

Zee Entertainment Enterprises Ltd vs Tejendra Modi And Ors on 20 May, 2021

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 231/2021

ZEE ENTERTAINMENT ENTERPRISES LTD.

..... Plaintiff

Through: Mr. Amit Sibal, Senior Advocate,
with Mr. Saikrishna Rajagopal, Mr.
Sidharth Chopra, Ms. Sneha Jain, Mr.
Thomas George, Ms. Savni D.
Endlaw, Mr. Yatinder Garg, Ms.
Snehima Jauhari, Mr. Sudarshana MJ,
Mr. Rishabh Sharma, Mr. Saksham
Dhingra, Mr. Aishvary Vikram,
Advocates.

versus

TEJENDRA MODI AND ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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20.05.2021

[VIA VIDEO CONFERENCING]

I.A. 6529/2021 (for exemption)

1. Exemption allowed, subject to just exceptions.
2. The application stands disposed of.

I.A. 6530/2021 (for exemption from filing the duly

signed/affirmed/notarized affidavits on behalf of Ms. Sucheta Burman at present)

3. The present application under Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') on behalf of the Plaintiff seeks exemption from filing duly signed/affirmed/notarized affidavits.

4. The application is allowed, subject to the Plaintiff filing the exempted documents within two weeks from the day the lockdown restrictions imposed by the Government of NCT of Delhi are lifted and the facility for attestation of affidavits is resumed.

5. The application stands disposed of.

I.A. 6534/2021 (u/O 149 of the CPC for exemption from filing Court Fee at present)

6. The present application u/Section 149 of the CPC on behalf of the Plaintiff seeks exemption from filing court fee at present.

7. The Plaintiff submits that due to the recent change in the e-court fee procurement procedure, it is made incumbent that funds for issuance of e-court fee shall only be accepted from the concerned litigant's bank account and since the Plaintiff's registered office is in Mumbai, which is currently under lockdown, it is unable to transfer the requisite funds. Due to the urgency of matter, Plaintiff has filed the subject suit without the court fee.

8. The application is allowed, subject to the Plaintiff filing the subsequent court fee within two weeks from the day the lockdown restrictions imposed by the Government of NCT of Delhi and the Government of Maharashtra are lifted and the facility for issuance of court fee stamps is resumed.

9. The application stands disposed of.

I.A. 6535/2021 (u/O 11 Rule 1(4) for seeking leave to file additional documents)

10. This is an application seeking leave to file additional documents under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (in short 'Commercial Courts Act').

11. The Plaintiff, if they wish to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act.

12. Accordingly, the application stands disposed of.

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13. Let the plaint be registered as a suit.

14. Upon filing of process fee, issue summons to the Defendants by all permissible modes including email and WhatsApp and such other electronic means. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the 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.

15. 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.

16. List before the Joint Registrar for marking of exhibits on 10th August, 2021. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

17. List before Court on 1st June, 2021.

I.A. 6528/2021 (u/O XXXIX Rules 1 and 2 r/w Section 151 of the Code of Civil Procedure, 1908 for restraining infringement of copyrights and other injunction)

18. The Plaintiff has filed the instant suit for permanent injunction, rendition of accounts and damages for the infringement of Plaintiff's exclusive license and exploitation rights in the cinematograph film 'Radhe:

Your Most Wanted Bhai' (in short 'the film'). As stated in the plaint, the Plaintiff is the exclusive licensee and holder of various exploitation rights including Theatrical Rights, Satellite Rights, On Demand Rights, etc. in and to the film, including, inter alia, the exclusive right to distribute/ exhibit/release the film and/or make the film available to the public through theatrical, internet, digital and online streaming platforms/OTT platforms, Transactional Video On Demand (TVOD) etc.

19. The Plaintiff asserts that it is a reputed production house and film studio involved in the business of production, acquisition, co-production, promotion, marketing and distribution of various cinematographic films and audio-visual content in various languages in multiple formats worldwide including but not limited to; theatrical, television syndication, digital and Internet connected platforms. The Plaintiff owns and operates over 48 channels across 11 languages and is regarded as India's No. 1 Entertainment Network and also owns and operates a digital entertainment streaming service called 'Zee 5', (accessible at: <http://www.zee5.com/>). Through the Zee5 service, the Plaintiff provides the service known as ZeePlex - a premium movie- on- demand service where users can rent/gain access to premium films and movies at a minimal price.

20. The film was released on 13th May, 2021 on the Plaintiff's digital entertainment streaming service 'Zee 5' for public viewing on a pay-per view basis. The Plaintiff received information that the film was victim to rampant piracy through social media platforms, including the messaging service 'WhatsApp'. The Plaintiff became aware that several infringing/illegal copies of the film and also various video clips thereof have been made/created/stored and are being unlawfully copied, stored, reproduced, transmitted, circulated, shared, sold and/or being made available for illegal and unauthorised viewing, download and storage to public at large by individuals on several social media platforms, including 'WhatsApp'. On 14th May, 2021, the Plaintiff also filed a complaint before the Inspector General of Police, Maharashtra Cyber Digital Crime Unit under the provisions of the Copyright Act, 1957 (in short 'the Act'), against known and unknown persons including Defendant Nos. 1 and 2. On 15th May, 2021, a similar complaint was also filed before the Additional Commissioner of Police, Central Region, Cyber Cell against Defendant Nos. 2, 4, 8 and several other unknown persons. Pursuant to the said complaint, an FIR bearing no. 10/2021 dated 17th May,

2021 has been registered at the Cyber Cell. The Plaintiff further states that it has reached out to Defendant No. 9 - WhatsApp LLC, through various channels and shared the details of the phone numbers who were sharing infringing copies of the film on WhatsApp without permission, however, no response has been received. The Plaintiff has also impleaded Defendant No. 13, as 'Ashok Kumar' to ensure that the order passed by this Court, is also effective against any other unidentified individual, who, during the course of the proceedings is indulging or engaging in activities infringing the rights of the Plaintiff.

21. Mr. Amit Sibal, learned Senior Counsel for the Plaintiff submits that Defendant Nos. 1 to 8, are unauthorisedly viewing, downloading and storing the film on the WhatsApp platform on a pan-India basis, including the city of Delhi and thereby infringing the Plaintiff's copyright under Section 51(a)(i) of the Act. He has taken the Court through the screenshots of the WhatsApp messages, which reveal that the Defendants are transmitting, circulating and sharing and/or making available the contents of the film available on the WhatsApp platform. Mr. Sibal has also relied upon Defendant No. 9's Terms of Service, which inter alia provides as under :

"Safety, Security, And Integrity. We work to protect the safety, security, and integrity of our Services. This includes appropriately dealing with abusive people and activity violating our Terms. We work to prohibit misuse of our Services including harmful conduct towards others, violations of our Terms and policies, and address situations where we may be able to help support or protect our community. If we learn of people or activity like this, we will take appropriate action, including by removing such people or activity or contacting law enforcement. Any such removal will be in accordance with the "Termination"

section below.

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Our Terms And Policies. You must use our Services according to our Terms and posted policies. If you violate our Terms or policies, we may take action with respect to your account, including disabling or suspending your account and, if we do, you agree not to create another account without our permission. Disabling or suspending your account will be in accordance with the "

Termination" section below.

Legal And Acceptable Use. You must access and use our Services only for legal, authorized, and acceptable purposes. You will not use (or assist others in using) our Services in ways that: (a) violate, misappropriate, or infringe the rights of WhatsApp, our users, or others, including privacy, publicity, intellectual property, or other proprietary rights; (b) are illegal, obscene, defamatory, threatening, intimidating, harassing, hateful, racially or ethnically offensive, or instigate or encourage conduct

that would be illegal or otherwise inappropriate, such as promoting violent crimes, endangering or exploiting children or others, or coordinating harm; (c) involve publishing falsehoods, misrepresentations, or misleading statements; (d) impersonate someone; (e) involve sending illegal or impermissible communications such as bulk messaging, auto-messaging, auto-dialing, and the like; or (f) involve any non-personal use of our Services unless otherwise authorized by us.

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To report claims of third-party copyright, trademark, or other intellectual property infringement, please visit our Intellectual Property Policy. We may take action with respect to your account, including disabling or suspending your account, if you clearly, seriously or repeatedly infringe the intellectual property rights of others or where we are required to do so for legal reasons. Disabling or suspending your account will be in accordance with the "Termination" section below.

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Termination. Although we hope you remain a WhatsApp user, you can terminate your relationship with WhatsApp anytime for any reason by deleting your account. For instructions on how to do so, please visit the Android, iPhone, or KaiOS articles in our Help Center. We may modify, suspend, or terminate your access to or use of our Services anytime for any reason, such as if you violate the letter or spirit of our Terms or create harm, risk, or possible legal exposure for us, our users, or others. We may also disable or delete your account if it does not become active after account registration or if it remains inactive for an extended period of time. The following provisions will survive any termination of your relationship with WhatsApp: "Licenses," "Disclaimers And Release," "Limitation Of Liability, "Indemnification," "Dispute Resolution," "Availability And Termination Of Our Services," "Other,"

and "Special Arbitration Provision For United States Or Canada Users."

22. Mr. Sibal urges that the abovementioned Terms of Service of Defendant No. 9 clearly provide that WhatsApp users cannot use the services for violation of intellectual property rights. Since the Defendant Nos.1 to 8 are evidently breaching the terms, Defendant No. 9, should suspend, and ultimately terminate and permanently delete the WhatsApp accounts of the Defendants. Mr. Sibal has drawn the Court's attention to the printouts from a website, which traces the location of the telephone numbers and submits that the Plaintiff has been able to ascertain the Telecom Service Provider ("TSP") for each of the Defendant Nos. 1 to 8. Accordingly, the Plaintiff has impleaded the TSPs- Defendant Nos. 10, 11 and 12 in order to obtain information regarding the identity of

Defendant Nos. 1 to 8. He states that since Defendant No. 9 only requires the mobile number for registering and opening an account, the information regarding the identity of Defendant Nos. 1 to 8 would have to be obtained from Defendant Nos. 10, 11 and 12.

23. The printouts of the WhatsApp communications pertaining to Defendant Nos. 4 and 8, placed on record, further reveal that the account holders, are selling the content of the film. The messages show that on receipt of payment, the pirated copy has been sold. These messages clearly suggest that these particular accounts in question, are ex facie being used in complete violation of the terms of the policy of Defendant No. 9 and are infringing the copyright of the Plaintiff.

24. Besides, Mr. Sibal has also drawn the attention of this Court to the order passed by the Madras High Court, in a suit filed by the Plaintiff being Zee Entertainment Enterprises Limited v. Bharat Sanchar Nigam Limited & Ors.¹ wherein the Court has inter alia directed Internet Service Providers to block access to the websites/webpages on which this film was expected to be made available unauthorisedly.

25. In view of the above, the Plaintiff has established a prima facie case in its favour. The balance of convenience also lies in favour of the Plaintiff and an irreparable loss would be caused to the Plaintiff, in case an ex-parte interim injunction is not granted. Accordingly, till the next date of hearing, Defendant Nos. 1 to 8 and 13, their servants, agents, legal representatives, heirs and any other person acting for or on their behalf are restrained from unauthorisedly storing, reproducing, communicating, disseminating, circulating, copying, selling, offering for sale or making available copies of Order dated 12th May, 2021 in C.S.(COMM) No.191 of 2021 the film or any other portion thereof, through WhatsApp or any other means or modes, that may infringe the Plaintiff's copyright in the film.

26. Further, the Defendant No. 9, is directed to forthwith suspend the WhatsApp accounts of Defendant Nos. 4 and 8 to ensure that the said Defendants cease the infringement of the Plaintiff's copyright on WhatsApp. It is further directed that in the event the Plaintiff brings to the notice of Defendant No. 9, that any other WhatsApp account is being used for the purpose of selling infringing copies of the film, the Defendant No. 9 shall as expeditiously as possible, and not later than 24 hours from the receipt of the request from the Plaintiff, suspend such accounts.

27. Further, Defendant Nos. 10 to 12 are directed to disclose the contact details of Defendant Nos. 1 to 8, which are registered with them, within a period of three days from today so that the Plaintiff can then take further steps for effecting service of the summons in the suit.

28. Let the provisions of Order XXXIX Rule 3 be complied with within a period of three days from today.

29. List before the Joint Registrar on 10th August, 2021.

30. List before the Court on 1st June, 2021.

SANJEEV NARULA, J MAY 20, 2021 nd