

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 469/2014

MULTI SCREEN MEDIA PVT LTD Plaintiff

Through: Mr.Abhishek Malhotra and Mr.Anand

Dugal, Advocates

versus

WWW.VIMEO.COM and ORS Defendant

Through: Ms.Sonali Jaitley, Mr.Navin Chawla,

Mr.B. Subramaniam and Ms.Neha Jain, Advocates for defendant no.21 and 22

Mr.Sudeep Chatterjee, Advocate for

the defendant no.17

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

O R D E R

19.02.2014

CAV 177/2014

Since counsel for the Caveator has entered appearance, the present caveat stands disposed of.

I.A. 3174/2014 (Exemption)

Allowed, subject to just exceptions.

Application stands disposed of.

I.A. 3173/2014

This is an application, seeking exemption from filing original documents. Let the original documents be filed within ten weeks from today.

Application stands disposed of.

I.A. 3175/2014 (u/S.149 r/w. Section 151 CPC)

By the present application, plaintiff seeks some time to file court fee. Let the court fee be filed within one week from today.

Application stands disposed of.

CS(OS) 469/2014 and I.A. 3171/2014 (u/O.39 Rs=1 and 2 CPC)

The present suit has been filed by the plaintiff for permanent injunction, restraining infringement of copyright and rendition of accounts against the defendants.

The plaintiff claims to be the sole and exclusive owner of the intellectual property rights in the film ?Darr@ The Mall?, which is stated to be released on February 21, 2014. The defendants are said to be inter alia websites/ persons/ agencies engaged in reproduction, communication to the public and broadcasting of content including films in the entertainment industry in that :

a) Defendant Nos.1 to 13 are websites / entities engaged in the business of uploading and communicating to the public pirated and unlicensed content. Plaintiff further alleges that these entities are likely to engage in business where infringing / pirated copies of the said film are transmitted/ communicated through the medium of the internet and the websites owned or controlled by these defendants.

b) Defendant nos.14 to 27 are ISPs i.e. Internet Service Providers and Network Service Providers, who are engaged in telecommunication industry.

c) Defendant Nos.28 to 35 and 36 to 75 are Multi Systems

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Operators and Cable Operators that are governed by the Cable TV Networks

Regulation Act, 1995 and the Telecom Regulatory Authority of India Act, 1997. These entities are currently specifically not identifiable.

d) Defendant Nos.76 to 100 are persons who are habitual infringers and indulge in piracy as a part of their business. They operate under various assumed identities in order to avoid the process of law. For convenience of reference, the plaintiff has named them ?Ashok Kumar?, and is seeking an injunction in the nature of a ?John Doe Order? against these defendants.

The plaintiff's case is that the contents of its film ?Darr@ The Mall?, are likely to be copied/ telecast/ distributed/ transmitted/ communicated to the public, inter alia through the medium of cable networks as well as internet websites and that the plaintiff has not authorized any of the defendants to copy or reproduce or communicate or duplicate or display or telecast or upload or download the film ?Darr@ The Mall?. And that the present suit is necessitated for the reason that the entertainment industry has experienced large scale violations of intellectual property rights in some of the recent films released in the Indian film industry.

The plaintiff submits that it has reliable information that the defendant nos.28 to 35 and 36 to 75 are cable operators and MSOs whose identities are currently unknown to the plaintiff and who may on their own

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or by using third party media, carry out unauthorized distribution or transmission of the film through their networks. Similarly, defendants no.76 to 100 are unknown persons, who make poor copies of the film when it is being screened, upload the infringing content on websites such as defendant nos.1 to 13, which are accessible over the internet through the aegis of the ISPs and Network Service Providers such as defendants no.14 to 27, who make these websites accessible to millions of users in India and around the globe.

Counsel for the plaintiff submits that the only effective remedy available to it, is to seek an injunction against the known defendants and an injunction in the nature of a ?John Doe Order? for the unknown defendants in order to ensure that its intellectual property rights are not infringed.

Counsel for the plaintiff has placed reliance on the orders of this Court passed in CS(OS)No.2335/2013 dated 2.12.2013 and also in CS(OS)No.145/2014 dated 17.1.2014, CS(OS)No.1724/2011, CS(OS)No.821/2011 and CS(OS)No.384/2011, where similar injunctions were granted.

Plaintiff also contends that the provision of the Information Technology Act, 2000 mandates ISPs as well as Network Service Providers, which are included within the definition of an 'intermediary'. The licenses granted to ISPs and telecom service providers by the Department of Communication also oblige the licencees to ensure that intellectual

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property rights are not infringed by or through their networks. And that defendant Nos.14 to 27 are thus, additionally mandated to ensure that once they are informed of any infringing activity being carried out utilizing their medium and agency, they take immediate steps to ensure that such medium and agency is not used by any person for unauthorized copying, communication, duplication, reproduction, exhibition or distribution of the plaintiff's film.

Issue summons in the suit and notice in the application to defendants, returnable on 20.3.2014.

The learned counsel appearing for defendant nos.17, 21 and 22 accept notice and have fairly conceded that on being informed by the plaintiff in writing about the particulars of websites hosting infringing content, they shall within 48 hours, block such URLs.

I have heard counsel for the plaintiff and perused the plaint, application and the supporting documents. I am satisfied that this is a fit case for grant of ad interim injunction. Accordingly, an interim ex parte injunction is granted in favour of the plaintiff and against defendants and other unnamed and undisclosed persons, their partners or proprietors as the case may be, their officers, servants, agents and representatives, websites administrators, franchisees, head-ends and all other in capacity of principal and agent acting for or on behalf, thereby restraining them from communicating or making available or distributing, or duplicating, or displaying or releasing or showing or uploading, or downloading, or

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exhibiting or playing and /or defraying the movie ?Darr@ The Mall? in any manner without a proper license from the plaintiff, or in any other manner which would violate / infringe the plaintiff?s copyright in the said film, including but not limited to through mediums such as CD, DVD, Blue-Ray Disc, VCD, Cable TV, DTH, HITS, IPTV, websites, Internet services, mobile, MMS Clips, Tapes, or in any other manner. The defendant nos.14 to 16, 18 to 20 and 23 to 27 are also directed to block URLs upon receiving particulars of the infringing websites from the plaintiff.

Provisions of Order 39 Rule 3 CPC be complied with, within 7 days.

DASTI under the signatures of the Court Master.

I.A. 3172/2014 (u/O.26 Rule 9 and u/O.39 R.7 CPC)

Counsel for the plaintiff submits that at this juncture it is difficult to ascertain the extent of the illegal activity complained of and hence, seeks liberty that in the event that the plaintiff is made aware of infringement of its copyright by MSOs/ LCOs or other named and unnamed persons arrayed as defendant Nos.1 to 13 and 28 to 100, the counsel for the plaintiff may be allowed to mention the matter before this court and seek appointment of Local Commissioners in terms of prayers sought in the said application at paragraph 6.

Issue notice to the defendants, returnable on 20.3.2014.

G.S.SISTANI, J

FEBRUARY 19, 2014

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