59

Tpbtpb.xyz

@ 513 Folder IV (Vol. 3)

@ 514-515 Folder IV (Vol. 3)

@ 516-517 Folder IV (Vol. 3)

60

Moviebaba.in

@ 518 Folder IV (Vol. 3)

@ 519-521 Folder IV (Vol. 3)

@ 522-523 Folder IV (Vol. 3)

61

Thepiratebay.kiwi

@ 524 Folder IV (Vol. 3)

@ 525-527 Folder IV (Vol. 3)

@ 528-529 Folder IV (Vol. 3)

62

Beatpb.club

@ 530 Folder IV (Vol. 3)

@ 531-533 Folder IV (Vol. 3)

@ 534 Folder IV (Vol. 3)

63

Blueunblocked.club

@ 535 Folder IV (Vol. 3)

@ 536-538 Folder IV (Vol. 3)

@ 539-540 Folder IV (Vol. 3)

64

247tpb.club

@ 541 Folder IV (Vol. 3)

@542-544 Folder IV (Vol. 3)

@ 545 Folder IV (Vol. 3)

65

Thepiratebay.vip

@ 546 Folder IV (Vol. 3)

@ 547-548 Folder IV (Vol. 3)

@ 549 Folder IV (Vol. 3)

66

Btdp.eu

@ 550 Folder IV (Vol. 3)

@ 551-552 Folder IV (Vol. 3)

@ 553 Folder IV (Vol. 3)

67

Worldfree4u.desi

@ 554 Folder IV (Vol. 3)

@ Folder IV (Vol. 3)

@ 555 Folder IV (Vol. 3)

13. The evidence placed on record by the plaintiff in support of the claims in the suit include an affidavit dated 29.07.2019 of its investigator, Mr. Gaurav Ray, and electronic records of proof of infringing activities actually being carried out through defendant Nos. 1 to 67. It has been stated in the investigator's affidavit that on monitoring the defendant-websites in June - July 2019, it was found that the plaintiff's content and related proprietary content were available on the websites of defendant Nos. 1 to 67, access to which was being provided illegally and without a license from the plaintiff or any of its divisions.

14. The plaintiff has placed on record, in a USB drive, several screenshots from the defendants' websites, and screenshots of the plaintiff's content actually being downloaded/streamed/played from the defendants' websites to show that the defendants are indulging in large scale infringement of the plaintiff's copyright. The plaintiff has also placed on record the Whois details of each of the defendants, as well as notices sent to the defendant-websites by the investigation firm. The affidavit of the investigator states that the contact details of the registrant of the defendants' website are also masked, and have not been revealed to the plaintiff. The screenshots also reveal that the content on many of the defendant-websites is categorized according to the language, genre and/or popularity of the film, to enable convenient dissemination.

15. In view of the above, the plaintiff has succeeded in showing that defendant Nos. 1 to 67 are primarily engaged in committing and facilitating copyright infringement, that the contact details of the registrant of the website are masked/untraceable, and that the defendant Nos. 1 to 67-websites fall within the parameters laid down in UTV Software (*supra*). The failure of the said defendants to comply with the notices issued on behalf of the plaintiff, or to enter appearance pursuant to summons in this suit, displays a casual indifference to the intellectual property rights of the plaintiff.

16. Having regard to the above, the plaintiff is entitled to a decree against

defendants 1 to 67 in terms of paragraph 59 (i) of the plaint, and against defendant No.69 in terms of paragraph 59 (ii) of the plaint. Decree sheet be prepared accordingly. No other relief is pressed by the plaintiff.

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

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