

Universal City Studios Llc. & Ors vs 123Movieshub.Tc & Ors on 21 February, 2022

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 116/2022

UNIVERSAL CITY STUDIOS LLC. & ORS.

Through: Mr. Saikrishna Rajagopa
Sidharth Chopra, Ms. Su
Ms. Disha Sharma & Ms.
Rao, Advocates.

Versus

123MOVIESHUB.TC & ORS.

Through: None.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% 21.02.2022 I.A. 2718/2022 (exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

I.A. 2719/2022 (of the plaintiffs seeking exemption from issuing notice to the defendant No. 44, Department of Telecommunications (DoT) and defendant No. 45, the Ministry of Electronics and Information Technology (MEITY) under Section 80 CPC)

3. For the reasons stated in the application, the same is allowed and the plaintiffs are exempted from serving advance notice to defendants No.44 and 45 under Section 80 CPC.

4. The application stands disposed of.

I.A. 2720/2022 (of the plaintiffs under Section 12A of the Commercial Courts Act, 2015 read with Section 151 CPC seeking exemption from instituting pre-suit mediation)

5. For the reasons stated in the application, the same is allowed and the plaintiffs are exempted from instituting pre-institution mediation.

6. The application stands disposed of.

CS(COMM) 116/2022, I.A. 2717/2022 (of the plaintiffs under Order XXXIX Rules 1 and 2 read with Section 151 CPC restraining infringement of copyright)

7. This is a suit for permanent injunction, rendition of accounts, damages IPR, copyright etc. filed by six plaintiffs, namely, (i) Universal City Studios LLC., (ii) Warner Bros. Entertainment Inc., (iii) Columbia Pictures Industries, Inc., (iv) Netflix Studios, LLC, (v) Paramount Pictures Corporation and (vi) Disney Enterprises, Inc.

8. The defendants No.1 to 34 are described as rogue websites indulging in online piracy by permitting access to illegal downloads of the movies of the plaintiffs. Defendants No.35 to 43 are Internet Service Providers ('ISPs'), defendant No. 44 is the Department of Telecommunications ('DoT') and defendant No.45 is the Ministry of Electronics and Information Technology ('MEITY').

9. The suit has been filed with the prayer for permanent injunction restraining defendants No.1 to 34 or any such other mirror/redirect/alphanumeric website which appears to be associated with any of these websites from, in any manner, hosting, streaming, reproducing, distributing, making available to the public and/or communicating to the public, or facilitating the same, on their websites, through the internet, in any manner whatsoever, any cinematograph work/content/program/show in relation to which the plaintiffs have copyright.

10. Mr. Saikrishna Rajagopal, learned counsel for the plaintiffs submits that the suit is maintainable in the present form, as the plaintiffs have been affected by these rogue websites on account of the unlawful streaming of their creative and original work and thus, there were common facts and questions of law involved. Reliance has been placed on the decision of a Division Bench of this Court in Microsoft Corporation and Anr. vs. Sujan Kumar and Ors. [order dated 04th February, 2016 in RFA(OS)(COMM) 1/2016], to submit that if separate Court fee was paid as has been done in the present matter, the suit in the present form was maintainable. It is also submitted that in similar suits filed, interim protection has also been granted (reference is made to the orders in Disney Enterprises Inc. & Ors. vs. Kimcartoon.to & Ors. [order dated 27th July, 2020 in CS 275/2020], Universal City Studios LLC and Ors. vs. Myflixer.to and Ors. [order dated 31st August, 2021 in CS (COMM) 401/2021], Universal City Studios LLC and Ors. vs. Dramacool.news and Ors. [order dated 26th November, 2021 in CS (COMM) 605/2021], and Disney Enterprises Inc. & Ors. vs Rlsbb.unblocked.ltda & Ors. [judgement dated 12th March, 2020 in CS(COMM) 594/2019]

11. Order I Rule 1 CPC reads as under :

"ORDER I Parties to Suits

1. Who may be joined as plaintiffs.--All persons may be joined in one suit as plaintiffs where--

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise."

12. Learned counsel for the plaintiffs has laid emphasis on the fact that since the plaintiffs were aggrieved by the same act or series of acts, on the basis of which the copyrights in their works were being infringed by the rogue websites, the suit was maintainable also in terms of Order I Rule 1(a) CPC and that in any case, bringing separate suits would only add to the burden of the court and which could be avoided as common questions of law as well as facts would arise. Reference was made to para Nos. 57 and 58 of the plaint to explain that all the defendants have been joined in the present suit on this ground and the cause of action has arisen from making available "identical contents" on these websites.

13. This Court is unable to accept the submissions made. The plaintiffs are different corporate entities. They may have a common grievance against the defendants for uploading and streaming their copyrighted work without authority or license, but the similarity in reliefs claimed against the defendants would not suffice for the plaintiffs to join hands in a single action. Though in para 58 it is claimed by all the plaintiffs that the "cause of action has arisen from making available identical content on the defendant Websites and thus, the Plaintiffs have joined all the defendant Websites in the present suit", this is ex-facie incorrect, as the creative content of each plaintiff is not identical to that of the other. What is identical is the allegation that copyright has been infringed. There is no identity of copyright, the work, the infringement of each work of the plaintiffs by each one of the defendants. Thus, the requirements of Order I Rule 1(a) & (b) CPC are not met in the present suit and all of the plaintiffs could not join in one suit, even against a similar set of defendants.

14. The decision in Microsoft Corporation and Anr (supra) related to the mis-joinder of the defendants, as also the mis-joinder of the causes of action. However, in that case, the rejection of the plaint on the ground of misjoinder of defendants and the causes, was found not to be proper. However, subsequently, the parties settled the matter in the RFA (OS) (COMM) 1/2016. In the judgment of the learned Single Judge from which Microsoft Corporation and Anr (supra) had arisen and which is reported as Microsoft Corporation v. Sujana Kumar, 2015 SCC OnLine Del 14356, it was observed that when various subject matters were joined in one suit which essentially formed different causes of action, then under Section 17 of the Court Fee Act, 1860, separate court fee was required to be paid. Furthermore, it was observed that when the plaintiffs claimed common questions of law and facts to file a single suit qua separate defendants who were separate legal entities, the facts and causes were to be pleaded separately qua different defendants. In the present case, learned counsel for the plaintiffs has submitted that separate court fees in respect of each of the plaintiffs had been paid and that therefore, the requirements of law were met in the present

case. But paying requisite court fees cannot validate what is not within the procedure prescribed.

15. Even though it is clear that the suit does not fall within the prescription of Order Rule 1(a) or/and (b) CPC, there is no doubt that the court cannot reject the suit on the ground of this "procedural objection". It is also evident from Order I Rule 2 that where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the court may put the plaintiffs to their election to or order separate trials or "make such other order as may be expedient". This clarifies the position that where several plaintiffs are joined in a suit, even improperly, the suit cannot be rejected. The Supreme Court in *Prem Lala Nahata and Anr. vs. Chandi Prasad Sikaria* 2007 (2) SCC 551) has observed -

"16.....there is no such prohibition or a prevention at the entry of a suit defective for misjoinder of parties or of causes of action. The court is still competent to try and decide the suit, though the court may also be competent to tell the plaintiffs either to elect to proceed at the instance of one of the plaintiffs or to proceed with one of the causes of action...."

16. The court will have to use its discretion to allow the plaintiffs to elect and thereafter to order separate trials. It is an option available with this Court therefore to direct the splitting of the suits specifically for each of the plaintiffs and direct separate trial in each suit.

17. But the court also has power to consolidate suits in appropriate cases. The purpose of such consolidation is not just for deciding common questions of law or fact but also for "other reasons" including convenience in decision making (see : *Prem Lala Nahata* (supra) relying on *Halsbury's Laws of England*, Vol. 37, para 69). Ultimately, in the present set of matters, if the court were to direct the plaintiffs to file separate complaints in view of the observations hereinabove, since the reliefs claimed are against the same set of defendants, namely, of injunction against them, restraining them from violating the copyrights of each of the plaintiffs, in their various creative works and if some commonality of evidence is disclosed, this Court would not be powerless to direct consolidation of the suits for trial and disposal at a subsequent stage.

18. It is for that reason alone that the court is inclined not to direct the splitting up of this particular suit as separate suits to be numbered as such, also in the light of the fact that separate court fees has been paid. But it is not a practice that can be encouraged.

19. Thus, the present complaint be registered as a suit.

20. Issue summons in the suit and notice in the application to the defendants by all permissible modes, returnable before the Joint Registrar.

21. The summons shall indicate that the written statement(s) to the suit and reply(ies) to the application be filed by the defendants within thirty days from the date of receipt of the summons. The defendants shall also file the affidavit of admission/denial of the document(s) filed by the plaintiffs, failing which the written statement(s) shall not be taken on record.

22. The plaintiffs are at liberty to file replication(s) to the written statement(s) and rejoinder(s) to the reply(ies) filed by the defendants within thirty days from the filing of the written statement(s)/reply(ies). The replication(s) shall be accompanied by the affidavit of admission/denial in respect of the documents filed by the defendant(s), failing which the replication(s) shall not be taken on record

23. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the time lines.

24. Learned counsel for the plaintiffs seeks interim direction to the defendants No.44 & 45 to block access to the rogue websites as identified in the present suit as per the list at page 88 as by the continuous infringement of the copyright of their creative work in the shape of various movies as listed in the plaint including Mulan, Lego Batman, Finding Nemo, Finding Dory, Aquaman, Wonder Woman, San Andreas and Joker and TV Series such as Mob Psycho, Friends, Stranger Things, Sacred Games, Jojo's Bizarre Adventures and Arrow etc., immense loss is being caused to the plaintiffs. It is further submitted that the identities of these rogue websites were veiled and were anonymous and they satisfied the characteristics that have been laid down by this Court for identifying a rogue website in UTV Software Communication Ltd. v. 1337X.to, 2019 SCC OnLine Del 8002 which are reproduced herein below for ready reference-

"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."

25. The defendants No.1 to 34 have been created to upload pirated movies, TV programmes etc. These websites are anonymous in nature. The information provided in the public domain regarding the owners of the websites is inherently incorrect or protected behind the veil of secrecy and hidden behind private domain services offered by various domain name Registrars. Therefore, there is force in the contention of the learned counsel for the plaintiffs that it is virtually impossible to bring the owners of these websites before the court and to ensure that the orders are complied with. Yet there is no gainsaying that these websites are actively streaming motion pictures and television content of the plaintiffs through illegal means. The legal notices issued to them have evoked no response. Such illegal websites made with the primary and sole objective to pirate copyrighted works for their own commercial benefits cannot be permitted to continue doing so, to await the disposal of the suit. Therefore, the defendants No.35 to 43 are directed to block access to these websites as mentioned below :

LIST OF WEBSITES S. No. Domain Name URL IP Address

1. 123movieshub.tc <https://ww5.123movieshub.tc> 172.64.206.23 172.64.207.23
2. 123moviesfree4u.com <https://www4.123moviesfree4u.co> 172.67.166.56 m
104.21.82.249
3. 0123movie.ru <https://0123movie.ru> 162.159.137.85 162.159.138.85
4. 123movieshindi.net <https://123movieshindi.net> 104.21.48.56 172.67.178.208
5. 123movieshindi.com <http://123movieshindi.com> 172.67.168.166 104.21.94.199
6. 1-23movies.cc <https://w1.1-23movies.cc> 104.21.13.82 172.67.198.212
7. 123tv.movie <https://123tv.movie> 172.67.214.2 104.21.93.188
8. 123moviesh.to <https://123moviesh.to> 104.21.70.96 172.67.222.123
9. 123movie.sh <https://ww33.123movie.sh> 172.67.154.37 104.21.4.147
10. w-123movies.club <http://w-123movies.club> 104.21.69.100 172.67.207.102

11. putlocker-website.com <http://putlocker-website.com> 162.159.137.85 162.159.138.85
12. putlockernew.site <https://ww2.putlockernew.site> 104.31.16.8 104.31.16.121
13. putlocker.ps <https://putlocker.ps> 162.159.137.85 162.159.138.85
14. putlockers.llc <https://putlockers.llc> 104.21.90.142 172.67.157.191
15. putlocker.gg <https://putlocker.gg> 172.67.189.149 104.21.89.155
16. ogomovies.ws <https://ogomovies.ws> 172.67.210.93 104.21.69.164
17. poppygreens.com <https://poppygreens.com> 172.67.167.169 104.21.42.228
18. 1movieshd.com <https://1movieshd.com> 104.21.54.127 172.67.138.179
19. 2gomovies.ws <https://2gomovies.ws> 194.145.208.168
20. 2kmovie.cc <https://2kmovie.cc> 162.159.137.85 162.159.138.85
21. 4filmyzilla.bar <https://ww2.4filmyzilla.bar> 104.21.49.197 172.67.166.204
22. bolly2tolly.eu <https://www.bolly2tolly.eu> 172.67.223.114 104.21.91.151
23. oyomovies.com <http://oyomovies.com> 104.21.21.10 172.67.195.168
24. bolly2tolly.net <https://www.bolly2tolly.net> 104.21.29.70 172.67.148.145
25. fboxtv.com <https://fboxtv.com> 162.159.137.85 162.159.138.85
26. filmyhit.pink <https://filmyhit.pink> 104.21.51.33 172.67.220.10
27. filmyhit.media <https://filmyhit.media> 104.21.63.32 172.67.142.173
28. filmy.link <http://filmy.link> 172.67.214.20 104.21.42.249
29. flixhq.tv <https://flixhq.tv> 172.67.164.103 104.21.50.169
30. fmovies.style <https://fmovies.style> 172.67.193.95 104.21.76.110
31. freemoviesfull.com <https://www1.freemoviesfull.com> 162.159.137.85 162.159.138.85
32. gomoviefree.sc <https://gomoviefree.sc> 172.67.178.94 104.21.91.192

33. goojava.to <https://www.goojava.to> 172.67.143.39 104.21.46.235
34. hdtoday.tv <https://hdtoday.tv> 172.67.151.107 104.21.88.167
35. jexmovie.com <https://jexmovie.com> 172.67.191.63 104.21.33.184
36. kdramahood.com <https://kdramahood.com> 162.159.137.85 162.159.138.85
37. moviecrumbs.net <https://www.moviecrumbs.net> 104.21.23.223 172.67.213.248
38. moviesyify.online <https://moviesyify.online> 104.21.41.62 172.67.189.122
39. openloadflix.com <http://openloadflix.com> 172.67.154.80 104.21.64.186
40. openloadmov.net <https://openloadmov.net> 104.21.72.7 172.67.218.89 104.21.24.111
41. pagalmovies.digital <https://www.pagalmovies.digital> 172.67.190.54 104.21.10.138
42. pagalmovies.today <https://www.pagalmovies.today> 172.67.196.29 104.21.76.144
43. pagalmovies.art <http://pagalmovies.art> 104.21.37.94 172.67.206.218
44. playdesi.net <https://playdesi.net> 104.21.96.100 172.67.176.147
45. playdesi.tv <https://playdesi.tv> 104.21.28.9 172.67.170.34
46. seriestv.watch <https://seriestv.watch> 162.159.137.85 162.159.138.85
47. spacemov.site <https://spacemov.site> 104.21.10.30 172.67.189.223
48. spacemov.ws <http://spacemov.ws> 104.31.16.6 104.31.16.123
49. tvshows88.com <https://tvshows88.com> 162.159.137.85 162.159.138.85
50. watchfilm.net <https://www11.watchfilm.net> 162.159.137.85 162.159.138.85
51. watchmovieshd.ru <https://watchmovieshd.ru> 162.159.137.85 162.159.138.85
52. watchseries.ma <https://watchseries.ma> 104.21.5.100 172.67.154.116
53. watchserieshd.stream <https://watchserieshd.stream> 172.67.162.131 104.21.42.144
54. Watchseriesstream <https://watchseriesstream.com> 104.21.65.175 .com 104.21.64.186

55. watchtheoffice.cc <https://watchtheoffice.cc> 172.67.194.20 104.21.20.189

56. xemovie.com <https://xemovie.com> 172.64.130.9 172.64.131.9

26. They shall do so within 24 hours of the receipt of the order. The defendants No.44 and 45 are directed to issue notifications calling upon the telecom service providers registered under them to disable access into India of the websites of defendants No.1 to 34 within 36 hours of the receipt of the order.

27. Provisions of Order XXXIX Rule 3 CPC be complied with.

28. List before the Joint Registrar on 10th May, 2022, for completion of service and pleadings.

29. The order be uploaded on the website forthwith.

ASHA MENON, J.

FEBRUARY 21, 2022 ck