

Star India Private Limited. & Anr vs Live4Wap.Click & Ors on 11 January, 2023

Author: C. Hari Shankar

Bench: C.Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 11/2023 & I.A. 496/2023, I.A. 497/2023, I.A.
498/2023, I.A. 499/2023

STAR INDIA PRIVATE LIMITED. & ANR. Plaintiffs
Through: Mr. Sandeep Sethi, Sr. Adv.
with Mr. Siddharth Chopra, Mr. Yatinder
Garg, Mr. Raunak Das Sharma and Ms.
Rimjhim Tiwari, Advs.

versus

LIVE4WAP.CLICK & ORS. Defendants
Through: Mr Ajay Gupta, Adv. for
Defendant 29

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
ORDER

% 11.01.2023 I.A. 499/2023 in CS(COMM) 11/2023

1. This is an application, under Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, 2015, seeking permission to file additional documents.

2. For the reasons stated in the application, the plaintiffs are permitted to file additional documents within four weeks from today in accordance with the protocol envisaged by Order XI Rule 1(4) of the CPC.

3. The application is allowed accordingly.

I.A. 498/2023 in CS(COMM) 11/2023

4. Subject to the plaintiffs' filing legible copies of any dim or illegible documents on which they may seek to place reliance within four weeks from today, exemption is granted for the present.

5. The application is allowed accordingly.

I.A. 497/2023 in CS(COMM) 11/2023

6. Given the urgent nature of the relief sought in the plaint, exemption is granted for the present from serving notice under Section 80 of the CPC on the official defendants.

7. The application is allowed accordingly.

CS(COMM) 11/2023

8. Plaintiff 1 provides broadcasting services. Plaintiff 2 owns the online streaming platform/website www.hotstar.com and "Disney + Hotstar" and the corresponding Mobile App, which enables viewers to watch serials, sports, movies and the like.

9. The plaint asserts that, vide agreement dated 5th April 2018 executed between the Board of Control for Cricket in India (BCCI) and the plaintiffs, exclusive global media rights, for streaming/transmitting, over the television and digital media, events conducted by the BCCI, including the cricket tournaments which are to take place between Sri Lanka and India, New Zealand and India and Australia and India during the period from 15th March 2018 to 31st March 2023, have been granted to the plaintiffs.

10. By virtue of this agreement, the plaintiffs assert exclusive rights to make available to the public the events relating to cricket tournaments conducted by the BCCI during the aforesaid period 15th March 2018 to 31st March 2023, on any platform including the internet and mobile. Any such transmission or broadcasting of the said event by any other entity, it is submitted, would be infringing the exclusive copyright held by the plaintiffs in that regard, emanating from the agreement dated 5th April 2018.

11. Defendants 1 to 11 are stated to be rogue websites, engaged in making available to public third-party content and information through internet and mobile transmission.

12. The websites are stated to be streaming and providing access, as well as transmitting and broadcasting matches being conducted between India and Sri Lanka during the ongoing tour which commenced on 3rd January 2023 without any authorisation from the plaintiffs. For this purpose, it is stated that Defendant 6 is illegally using the name of website Cricbuzz.com, to which, too, the said defendant has no right.

13. In these circumstances, the plaint asserts that the plaintiffs issued cease and desist notices to Defendants 1 to 11 on 3rd and 4th January 2023 calling on them to desist from transmitting or broadcasting the aforesaid content. The plaintiffs also sent a notice dated 6th January 2023 to the internet service providers (ISPs, Defendants 18 to 26, calling on them to block access to the websites of Defendants 1 to 11.

14. It is in these circumstances that the plaintiffs have approached this Court by means of the present suit, seeking protection against infringement of copyright.

injunction against Defendants 1 to 11 from making available to the public, essentially by transmitting or broadcasting, in any manner, whether over the television or over any digital platform or the internet, the content relating to the events conducted by BCCI as broadcasted by the plaintiffs in their channels including "Hotstar" and "Disney + Hotstar". Other directions, to the remaining defendants, towards implementation of the said injunction is also sought.

16. Prima facie, there is substance in the grievance of the plaintiffs. It is a matter of common knowledge that such rogue websites come into being before such events takes places and, without any licence or authorisation, start streaming and broadcasting the events over which copyright is held by others.

17. This Court finds itself inundated with such suits, which keep cropping up every now and then. It may be useful for the Legislature to formulate some kind of a policy by which such disputes can avoid being taking up the time of the courts. That said, as the plaintiffs have a clear prima facie case, they would be entitled to an injunction as sought.

18. In the circumstances, let the plaint be registered as a suit.

19. Issue summons in the suit.

20. Summons are accepted, on behalf of Defendant no. 29, by Mr Ajay Gupta.

21. Let summons issue to remaining defendants by all modes.

22. Written statement, if any, accompanied by affidavit of admission and denial of the documents filed by the plaintiffs be filed within 30 days with advance copy to learned Counsel for the plaintiffs who may file replication thereto, accompanied by affidavit of admission denial of documents filed by the defendants within 30 days thereof.

23. List before the Joint Registrar on 21st February 2023 for completion of pleadings, admission and denial of documents and marking of exhibits, whereafter the matter would be placed before the Court for case management and further hearing.

24. This application seeks ad interim protection.

25. My attention has been invited to earlier orders passed by this Court in which similar directions had been issued in similar circumstances.

26. Accordingly, the following interlocutory directions are passed, to remain in force till the next date of hearing:

(i) Defendants No. 1 to 11 (and such other mirror/redirect/alphanumeric websites of Defendants 1 to 11 which are discovered during the course of the proceedings and notified on Affidavit by the Plaintiffs to have been infringing the Plaintiffs' 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 restrained from 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 content over which the plaintiff has exclusive copyright, so as to infringe the Plaintiffs' exclusive rights, copyrights and broadcast reproduction rights.

(ii) Defendant 12 is directed to suspend the domain name registration of Defendants 1, 3, 8 and 10 in respect of the websites (live4wap.click, khantv.khantv.com, s1.mylivecricket.club and hesgoaltv.me).

(iii) Defendant 13 is directed to suspend the domain name registration of Defendants 2 and 6 & 29 in respect of the websites (a-sports-live.com and cricbuzzlive.in).

(iv) Defendant 14 is directed to suspend the domain name registration of Defendants 4 and 5 in respect of the websites (beemsports.com and btsportlivestream.com).

(v) Defendant 15 is directed to suspend the domain name registration of Defendant 11 in respect of the website (wikicast.tv).

(vi) Defendant 16 is directed to suspend the domain name registration of Defendant 9 in respect of the website (neymartv.net).

(vii) Defendant 17 is directed to suspend the domain name registration of Defendant 7 (123cric.com) in respect of the website (neymartv.net).

(viii) Defendant 29 is directed to suspend/cancel the domain name registration of the domains cricbuzzlive.in.

(ix) Defendants 12 to 17 and 29 are directed to disclose, on affidavit, (a) complete details such as name, address, email address, phone number, IP address, etc. (b.) Mode of payment along with payment details used for registration of domain name by the registrant(s) and (c.) details of other websites registered by the Defendant Nos. 1 to 11 using similar details, same credit card, payment gateway etc. (disclosed as per sub- clause (b) above) with the Defendant Nos. 12 to 17 & 29.

(x) To facilitate implementation of the aforesaid directions, Defendants 27 and 28 are directed to issue a notification, calling on internet and telecom service providers registered under the said defendants, to block access to the aforesaid websites identified by the plaintiff and enumerated in the serial no.1 in the documents annexed to the plaint.

27. Mr. Sandeep Sethi, learned Senior Counsel for the plaintiffs, also seeks, in order that the plaintiffs are not constrained to approach this Court time and again against new infringing websites which may mushroom during the course of these proceedings, that an order of dynamic injunction be granted, whereby access to the said websites would be blocked on the plaintiffs' filing an affidavit with Defendants 18 to 26 and 29, immediately on filing of the said affidavit. He undertakes, in order to maintain transparency in the process, that the plaintiffs would also, side-by-side, file the affidavit

before this Court.

28. He draws my attention, in this context, to para 93 of the judgment Communication Ltd v. 1337X.To and Ors.1.

29. Accordingly, Defendants 18 to 26 and 29 are directed to block access to any alphanumeric/redirect/mirror website of the defendant- websites which is communicated, to them, by the plaintiffs, on affidavit, to be indulging in infringing activities similar to those in which Defendants 1 to 11 in the present plaint are indulging.

30. The plaintiffs would also, immediately, file a copy of the said affidavit before this Court.

31. The aforesaid directions shall remain in force till the next date of hearing.

32. The plaintiffs are directed to comply with the provisions of Order XXXIX Rule 3 of the CPC qua the defendants who are un- represented today within a period of one week from today by all modes possible.

33. List this application before the Court on 15th March 2023.

C. HARI SHANKAR, J.

JANUARY 11, 2023 dsn (2019) 78 PTC 375 Digitally Signed By:SUNIL SINGH NEGI Signing Date:16.01.2023 10:36:48