

(2019) 08 DEL CK 0347

In the Delhi High Court

Case No : Civil Suits (COMM) No. 457 Of 2019, Miscellaneous Application No. 11595, 11597 Of 2019

Warner Bros. Entertainment Inc

APPELLANT

Vs

Moviesflix. Net & Ors

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 3, Order 1 Rule 10
Copyright Act, 1957 — Section 2(f), 2(y), 5, 13(1), 13(2), 14(d), 17, 40, 51(a)(i), 51(a)(ii), 51(b)

Citation : (2019) 9 AD(Delhi) 80

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Sai Krishna Rajagopal, Disha Sharma, Snehima, Surabhi Pande, Vivek Ayyagari

Judgement

V. Kameswar Rao, J

I.A. 11596/2019 (for exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

I.A. 11597/2019 (under Section 80 CPC)

Issue notice to the non-applicants / Defendant Nos. 24 and 25 by all modes including email, returnable on 24th October 2019.

CS(COMM) 457/2019

1. Let the plaint be registered as a suit.
2. Issue summons to the Defendant Nos. 1 to 14 through email and to Defendant Nos. 15 to 25 through all modes upon filing of Process Fee.
3. The summons to the Defendants shall indicate that a written statement to the

plaint shall be filed positively within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

4. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

5. List before the Joint Registrar for marking of exhibits on 27th September 2019. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

6. List before Court on 24th October 2019.

I.A. 11595/2019 (U/O 39 Rule 1 & 2 CPC)

7. Issue notice to the Defendants by all modes including email, returnable on 24th October 2019.

8. The present suit has been filed for permanent injunction, rendition of accounts and damages etc. Plaintiff-Warner Bros. Entertainment Inc., is a Company incorporated at the state of Delaware, having its office at 4000 Warner Boulevard, Burbank, California 91522, United States of America.

9. Defendants Nos. 1-14, which include moviesflix.net, with the additional domains moviesflixhub.com, moviesflixhub.net, hdmoviearea.com, dailydrivelink.me, dailydrivelink.net, dailydrivelink.in (hereinafter Defendant No. 1); psarips.org, with the additional domain psarips.com, psarips.in, psarips.net, (hereinafter Defendant No. 2); world4ufree.store with the additional domains world4ufree.best, world4ufree.com.CO, world4ufree.cool, world4ufree.fun (hereinafter Defendant No. 3); moviebaba.in (hereinafter Defendant No. 4); 123movies.domains, with the additional domains 123moviesback.org, 123moviesback.com, 123movies.gdn, 123moviesla.com, 123moviesz.pro, is123movies.site, www.123movies.site, 123movies2019.com, 123movieshq.org, 123movies.st, 123movies.la, 123movie.uk, go123movies.io, gostream.site, gostream.nu (hereinafter Defendant No. 5); mkvcinemas.eu, with the additional domains mkvcinemas.pro, mkvcinemas.live, mkvcinemas.pw, mkvcinemas.com, mkvcinemas.cz, mkvcage.fun, mkvcage.com, mkvhub.com, mkvrips.com, 480mkv.net, 480mkv.com, mkvcinemas.be (hereinafter Defendant No. 6); pahe.in (hereinafter Defendant No. 7); ettv.to, with the additional domains katcr.co, kickassl.to, kat.ag, kickass.sx, kikass.to, kat.sx (hereinafter Defendant No. 8); fullmaza.ch with the additional domains fullmaza.vip, fullmaza.org (hereinafter Defendant No. 9); watchseries.fm, with the additional domains watch-series.co, watch-series.live, watch-series.ru, watch-series.cc,

watchseriesnet.net, on.mywatchseries.stream, get.mywatchseries.stream, swatchseries.to, dwatchseries.to, gowatchseries.tv, gowatchseries.co, watchseries.to, watch-series.ac (hereinafter Defendant No. 10); hdpopcorns.me with the additional domain hdpopcorns.online (hereinafter Defendant No. 11); lordhd.com(hereinafter Defendant No. 12); moviesak47.pro with the additional domain moviesak47.in(hereinafter Defendant No. 13); subsmovies.nz (hereinafter Defendant No. 14) [hereinafter collectively referred to as "Defendant Websites"], are online locations which enables users of the Defendant Websites' services to: (a) view (by a process known as "streaming / downloading") cinematograph films, being motion pictures, television programs or other audio-visual content, on devices connected to the Internet; (b) cause copies of those cinematograph films to be downloaded onto the memory of their devices for watching later or enabling others to watch or further copy those cinematograph films; and/or (c) identify other online locations including (by a process known as "linking") which enables those users to engage in the activities set out in (a) or (b).

10. It is stated in the plaint that Defendant Websites are primarily and substantially engaged in communicating to the public, hosting, streaming and/or making available to the public Plaintiff's original content without authorization, and/or facilitating the same. Defendant Nos. 1 to 14 are making available, illegally and unauthorizedly, content of various third parties like UTV Software Communications Ltd., STAR India Pvt. Ltd., Disney Enterprises, Inc., Paramount Pictures Corporation, Columbia Pictures Industries, Inc., Universal City Studios LLC., and Netflix Entertainment Services India LLP, etc. (hereinafter referred to as 'studios').

11. It is further submitted that Plaintiff's films are works of visual recording and include sound recordings accompanying such visual recordings, which qualify as a "cinematograph film" under Section 2(f) of the Copyright Act, 1957 (hereinafter 'the Act'). Further, by virtue of Section 13(1) read with Section 13(2), Section 5 and Section 40 of the Act, the Plaintiff's cinematograph films whether released or not released in India would be entitled to all rights and protections granted under the Act for cinematograph films. The cinematograph films produced by the Plaintiff are "works" as defined under Section 2(y) of the Act, Plaintiff has all the rights in such cinematograph films granted under Section 14(d) of the Act, and Plaintiff is author and/or first owner and/or owners (under Section 17 of the Act) of the following illustrative list of cinematograph films that are entitled to protection under the Act:

S.No.

Film

Year

1.

Aquaman

2018

2.

A Star Is Born

2018

3.

Wonder Woman

2017

4.

Arrow, Season 7, Episode 22

2019

12. In order to protect and enforce their exclusive rights, the Plaintiff investigated and monitored the Defendant Websites and gathered evidence of their infringing activity. During the period of investigation the Defendant Websites infringed the Plaintiff's Original Content or facilitated the same, using or facilitating the use of the Defendant Websites, inter alia, by downloading and streaming the Plaintiff's Original Content. The illustrative list of illegal content made available by Defendant Nos. 1 to 14, that are entitled to protection under the Act are mentioned hereinbelow:

Studio

Film

Year

Columbia

Miracles from Heaven

2016

Columbia

This is the End

2013

DEI

Finding Dory

2016

DEI

The Jungle Book

2016

Paramount

Transformers: The Last Knight

2017

Paramount

Transformers: Age of Extinction

2014

Paramount

xXx: Return of Xander Cage

2017

Universal

Straight Outta Compton

2015

Universal

The Purge: Election Year

2016

Universal

The Secret Life of Pets

2016

Netflix

Stranger Things

2017- 2019

Netflix

Santa Clarita Diet

2018- 2019

13. Learned counsel for the Plaintiff submits that legal notice was served upon the Defendant Websites calling upon them to cease from engaging in their infringing activities. Despite such legal notices, the Defendant Websites continue to infringe the rights in Plaintiff's Original Content. The Defendant Websites are therefore willfully infringing Copyright material and ignoring or failing to respond

to notice to cease all infringement. He further submits that, access of the Defendant Websites has been disabled in other jurisdictions such as 123movies.st (Defendant No. 5) has been blocked in Australia; gostream.site (Defendant No. 5) has been blocked in Australia and Italy; katcr.co (Defendant No. 8) has been blocked in Belgium, Denmark, Indonesia, Italy, Malaysia and Portugal; smatchseries.to (Defendant No. 10) has been blocked in Belgium, Denmark and Norway; watch-series.co (Defendant No. 10) has been blocked in Australia, Denmark and Malaysia; gowatchseries.co (Defendant No. 10) has been blocked in Denmark; gowatchseries.tv (Defendant No. 10) has been blocked in United Kingdom; hdpopcorns.com an additional domain of Defendant No. 11 has been blocked in Australia, Indonesia and Malaysia; submovies.nz (Defendant No. 14) has been blocked in Australia, Denmark and Italy.

16. Learned Counsel for the Plaintiff submits that Defendant Websites provides illegal content directly for free without any requirement of registration by users, and such availability of content is supported by the advertisements featured on the website. The primary purpose of the Defendant Websites is to commit or facilitate copyright infringement. Thus, Defendant Nos. 1 to 14 is liable for infringement under Section 51(a)(ii), Section 51(b), and Section 51(a)(i) for making a copy of the Original Content including the storing of it in any medium by electronic or other means and communicating the Original Content to the public. Further the hosting, streaming, reproducing, distributing, making available to the public, and/or communicating to the public of the Original Content, or facilitating the same, without authorization of the Plaintiff amounts to violation of the Plaintiff's copyright work, protected under the Act. In support of his contentions reliance has also been placed on the decision of this court in CS(COMM) 724/2017 dated 10th April, 2019, UTV Software Communication Ltd. vs. 1337X.TO and Ors.

14. Plaintiff has arrayed various internet and telecom services providers (ISPs) as Defendant Nos. 15-23 (hereinafter "the said ISPs") in the present suit to ensure the effective implementation of any relief that this Hon'ble Court may grant in favour of the Plaintiff. The limited relief being claimed against the said ISPs is to ensure the effective implementation of any order that this Hon'ble Court may be pleased to grant in favour of the Plaintiff by disabling access of the Defendant Websites in India.

15. Plaintiff has also arrayed Defendant No. 24, the Department of Telecommunications (DoT), and Defendant No. 25, the Ministry of Electronics and Information Technology (MEITY), for a similar reason. The limited relief being claimed against the DoT and the MEITY is the issuance of a notification to the internet and telecom service providers registered with it to disable access into India of the Defendant Websites.

16. In view of the averments noted hereinabove and in view of the judgment passed in UTV Software Communication Ltd. (supra), this Court is of the opinion that a prima facie case is made out in favour of the Plaintiff and balance of

convenience is also in its favour. Further, irreparable harm or injury would be caused to the Plaintiff if an interim injunction order is not passed.

17. Consequently, Defendant Nos. 1-16 (and such other domains/domain owners/ website operators/entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiff's exclusive rights), 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, are restrained from, hosting, streaming, reproducing, distributing, making available to the public and/or communicating to the public, or facilitating the same, in any manner, on their websites, through the internet any cinematograph work/content/programme/ show in relation to which Plaintiff has copyright;

18. Further, as held by this court in UTV Software Communication Ltd. (supra), in order for this court to be freed from constant monitoring and adjudicating the issues of mirror/redirect/alphanumeric websites it is directed that as and when Plaintiff files an application under Order I Rule 10 for impleadment of such websites, Plaintiff shall file an affidavit confirming that the newly impleaded website is mirror/redirect/alphanumeric website with sufficient supporting evidence. Such application shall be listed before the Joint Registrar, who on being satisfied with the material placed on record, shall issue directions to the ISPs to disable access in India to such mirror/redirect/alphanumeric websites.

19. Defendant Nos. 15-23, shall ensure compliance of this order by blocking, the websites, their URL's and the respective IP address as under:

S.No.

Domains

URLs

IP Addresses

1.

moviesflix.net

<https://moviesflix.net/>

104.27.158.101

104.27.159.101

moviesflixhub.net

<https://moviesflixhub.net/>

104.31.82.218

104.31.83.218

moviesflixhub.com
www.moviesflixhub.com
104.18.34.197
104.18.35.197
hdmoviearea.com
https://hdmoviearea.com/
104.31.66.64
104.31.67.64
dailydrivelink.net
http://dailydrivelink.net
104.27.140.106
104.27.141.106
dailydrivelink.in
http://dailydrivelink.in
104.28.6.222
104.28.7.222
dailydrivelink.me
https://dailydrivelink.me/
104.24.120.188
104.24.121.188
2.
psarips.org
https://psarips.org/
93.174.89.4
psarips.com
https://psarips.com
psarips.in
https://psarips.in
psarips.net
https://psarips.net

3.

world4ufree.best

<https://world4ufree.best/>

104.27.184.87

104.27.185.87

world4ufree.com.co

<https://world4ufree.com.co>

104.18.32.222

104.18.33.222

world4ufree.store

<https://world4ufree.store>

192.124.249.159

world4ufree.fun

<https://world4ufree.fun>

104.27.144.38

104.27.145.38

world4ufree.cool

<https://world4ufree.cool>

104.28.28.199

104.28.29.199

4.

moviebaba.in

<http://moviebaba.in/>

104.27.186.85

104.27.186.85

5.

123movies.domains

<https://ww1.123movies.domains/>

104.31.68.37

104.31.68.37

123movies.la

<https://www3.123movies.la/>

104.25.107.102

104.25.108.102

123moviesback.org

<https://www.123moviesback.org/>

104.27.166.24

104.27.167.24

123moviesback.com

<https://www.123moviesback.com>

104.31.84.11

104.31.85.11

123movies.gdn

<https://www.123movies.gdn/>

104.25.88.28

104.25.89.28

123moviesla.com

<https://www.123moviesla.com>

104.24.104.218

104.24.105.218

123movie.uk

<https://w3.123movie.uk/>

199.188.201.159

gostream.nu

<https://gostream.nu>

104.31.94.223

104.31.95.223

123moviesz.pro

<https://www.123moviesz.pro/>

104.24.124.223

104.24.125.223

is123movies.site

<https://is123movies.site/>

104.28.22.9

104.28.23.9

123movies2019.com

<https://www.123movies2019.com>

104.27.146.147

104.27.147.147

gostream.site

<https://gostream.site>

104.18.60.72

104.18.61.72

go123movies.io

<https://www2.go123moves.io/>

104.27.142.213

104.27.143.213

123movieshq.org

<https://123movieshq.org/>

104.18.42.58

104.18.43.58

123movies.st

<https://www6.123movies.st/>

104.31.114.13

104.31.115.13

6.

mkvcinemas.pro

<https://www.mkvcinemas.pro/>

104.27.188.121

104.27.189.121

mkvcinemas.cz

<https://www.mkvcinemas.cz>

104.28.24.84

104.28.25.84

mkvcinemas.eu

<https://www.mkvcinemas.eu/>

104.27.188.153

104.27.189.153

mkvcinemas.pw

<https://mkvcinemas.pw>

104.28.8.69

104.28.9.69

mkvcinemas.com

<https://mkvcinemas.com>

104.31.78.10

104.31.79.10

mkvcinemas.live

<https://mkvcinemas.live/>

104.27.148.32

104.27.149.32

mkvcinemas.be

<https://www.mkvcinemas.be/>

104.18.58.198

104.18.59.198

mkvhub.com

<https://www.mkvhub.com/>

104.31.64.69

104.31.65.69

mkvcage.com

<https://www.mkvcage.com/>

104.24.98.153

104.24.99.153

mkvcage.fun

<https://www.mkvcage.fun/>

104.27.172.131

104.27.173.131

480mkv.net

<https://480mkv.net/>

104.27.172.131

104.24.117.158

480mkv.com

<https://480mkv.com>

104.31.80.82

104.31.81.82

mkvrips.com

<https://mkvrips.com/>

104.18.62.90

104.18.63.90

7.

pahe.in

<https://pahe.in/>

104.27.132.141

104.27.133.141

8.

etv.to

<https://www.etv.to/>

104.25.158.33

104.25.159.33

katcr.co

<https://katcr.co/>

192.64.119.34

91.212.150.157

kickass1.to

<https://kickass1.to/>

104.31.18.30

104.31.19.30

kikass.to

<https://kikass.to/>

104.27.150.245

104.27.151.245

kat.sx

<https://kat.sx/>

104.31.16.3

104.31.17.3

kickass.sx

<https://kickass.sx/>

104.31.18.30

104.31.19.30

kat.ag

<https://kat.ag>

104.31.18.30

104.31.19.30

9.

fullmaza.vip

<https://fullmaza.vip/>

104.27.176.218

104.27.177.218

fullmaza.ch

<https://fullmaza.ch/>

104.27.174.146

104.27.175.146

fullmaza.org

<https://fullmaza.org>

104.27.190.251

104.27.191.251

10.

swatchseries.to

<https://www1.swatchseries.to/>

104.31.18.30

104.31.19.30

dwatchseries.to

<https://dwatchseries.to>

104.31.18.30

104.31.19.30

watch-series.ac

<https://watch-series.ac>

104.18.58.170

104.18.59.170

watch-series.co

<https://ww6.watch-series.co/>

104.25.206.11

104.25.207.11

watchseries.fm

<https://watchseries.fm/>

172.64.104.16

172.64.105.16

watch-series.live

<https://www4.watch-series.live/>

104.26.4.194

104.26.5.194

Watch-series.cc
Watch-series.cc
185.38.15.148
Watch-series.ru
Watch-series.ru
104.31.92.31
104.31.93.31
mywatchseries.stream
<https://on.mywatchseries.stream>
104.28.28.173
104.28.29.173
mywatchseries.stream
<https://get.mywatchseries.stream/>
104.28.28.173
104.28.29.173
watchseries.to
<https://ww1.watchseries.to/>
104.31.64.104
104.31.65.104
watchseriesnet.net
<http://www5.watchseriesnet.net>
104.31.72.66
104.31.73.66
mywatchseries.stream
<https://mywatchseries.stream>
104.28.28.173
104.28.28.173
104.28.29.173
gowatchseries.tv
<https://www2.gowatchseries.tv/>

104.26.6.88

104.26.7.88

gowatchseries.co

<https://ww5.gowatchseries.co>

104.26.14.159

104.26.15.159

11.

hdpopcorns.online

<https://hdpopcorns.online/>

104.24.102.92

104.24.103.92

hdpopcorns.me

<https://www.hdpopcorns.me>

104.24.106.249

104.24.107.249

12.

lordhd.com

<https://lordhd.com/>

104.28.30.228

104.28.31.228

13.

moviesak47.pro

<https://moviesak47.pro>

104.27.184.104

104.27.185.104

moviesak47.in

<https://www.moviesak47.in>

104.28.16.163

104.28.17.163

14.

subsmovies.nz

http://www1.subsmovies.nz

104.27.152.183

104.27.153.183

Further, Defendant Nos. 24 and 25 are directed to suspend the aforementioned domain name registration of Defendant Nos. 1 to 14 and issue requisite notifications calling upon various internet and telecom service providers registered under them to block the aforementioned websites identified by Plaintiff.

20. Let provisions of Order XXXIX Rule 3 CPC be complied by way of email within a period of one week.

21. A copy of this order be given dasti under the signature of the Court Master.