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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(COMM) 239/2017

SONY PICTURES NETWORKS INDIA

PRIVATE LIMITED & ANR

..... Plaintiffs

Through: Mr. Darpan Wadhwa, Sr. Adv. with Mr.
Amitesh Chandra Mishra, Mr. Azmat H.
Amanullah and Mr. Nishant Awana, Advocates

versus

HOME CABLE NETWORK PVT. LTD & ORS Defendants

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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30.03.2017

IA No.3977/2017 (Exemption from filing original documents and clearer copies, etc.)

1. Allowed subject to just exceptions.

CS(COMM) 239/2017 and IA 3975/2017 (u/O. XXXIX R 1& 2 CPC) and IA 3976/2017 (u/O. XXVI R.4, 9 & 10 and O. XXXIX R. 7 CPC)

2. Issue summons on the suit and notices on the applications on requisite steps by all permissible modes, returnable on 20.04.2017.

3. The plaintiff presses for *ex parte ad interim* injunction and for appointment of the Local Commissioner.

4. The learned counsel for the plaintiff has been heard at length. From the pleadings and the documents filed, it appears *prima facie* that the first plaintiff has been granted exclusive media and broadcasting rights in respect of the Indian Premier League (IPL), an annual Twenty20 cricket tournament founded in 2008, by the Board of

Control for Cricket in India (BCCI) including the upcoming season of VIVO IPL 2017 commencing on 05.04.2017 and slated to end on 22.05.2017, by virtue of an exclusive license agreement dated 25.06.2010, with the BCCI. The VIVO IPL 2017 is to be telecast live in India on channels of the first plaintiff, they being SIX, SIX HD, SONY ESPN, SONY ESPN HD and SET MAX, statedly exclusively distributed in India by the second plaintiff. The plaintiffs are ready and willing to grant authorisation to such parties as wish to broadcast / re-broadcast / transmit / re-transmit the signals of the said coverage on their channels, subject to agreements in writing being executed by such third parties.

5. Defendant nos.1 to 40 are described as Multi System Operators, Local Cable Operators and other similarly placed distribution platform operators having their networks in various towns and cities across the length and breadth of the country. The plaintiffs apprehend that the said defendants who are named, as also unnamed defendants [Defendant no.41, described as Ashok Kumar(s)] might infringe upon their exclusive broadcast reproduction rights by illegally broadcasting / re-broadcasting / transmitting / re-transmitting or communicating to the public through any medium whatsoever, the coverage of VIVO IPL 2017 season.

6. The plaintiffs rely on *ad interim ex parte* injunction orders that had been granted by this court in similar circumstances concerning the previous seasons of the IPL tournament including particularly the order granted on 01.04.2010 by a Division Bench of this court in FAO (OS) 111/2010, which was followed by a learned single judge in similar facts-situation for granting identical relief concerning the last

season of the tournament VIVO IPL 2016 by order dated 05.04.2016 in CS (Comm) 316/2016.

7. On careful perusal of the documents submitted on record and the submissions made in the light of pleadings of the plaintiffs particularly assertion that the infringement by the defendants is likely to be on account of illegal use of common source by the defendant's, a case for *ex parte ad interim* injunction and directions for local inspection as per the need that may arise is made out.

8. In the facts and circumstances of the case, the defendants, their directors, partners, proprietors, their officers, servants, agents, assigns, representatives, franchisees, head-ends, and all others in capacity of principal or agents acting for and on their behalf, as the case may be, as also all other persons who are presently unknown, are hereby restrained, till next date of hearing, from broadcasting / re-broadcasting / transmitting / re-transmitting or communicating to the public through any medium whatsoever including their subscribers, through cable TV network(s) or otherwise, the contents of coverage of VIVO IPL 2017 Cricket Tournament, as telecast by the channels SIX, SIX HD, SONY ESPN, SONY ESPN HD and SET MAX of the plaintiffs, unless and until they have paid subscription to and obtained license from the plaintiff no.2, on behalf of plaintiff no.1.

9. Order XXXIX Rule 3 CPC shall be complied with within a week of this order.

10. In view of the averments made in the plaint and in the present application, this court is inclined to allow the prayer for appointment of Local Commissioners. Accordingly, Mr. Jamal Akhtar, Advocate (Mobile No. 9911120018) and Ms. Hamsini Shankar, Advocate

(Mobile No.8826313500) are appointed as the Local Commissioners with directions to execute the commissions by undertaking the following steps :-

(i) to ascertain whether the 2017 season of IPL is being unauthorisedly exhibited, communicated or made available for viewing by the public on SONY MAX, SONY SIX, SONY KIX, SONY AATH and SONY SIX HD channels at the premises to be visited by the Local Commissioners;

(ii) to serve a copy of the order of injunction passed by this Court on the person(s) in-charge of the establishment, located at the premises to be visited by the Local Commissioners. In case the Local Commissioners visit the premises of person(s) other than the named defendants, i.e. defendants No.1 to 40, they shall serve the complete paper book containing the plaint, affidavits, list of documents and the interim applications with supporting affidavits upon all such persons;

(iii) to search and make an inventory of all equipment which is being used for the unauthorized broadcast, telecast or communication of SIX, SIX HD, SONY ESPN, SONY ESPN HD and SET MAX channels to the defendants subscribers/public, found at such premises or any other premises where the infringing activity is taking place;

(iv) to seize/take into custody all equipment which is being used for the unauthorized broadcast / re-broadcast / transmit / re-transmit or communication of SIX, SIX HD, SONY ESPN, SONY ESPN HD and SET MAX channels showing the 2017 season of IPL to the defendants' subscribers / public, and thereafter seal the same in suitable packing material/containers;

(v) to hand over the seized goods on *superdari* to the defendants or

their representatives, or the person(s) in-charge of the premises, who may be directed to give an appropriate undertaking that the seized goods will be produced before this Court, as and when directed.

(vi) to take photographs and video recordings of the unauthorized broadcasting, re-broadcasting, transmitting, retransmitting, exhibiting, exploiting, communicating and / or making available SIX, SIX HD, SONY ESPN, SONY ESPN HD and SET MAX channels showing the 2017 season of IPL and also of the commission proceedings, and take assistance of the plaintiffs' representatives or the technical experts of the plaintiffs for such purpose;

(vii) to direct the persons in-charge of such premises visited by the Local Commissioner where unauthorised broadcasting, re-broadcasting, transmitting, re-transmitting, exhibiting, exploiting, communicating and / or making available SIX, SIX HD, SONY ESPN, SONY ESPN HD and SET MAX channels showing the 2017 season of IPL is in progress: (a) to disclose the legal status (i.e. sole proprietorship, partnership, company etc.) of the entity located at such premises and (b) to disclose the names and details of persons responsible for owning and managing the said entity.

11. It is clarified that in case any of the defendants are willing to obtain a licence at the time of their visits, the representatives of the plaintiffs shall give the same as per law. In case any of the defendants obtain the license from the plaintiffs, they shall be entitled to exhibit, communicate and make available for viewing by the public the aforesaid channels of the plaintiffs.

12. The Local Commissioners shall be entitled to seek the help of the plaintiffs' representatives and/or their technical experts for proper

execution of the commission and they shall also be entitled to obtain police assistance from the local police stations and the SHOs of all the concerned police stations, which shall be so rendered, if a request in that regard is received for the execution of the directions of this Court.

13. The defendants, their employees, agents, etc., are directed to cooperate with the Local Commissioners to enable them to execute the commissions in terms of the directions issued in para 10 above. The fee of the Local Commissioners is fixed at Rs.1,00,000/- each apart from out of pocket expenses, which shall be borne by the plaintiffs when they visit any of the defendant's addresses or the premises of other unknown defendants identified by the plaintiffs. The plaintiffs are granted the liberty to take the services of any of the Local Commissioners listed hereinabove on the match days at any of the cities, but with prior intimation to them. The further fees, if any, payable to the Local Commissioners shall be fixed by the Court in case they or either of them are required to execute more than two commissions. The Local Commissioners shall submit their reports within two weeks from the date of conclusion of the commission.

14. A copy of this order be given *dasti* to the counsel for the plaintiffs under the signatures of the Court Master.

R.K.GAUBA, J.

MARCH 30, 2017

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