

IN THE HIGH COURT OF DELHI AT NEW DELHI**FAO(OS) 211/2010****MSM SATELLITE SINGAPORE PTE LTD. Appellant
Through: Mr.Praveen Anand, Advocate with
Mr.Dhruv Anand, Advocate****versus****STAR CABLE NETWORK and ORS. Respondents****Through: Nemo.****CORAM:
HON?BLE MR.JUSTICE PRADEEP NANDRAJOG
HON?BLE MR.JUSTICE RAJIV SAHAI ENDLAW****O R D E R
01.04.2010****CM No.5737/2010 in FAO (OS) 211/2010****Allowed subject to just exceptions.****CM No.5736/2010****Allowed subject to just exceptions. However, certified copy of the
impugned order shall be filed as and when made available by the Registry.****FAO(OS) No.211/2010 and CM No.5735/2010**

- 1. MSM Discovery Pvt. Ltd. is the distribution arm of Multi Screen Media Pvt. Ltd., a wholly owned subsidiary company of the appellant and has the sole and exclusive distribution rights pertaining to ?Sony Set Max? channel in India.**
- 2. The appellant has acquired entertainment software and distributes and broadcasts signals of various entertainment channels such as ?SONY ENTERTAINMENT (MAX and SAB)?. The appellant has an agreement with BCCI as per which exclusive broadcast rights for matches of ?IPL Cricket Tournament in India? which commenced on 12th March 2010 vest with the appellant.**
- 3. The grievance of the appellant is that respondents No.1 to 10 and 20 to 41, having obtained no authorization from the appellant as required by the Cable Television Networks (Regulation) Act 1995 and the Cable Television Network Rules framed thereunder are indulging in the unauthorized activity of downloading signals of the appellant and thereafter distributing the same through their network channel to various individuals. Qua respondents No.11 to 19, the grievance is of downloading the signals or otherwise obtaining the same illegally are telecasting the IPL matches to attract customers to their establishment. It is alleged that all the respondents require a license along with a decoder to capture the signal of the appellant which is encrypted and thereafter after decrypting the same, to transmit/broadcast the same under the authorization as per the license granted.**

4. It is the positive assertion of the appellant that none of the respondents has any license under the appellant authorizing the respondent to download and thereafter transmit the signals or broadcast the program in which the appellant has the exclusive right.

5. We note that as per the appellant the IPL matches are being transmitted on the 'Sony Set Max' channel.

6. The grievance in the plaint was that the unauthorized activities of the defendants requires to be enjoined by means of a permanent injunction and in the interregnum, by way of interim relief, it was prayed that an ex-parte ad-interim injunction be issued to enjoin the defendants from downloading the signals of 'Sony Set Max' channel and thereafter distribute the same to the individual houses or broadcast the same.

7. Vide impugned order dated 26.3.2010, declining the ex-parte ad-interim relief prayed for, the learned Single Judge has directed that a Commission be executed with the mandate that the local commissioners appointed would visit the premises of the defendants and report whether the defendants are telecasting the program of 'Sony Set Max' channel. The defendants have been directed to maintain accounts in respect of the telecast of the channel.

8. Mr.Praveen Anand, learned counsel for the appellant urges that the illegal activities being carried on by the respondents are under the cover of darkness of secrecy and where would be the purity in the accounts required to be maintained by the respondents? Learned counsel urges that it would be impossible for the appellant to find out as to how many houses have subscribed with the respondents and how many connections have been provided for, in each house. Learned counsel urges that the very life of the Copyright Broadcasting Reproduction Rights is limited in duration and unless the problem is not dealt with, with matching commensurate exercise of judicial power, the problem of piracy cannot be brought down or curtailed. Learned counsel highlights that very soon the Common Wealth Games are likely to be held and a message needs to be sent out that those who desire a share in the pie must contribute in the creation of the pie.

9. Having considered the submissions afore-noted, suffice would it be to state that if the respondents or any one of them does not have the license under the appellant to download and thereafter distribute Sony Set Max channel, any such activity would be an act of piracy. Similarly an act of downloading the signal of Sony Set Max channel and broadcasting the same without a license would be of the same taint.

10. Considering the life span of the right in favour of the appellant to broadcast live the IPL cricket matches and conscious of the fact that large number of viewers would be affected by any order which may be passed by us, but noting the fact that if any respondent has no license under the appellant to download and thereafter distribute or broadcast the signals/program of Sony Set Max channel, it hardly matters, where would the balance of convenience lie, for the reason where the prima facie case made out is so strong that it reaches proof of 100% success, injunction must follow.

11. Learned counsel for the appellant submits at this stage, on being asked by us, that in terms of the orders passed by the learned Single Judge the commissions have yet to be executed. Learned counsel further urges that past experience shows that unless the learned Commissioner is a person with some authority it becomes difficult to execute the Commission, which more often than

not requires assistance from the local administration.

12. Considering that the learned Single Judge has issued notice in the application seeking interim injunction, meaning thereby, that the learned Single Judge is still seized of the issue, we are of the opinion that the appeal can be disposed of issuing appropriate directions and clarifying that opposition if any, by the respondents can be before the learned Single Judge by means of either an application or by means of a reply to the application filed by the appellant for interim relief.

13. It is hereby directed that subject to any orders which may be passed by the learned Single Judge after hearing the parties, the said respondents shall be restrained from downloading any signals of Sony Set Max channel and/or from distributing the same through cable network to any individual or from broadcasting the same in their establishments without obtaining the license/authorization from the appellant. The appellant also seeks John Doe/Ashok Kumar order; it is stated that during the enforcement of this order and/or execution of the Commission the appellant may learn of others committing similar acts of piracy; it is further stated that the respondents may also make the injunction order issued by this Court infructuous by commencing/carrying on the business which they are enjoined from carrying, in the names of others. We are satisfied with the said argument. Accordingly, any other person/organization/body who is indulging in the act of piracy of the signal of the appellant and/or in which the appellant has the exclusive right is also prohibited/enjoined from distributing or broadcasting the said signal/programme of the appellant qua the IPL Cricket Tournament.

14. It is directed that respondents No.11 to 19 shall stand restrained, unless they obtain from the appellant affiliation subscription agreement authorizing said respondents to download the signals and show the program on the Sony Set Max Channel.

15. We further direct that a Commission be executed with mandate of the Commissioner to visit the premises of the respondents and on proof that any respondent is downloading the signal of Sony Set Max channel without any proper authorization, to seize the devices which receive and transmit the Sony Set Max Channel. The Commissioners are also authorized to visit the premises of any other person found to be indulging in such piracy and on proof that such person is downloading the signal of Sony Set Max channel or broadcasting the same without authorization of the appellant, to seize the devices used for the same.

16. We direct that the Commission would be executed during the hours IPL Matches are being telecast live and would note the telephone calls, if any, received by individuals making a grievance at the telephone installed at the premises of the respondents, pertaining to signals not being received by the caller.

17. We hereby appoint Mr.Parveen Uppal, Assistant Registrar (Mob.No.9717394810) as the Commissioner to visit the premises of respondent Nos.1, 6, 32, 33, 34, 35 and 36, all of which are at Alwar.

18. We hereby appoint Mr.Lorren Bamniyal, Joint Registrar (Mob.No.9910390952) as the Commissioner to visit the premises of respondent Nos.27, 28, 29, 30 and 31 in Jodhpur.

19. We hereby appoint Mr.Govind Ram Grover, Deputy Registrar (Mob.No.9717991822) as the Commissioner to visit the premises of respondent Nos.7, 8, 9 and 10 at Chittorgarh, Rajasthan.

20. We hereby appoint Mr.V.Vishwanathan, Joint Registrar (Mob.No.9910390947) as

the Commissioner to visit the premises of respondents No.2, 3, 4 and 5 at Ganganagar, Rajasthan.

21. We hereby appoint Ms.Meenakshi, Private Secretary (Mob.No.9717394843) as the Commissioner to visit the premises of respondents No.11, 12, 13, 14 and 15 at New Delhi.

22. We hereby appoint Mr.Pradeep Patwal, Senior Personal Assistant, (Mob.No.9810961661) as the Commissioner to visit the premises of respondents No. 16, 17, 18, 19, 20 and 21 at New Delhi.

23. We hereby appoint Mr.Anil Koushal, Joint Registrar (Mob.No.9910390949) as the Commissioner to visit the premises of respondents No.23, 37 and 41 in Gurgaon and Ghaziabad respectively.

24. We hereby appoint Mr.Vishnu Kumar Mittal, Joint Registrar (Mob.No.9910390942) as the Commissioner to visit the premises of respondents No.38 and 39 at Kangra and Manali.

25. We hereby appoint Mr.Janardan Tripathi, Assistant Registrar (Mob.No.9717394839) as the Commissioner to visit the premises of respondents No.22 and 26 at Lucknow.

26. We hereby appoint Mr.Rakesh Kumar, Private Secretary (Mob.No.9717991831) as the Commissioner to visit the premises of respondents No.24, 25 and 40 at Meerut, Aligarh and Roorkee respectively.

27. We fix the fee of the learned Local Commissioners in sum of Rs.75,000/- (Rupees Seventy Five Thousand) each besides out of pocket expenses.

28. The learned Local Commissioners are directed to file their reports in the Suit before the learned Single Judge being CS(OS) No.560/2010. The report shall be filed immediately after the Commissions are executed.

29. The SHO of the local Police Station as also the District Magistrate of the concerned district in jurisdiction whereof the respondents reside are directed to render full assistance to the learned Local Commissioners for the Commissions to be executed.

30. Copy of this order be supplied dasti to learned counsel for the appellant.

**(PRADEEP NANDRAJOG)
JUDGE**

**(RAJIV SAHAI ENDLAW)
JUDGE**

April 01, 2010

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