

Star India Pvt Ltd & Anr vs Yodesiserial.Su & Ors on 9 August, 2021

Author: C. Hari Shankar

Bench: C. Hari Shankar

\$~27 (original)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 353/2021 & I.A.9649/2021, I.A.9

I.A.9651/2021, I.A.9652/2021

STAR INDIA PVT LTD & ANR.

..... Plaintiff

Through: Mr. Saikrishna Rajagop

Mr.Sidharth Chopra, Ms. Sneha Jain,

Mr.Yatinder Garg and Mr. Angal Makkar,

Adv.

versus

YODESISERIAL.SU & ORS.

..... Defendants

Through: Mr. Alipak Banerjee, Adv. for D-

49

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

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09.08.2021

(Video-Conferencing)

I.A.9652/2021 (under Order 11 Rule 1(4) of the CPC)

1. Subject to the right of the defendants to admit/deny the same, the plaintiffs are permitted to file additional documents within four weeks from today.

2. The application stands allowed accordingly.

I.A.9651/2021 (under Section 80 of the CPC)

1. In the circumstances of the case, the prayer for exemption from issuing advance notice to Defendant Nos. 59 and 60 under Section 80 of the CPC is granted.

2. The application stands allowed accordingly.

I.A.9650/2021 (exemption)

1. 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.

2. The application is disposed of.

CS(COMM) 353/2021 & I.A.9649/2021 (under Order XXXIX Rules 1 & 2 of the CPC)

1. The plaintiffs are producers of various television shows, films and web series, broadcasted on their channels as well as on the Disney plus hotstar platform, which is stated to be owned and operated by Plaintiff No.2. The present plaint asserts copyright, of the plaintiff, in respect of the following contents/films/shows:

S. No. Name of the Show

1. Yeh Rishta Kya Kehlata Hai

2. Ghum Hai Kisi Ke Pyaar Mein

3. Anupamaa

4. Yeh Hai Chahatein

5. Imli

6. Saath Nibhaana Saathiya 2

7. Aapki Nazron Ne Samiha

8. Pandya Store

9. Mehndi Hai Rachne Wali

10. Zindagi Mere Ghar Aana

11. Yeh Rishtey Hain Pyaar Ke

12. Ek Hazaron Mein Meri Behna Hai

13. Lakshmi Ghar Aayi

14. Mann Ki Awaaz Pratigva 2

15. RadhaKrishn - Punar Milan

16. City of Dreams (2 Seasons - Second season coming out on July 30)

17. Grahan

18. November Story

19. Ok Computer

20. 1232 Kms

21. Live Telecast

22. Triples

23. Hundred

24. Special Ops

25. Roar of the Lion 26 1962: War in the Hills

2. Mr. Saikrishna Rajagopal, learned Counsel for the plaintiff has also placed on record the agreements whereunder the plaintiff produced the aforesaid shows/films and became the first owner of copyright therein, and has also filed a tabular statement referring to the relevant paragraphs of the said agreements. These agreements, prima facie, indicate that, as the producers of the aforesaid shows, the plaintiff is the first owner and copyright holder therein, within the meaning of Section 14(d) of the Copyright Act, 1957.

3. Prima facie, therefore, exclusive rights to stream or telecast the content contained in the aforesaid 26 items vests in the plaintiff, to the exclusion of others.

4. For this purpose, the plaintiff has also relied on Sections 37 and 51 of the Copyright Act.

5. Defendant Nos. 1 to 48, according to the plaint are rogue websites, engaged in the business of piracy of copyright and content on the internet. The plaint has placed, on record, from pages 234 to 1004, material to indicate that the defendants' websites are engaging in piracy of the content over which the plaintiff holds copyright.

6. In such circumstances, submits Mr. Rajagopal, the Division Bench of this Court has, in Department of Electronics & Information Technology v. Star India Pvt. Ltd.¹ and a learned Single Judge of this Court has, in UTV Software Communication Ltd. v. Torrentmovies.Co ², approved/taking down of the rogue websites.

7. The materials placed on record from pages 234 to 1004 of the documents filed with the plaint, do make out, prima facie a case of the 2016 SCC OnLine Del 4160 2019 SCC OnLine Del 8002

defendants engaging in rampant piracy of copyrighted content, thereby satisfying the concept of "rogue websites" as envisaged by this Court in the aforesaid two decisions in UTV Software Communication Ltd². and Department of Electronics & Information Technology¹.

8. Defendant No. 49 is the domain name registrar of Defendant No.

48. Defendant Nos. 50 to 58 are internet and telecom service providers (ISPs), providing internet and telecom services to the public. They control the gateways which enable access to the defendants' websites. Defendant Nos. 59 and 60 are the Department of Telecommunications and the Ministry of Electronics and Information Technology, which ensure compliance with court orders of injunction.

9. The plaintiff has also placed on record orders passed in other cases, where injunctions had been granted.

10. In view of the fact that the material placed on record indicate, prima facie, that the plaintiff has subsisting copyright in respect of the aforesaid 26 works enumerated in para 1 supra, and that Defendant Nos. 1 to 48 are engaging in piracy of the plaintiff's copyright and content, a case for grant of ex parte ad-interim relief is made out.

11. Issue summons in CS(Comm) 353/2021. Written statement, accompanied by affidavit of admission/denial of the documents filed by the plaintiffs be filed within four weeks from today with advance copy to learned Counsel for the plaintiffs who may file replication thereto, if any, accompanied by affidavits of admission/denial of the documents filed by the defendants within two weeks thereof.

12. List before the Joint Registrar for completion of pleadings, marking of exhibits and admission/denial of documents on 18th October, 2021.

13. The prayer clause in I.A.9649/2021 reads thus:

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

i) Pass an order of interim injunction restraining the Defendant Nos. 1 to 48, its owners, partners, proprietors, officers, servants, affiliates, employees, and all others in capacity of principal or agent acting for and on its behalf, or anyone claiming through, by or under it, from in any manner communicating to the public, hosting, storing, reproducing, streaming, broadcasting, re-

broadcasting, causing to be seen or heard by public, and/or making available for viewing, the Plaintiffs' Works, amounting to infringement of the Plaintiffs' copyright and broadcast reproduction rights;

ii) Pass an order of interim injunction directing the Defendant No. 49, its 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:

a. de-activate / suspend the domain name registration of the Defendant No. 48 (viz ghumhaikisikepyaarmein.com) or such other domain names that may subsequently be notified by the Plaintiffs (on affidavit) to be responsible for infringing the Plaintiffs' exclusive rights;

b. disclose the identity, correspondence details and billing details of the registrant of the domain of the Defendant No. 48 (viz ghumhaikisikepyaarmein.com) or such other domain names that may subsequently be notified by the Plaintiffs (on affidavit) to be responsible for infringing Plaintiffs exclusive rights;

iii) Pass an order directing the Defendant Nos. 50 to 58, 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 domains identified by the Plaintiffs in the instant suit at S. No. 1 of the Documents which are responsible for hosting, storing, reproducing, streaming, broadcasting, re-broadcasting, causing to be seen or heard by public, and/or making available for viewing, the Plaintiffs' Works, amounting to infringement of the Plaintiffs' copyright and broadcast reproduction rights, or such other websites / domains / IPs / URLs that may subsequently be notified by the Plaintiffs (on affidavit) to be engaging in the above activity;

iv) Pass an order directing the Defendant Nos. 59 and 60 to issue a notification calling upon the various internet and telecom service providers registered under it to block access to the various domains identified by the Plaintiffs in the instant suit at S. No. 1 of the Documents which are responsible for hosting, storing, reproducing, streaming, broadcasting, re-broadcasting, causing to be seen or heard by public, and/or making available for viewing, the Plaintiffs' Works, amounting to infringement of the Plaintiffs' copyright and broadcast reproduction rights, or such other websites / domains / IPs / URLs that may subsequently be notified by the Plaintiffs (on affidavit) to be engaging in the above activity;

v) Pass an ex-parte ad-interim order in terms of the prayer clauses (i) to (iv) hereinabove.

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

14. Issue notice in I.A.9649/2021. Reply, if any, be filed within four weeks with advance copy to learned Counsel for the plaintiffs who may file rejoinder thereto, if any, before the next date of hearing.

15. In my view and after hearing learned Counsel for the parties at some length, ad interim relief deserves to be granted but with some modifications to the prayers contained in this application. As such, the following observations/directions are issued:

(i) Defendant Nos. 1 to 48, as well as their owners, partners, proprietors, officers, servants, affiliates, employees and all others in capacity of principal or agent, acting on their behalf are restrained from communicating to the public, hosting, storing, reproducing, streaming, broadcasting, re-broadcasting or making available for viewing the aforesaid 26 works of the plaintiffs enumerated in para 1 supra.

(ii) Defendant No. 49 is directed to forthwith suspend the domain name registration of Defendant No. 48. However, it is not possible to pass an order for suspension, in advance, of domain names which may subsequently be notified by the plaintiffs on affidavit to be responsible for infringing the defendants' rights.

This is because, in order to suspend a domain name, the plaintiff would have to establish (i) that the website is a rogue website and

(ii) that the website has, in fact, infringed the plaintiffs' intellectual property rights. Both these aspects can be decided only by a judicial authority, especially the aspect of the concerned website being a rogue website, which is a sine qua non for directing bringing down or suspension of the website.

(iii) Defendant No. 49 is directed to disclose the identity, corresponding detail and billing details of the registrant of the domain of Defendant No. 48 (ghumhaikisikepyaarmein.com). This relief cannot, however, extend to any other domain names which may subsequently be notified by the plaintiffs on affidavits as infringing the plaintiffs' intellectual property rights, as an application would be required for that purpose followed by an order by the Court.

(iv) Defendant Nos. 50 to 58 are directed, forthwith, to block access to the domains enumerated in Serial No.1 of the document accompanying the plaint.

(v) Defendant Nos. 59 and 60 are directed to instruct the Internet and Telecom Service Providers registered under the said defendants to block access to the various domains identified by the plaintiffs at Serial No. 1 of the documents annexed to the plaint.

(vi) The aforesaid directions would also extend to any websites or domain names which are merely alphanumeric/re- directs/mirror variations of the aforesaid infringing domain names of Defendant Nos. 1 to 48.

(vii) Apropos any domain names/websites which may later come to the notice of the plaintiffs as indulging in similar infringing activity, the plaintiffs would be at liberty to move an appropriate application before this Court for passing of similar orders in respect of such websites/domain names.

(viii) Defendant Nos. 50 to 60 are directed to ensure compliance with the aforesaid directions within 48 hours of service on them by the plaintiffs of a copy of the order passed today by e-mail.

(ix) The plaintiffs are permitted to file the agreements, on which they seek to place reliance in the Registry of this Court in a sealed cover.

16. List I.A.9649/2021 for hearing and disposal before the Court on 25th October, 2021.

C. HARI SHANKAR, J AUGUST 9, 2021/kr