

Requite Court Fee) Tips Industries ... vs Glance Digital Experience Pvt. Ltd. & ... on 21 December, 2020

Author: Mukta Gupta

Bench: Mukta Gupta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 561/2020
CAV.250/2020
I.A.12403/2020 (under Order XXXIX Rule 1 and 2 CPC)
I.A.12404/2020 (exemption)
I.A.12405/2020 (under Section 149 CPC- exemption from filing
requite court fee)

TIPS INDUSTRIES LIMITED Plaintiff

Represented by: Mr.Amit Sibal, Sr. Advocate with
Mr.Harsh Kaushik,
Mr.S.S.Ahluwalia, Mr.Abhay
Chattopadhyay, Ms.Anushree Rauta,
Mr.Piyush Joshi, Mr.Mohit Bangwal,
Mr.Navankur Pathak, Ms.Pranita
Saboo, Mr.Saksham Dhingra,
Mr.Ambar Bhushan, Mr.Vinay
Tripathi, Advocates.

Versus

GLANCE DIGITAL EXPERIENCE
PVT. LTD. & ORS. Defendants

Represented by: Mr.Saikrishna Rajagopal, Advocate
with Mr.Himanshu Bagai,
Ms.Deepshikha Sarkar, Mr.Jasman
Dhanoa, Advocates for D1.
Mr.Abhishek Malhotra, Advocate
with Ms.Sapna Chourasia, Ms.Sneha
Herwade and Ms.Shilpa Gamnani,
Advocates for D2.
Mr.Rajshekhar Rao, Advocate with
Mr.Angad Singh Dugal, Mr.Govind
Singh Grewal, Ms.Shiva Vijaya
Kumar, Advocates for D3.

CS(COMM) 561/2020

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Mr.Deepak Gogia, Advocate for D4.
Mr.Jayant Mehta, Advocate for D11 /
Caveator.
Ms.Meenakshi Midha, Advocate with
Mr.Kapil Midha, Ms.Pritika Juneja,
Advocates for D13.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
ORDER

% 21.12.2020 The hearing has been conducted through video conferencing.

1. Learned counsel for the defendant No.11-caveator enters appearance.
2. Caveat is consequently discharged.

I.A.12405/2020 (under Section 149 of Court fees Act)

1. Court fees be filed within three weeks.
2. Application is disposed of.

I.A.12404/2020 (exemption)

1. Exemption allowed subject to just exceptions. Original documents, if any, be filed within thirty days.
2. Application is disposed of.

CS(COMM) 561/2020 I.A. 12403/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Plaint be registered as a suit.
2. At the outset, learned counsels for the defendant No.3 and defendant No.4 point out that the defendant No.3 and defendant No.4 have been wrongly impleaded, as though the notices were issued by the plaintiff, to the CS(COMM) 561/2020 PageGUPTA correct party, however, in the suit, incorrect parties with incorrect addresses have been impleaded.
3. Issue summons in the suit and notice in the application to the defendant Nos.1, 2 and 5 to 13.
4. Learned counsels appearing for the defendant Nos.1, 2, 11 and 13 accept summons in the suit and notice in the application.

5. Summons in the suit and notice in the application be now issued to the defendant Nos.5, 6, 7, 8, 9, 10 and 12 on the plaintiff taking steps through Email, SMS, Whatsapp, Speed Post and Courier, returnable before this Court on 25th February, 2021.

6. Written statements to the suit and reply affidavits to the application along with the affidavits of admission-denial will be filed within thirty days. Replication and rejoinder affidavit along with the affidavit of admission- denial within three weeks thereafter.

7. By the present suit, the plaintiff, inter alia, seeks a decree of permanent injunction against the defendants, alleging infringement of the plaintiff's exclusive rights and copyrights in their repertoire. In the plaint, the plaintiff has claimed infringement of its copyrights in the sound recordings/recording of songs/cinematographic works and the underlying works thereto, besides the rights pursuant to the synchronization in its 28791 sound recordings which are mentioned from pages 1 to 1185 of the documents file.

8. According to the plaintiff, defendant Nos. 1 to 13 are the owners/operators of Over-the-Top platforms/Applications ('OTT' platforms or Applications). As per the plaintiff, it apprehends that the defendants are infringing the plaintiff's copyrights in the re-created songs i.e. (i) by making CS(COMM) 561/2020 PageGUPTA the same available on their platforms/Applications so that their users can exploit the same; (ii) by permitting their users to synchronise, adapt, reproduce the re-created songs as a part of the videos or in any other manner; (iii) by storing/hosting the videos containing the re-created songs on the defendants' servers; (iv) by permitting communication to public of such videos, containing the re- created songs; (v) by allowing further digital dissemination, reproduction, issuing copies and communication of the infringing videos containing the re-created songs/sound recordings through sharing on other third party platforms. According to the learned counsel for the plaintiff, in view of the fact that the defendant Nos. 1 to 13 provide for the five abilities as noted hereinbefore, the defendants cannot claim themselves protection as provided to Intermediaries under Section 79 of the Information Technology Act (in short, 'I.T. Act').

9. According to the plaintiff, defendants have not only infringed but actively aided and facilitated, the infringements of the plaintiff's contents by their users and the said infringements are continuing as on date in blatant disregard to the plaintiff's rights under the Copyright Act, without securing the licence from the plaintiff. According to the plaintiff, defendants have millions of users, who regularly upload and share infringing contents on a daily basis on the defendants' platforms, as such, it is impossible for the plaintiff to examine such large amount of contents on the defendants' platforms in order to trace those utilizing its content and ergo, any post- facto copyright infringement reporting tool or mechanism, is technologically infeasible, cumbersome and legally untenable. The plaintiff prays that the defendants should thus apply filters so that the infringement content is not available on their platforms/Applications. According to the learned counsel CS(COMM) 561/2020 PageGUPTA for the plaintiff, the defendants are thus causing both direct and indirect infringement of the plaintiff's copyright. Reliance is placed on the decision in (2016) SCC Online Del 6382 MySpace Inc. Vs. Super Cassettes Industries Ltd. and the orders dated 27th August, 2020 & 31st August, 2020 in CS(COMM) 347/2020 titled as Super Cassettes Industries Pvt. Ltd. Vs. Relevant E-Solutions Pvt. Ltd. and Ors. Claiming that orders against the defendant No.14 John Does can also

be passed by this Court, learned counsel for the plaintiff relies upon a decision of this Court reported as (2003) F.S.R. 22 Taj Television Ltd.& Anr. Vs. Rajan Mandal and Ors.

10. Learned counsel for the defendant No.1 refuting the arguments advanced by the learned counsel for the plaintiff submits that the contention raised before this Court are beyond the pleadings. According to the pleadings, the grievance of the plaintiff is on the user generated contents, therefore, it is the users who are infringing the contents. According to the learned counsel for the defendant No.1, defendant No.1 has its own music library and each & every content of the music library is licensed. Learned counsel for the defendant No.1 further submits that the content of the music library is incapable of extraction based on the tools provided by the defendant No.1 platform. It is not the case of the plaintiff that the defendants are making available the sound recordings. Rather, the case of the plaintiff is that the defendants are helping in extraction to the user who then marries the video content with the sound recording and uploads the same. Learned counsel for the defendant No.1 also relies on the decision in MySpace Inc. (supra) as also the decision of the Supreme Court reported as 2015 (5) SCC 1 Shreya Singhal Vs. Union of India. Further, the defendant No.1 has also provided the plaintiff with the facility to delete any infringing CS(COMM) 561/2020 PageGUPTA material from the defendant No.1's platform and thus, as and when the plaintiff finds any infringing content uploaded by a user, the same can be deleted/taken down by the plaintiff and for the action, if any, of the user, defendant No.1 cannot be made liable. Learned counsel for the defendant No.1 relies upon Sections 51 and 52(1)(b) & (1)(c) of the Copyright Act in respect of transient transmission to claim that transient or incidental storage or transmission does not amount to infringement.

11. Learned counsel for the defendant No.2 claims that the averments in the present suit are very vague and further, there is a misjoinder of parties as all the parties with no specific averments qua them, have been joined in the present suit, contrary to the requirement of Order I Rule 3 CPC. Learned counsel for the defendant No.2 states that on a notice being received by the plaintiff, 5471 links have been removed by the defendant No.2 and as and when further intimations are received, the offending URLs will be deleted/taken down. Learned counsel relies upon Section 51 and 52(1)(a) of the Copyright Act to claim that when a user uses for his or personal use, the same amounts to a fair dealing and does not constitute infringement.

12. Learned counsel for the defendant No. 11, the caveator contends that in the entire plaint, there are no specific pleadings qua the defendant No.11. In the garb of the present plaint with omnibus averments, the plaintiff seeks a super injunction. He states, as and when the plaintiff has issued communications to the defendant No.11, the offending URLs have been taken down. The defendant No.11 has no extraction tools and thus, it does not facilitate a user in extracting the sound recordings and preparing its videos by extraction. It is further stated that in the guise of averments in relation to two songs, the plaintiff in the suit, claims infringement of more CS(COMM) 561/2020 PageGUPTA than 28000 sound recordings. The directions issued by a Division Bench of this Court in MySpace Inc. (supra) are being duly complied with by the defendant No. 11 even without any order of the Court and as and when any notice is received from the plaintiff, the defendant No. 11 takes down the relevant link(s).

13. Learned counsel for the defendant No.13 states that no notice has been received by the defendant No.13 from the plaintiff. Even the copy of the Email sent, filed by the plaintiff in respect of the defendant No.13 at page 1573 of the documents file does not indicate the Email I.D. and hence, it is not clear to whom the notice through Email has been sent. In the entire plaint, three URLs are attributed to the defendant No. 13, however, the same do not relate to the defendant No.13. Learned counsel, however, states, in case, the plaintiff issues a proper notice of any offending URL, the same will be taken down.

14. In MySpace Inc. (supra), the Division Bench of this Court dealt with an alleged copyright infringement by users of social media site like the appellant therein and held that subject to fulfilment of parameters laid down in Section 79, such sites which provide networking services or exchange of datas are 'Intermediaries' within the meaning of Section 79 and therefore, enjoy certain immunities. Therefore, the plaints against such sites under the Copyright Act have to be considered in the light of Section 79 of the I.T.Act and the two enactments are required to be harmonised. The Division Bench noted that the respondent therein claimed rights over thousands of musical works and it was difficult for the appellant therein, which was a social media site to keep a watch over individual infringement, particularly, when CS(COMM) 561/2020 PageGUPTA uploading or sharing of data was automated process and the social media site was simply acting as a conduit.

15. Having heard learned counsels for the parties, an ad-interim relief as sought for by the plaintiff cannot be granted at this stage. However, the defendant Nos. 1, 2 and 5 to 13 are directed that as and when any intimation is received from the plaintiff alleging infringement of its copyright, the defendants on receipt of the URLs in relation thereto, as informed by the plaintiff, would remove/block access such contents within 36 hours in accordance with Rule 3(4) of the Information Technology (Intermediaries' Guidelines) Rules, 2011.

16. Compliance under Order XXXIX Rule 3 CPC be done within one week.

17. Copy of the order be uploaded on the website of this Court.

MUKTA GUPTA, J.

DECEMBER 21, 2020
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