

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 696/2015

STAR INDIA PVT LTD Plaintiff

Through Mr.Rajiv Nayyar, Sr. Advocate with Mr.Sidharth Chopra, Mr. Sneha Jain and Ms.Savni Dutt, Advocates.

versus

KHALID NASIR RAJA and ORS Defendants

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

18.03.2015

I.A. No.5396/2015

As prayed, original documents, sought to be relied upon, shall be filed before the admission/denial of documents.

The application is disposed of.

I.A. No. 5397/2015

Let certified, clear and proper copies of the documents be filed within ten weeks from today. Application stands disposed of.

I.A. No. 5398/2015

For the reasons stated in the application, the plaintiff is exempted to issue notice u/S 80 CPC to defendant No.94 and 95.

The application stands disposed of.

CS (OS) 696/2015

Plaint be registered as suit.

Issue summons to the defendants by all means, including dasti, returnable for 06.07.2015.

I.A. No.5395/2015 (stay)

This is an application filed by plaintiff under Order XXXIX Rules 1 and 2 CPC for grant of ex parte ad interim injunction.

Issue notice of this application also to the defendants by all means, returnable for the aforesaid date.

As per the plaint, the plaintiff is a leading sports broadcaster in India which is incorporated under the Companies Act, 1956. It has the sole and exclusive right to broadcast and distribute the following Channels in India - Star Sports 1, STAR Sports 2, Star Sports 3, STAR Sports 4, STAR Sports HD I and Star Sports HD 2 (collectively referred to as ??Channels?). The plaintiff channels carry various sporting events such as international and domestic cricket matches organized by the Board of Control for Cricket in India (BCCI) International cricket matches organized by Cricket Australia (CA).?

The plaintiff also is stated to have internet and mobile presence through its websites www.starsports.com and www.hotstar.com (collectively referred to as ?Websites?) and its mobile applications StarSports.com and Hotstar (collectively referred to as ?Mobile Applications?). www.starsports.com and StarSports.com are said to be dedicated digital sports entertainment services (transmitted through internet and mobile respectively) on which the digital rights acquired by the plaintiff to various sporting events/properties are said to be exploited by the plaintiff. These internet services through www.starsports.com are an online destination that is said to bring the best of live sports in India. It offers to its viewers, sports content on live, delayed live, video on demand and pay per view basis. Similarly, www.hotstar.com and ?Hotstar? is said to provide a platform for viewers to access TV shows, Movies and Sports for free. The internet services through www.starsports.com and www.hotstar.com are accessible from a browser on a laptop, personal computer or any hand-held device and as mobile applications ?StarSports.com? and ?Hotstar? on iOS, Android and Nokia ASHA (Hotstar only) platforms.

The case of the plaintiff is that since the plaintiff owns the exclusive rights for telecast of various sporting events including the ongoing ICC Cricket World Cup 2015 from February 14, 2015 to March 29, 2015, any hosting, streaming, broadcasting, rebroadcasting, etc. to the public of the various sporting events for which the plaintiff has

exclusive broadcast rights, including the ongoing ICC Cricket World Cup 2015, on the plaintiff's Channels/Websites/Mobile Applications, by any means on any platform including internet and mobile, by any named or unnamed defendant website would be illegal and amount to violation of the broadcast reproduction rights of the plaintiffs protected under Section 37 of the Copyright Act, 1957.

In the present suit, the plaintiff is aggrieved as the defendant websites [named and un-named i.e. Ashok Kumar] are hosting, streaming,

exhibiting etc., making available for viewing and/or communicating to the public, the broadcast of various sporting events and the content related thereto, including the ongoing ICC Cricket World Cup 2015, for which the plaintiff has the exclusive rights, in India without the plaintiff's permission.

The plaintiff alleges that the instant suit has been filed primarily against such defendant websites which predominantly carry infringing content. Due to the very nature of internet where it is very easy to engage in illegal activities and avoid detection, internet piracy is thriving. After conducting proper due diligence for months and gathering evidence of past infringing conduct over a period of time, the plaintiff has shortlisted such Rogue Websites which predominantly host, stream, broadcast, retransmit, etc. illegal content, including content for which the plaintiff has exclusive rights for India, such as the ongoing ICC Cricket World Cup 2015. Such websites are rogue websites since they primarily host and stream illegal content without any regard to the rights of the content owners. These rouge websites not only violate and infringe the intellectual property rights of the various rights holders, but also substantially erode and dilute the value of the said intellectual properties by taking away significant revenues from all the stakeholders.

It has been submitted that owing to the fact that the defendant websites themselves are, as a whole, instruments/vehicles of infringement, it is not practical/viable to target/seek a restraint against individual or some specific URLs belonging to the defendant websites. It is submitted that a URL or a Uniform Resource Locator is a combination of alpha-numeric character used to locate a particular resource or content located on the internet. It is submitted that in case a URL is blocked or disabled, it is extremely easy for the website to provide access to the blocked content through another URL since a mere change of a character in the URL string will result in a completely new URL. Consequently, it is submitted that it is extremely easy for website to circumvent and thus nullify any order that directs blocking of specific URLs since such websites can very easily provide access to the same content by merely changing one character in the URL string. Thus, it is submitted that unless access to the entire website of the named and unnamed defendants is blocked, there is no alternate and efficient remedy that is open to the plaintiff.

It is submitted by the plaintiff that these websites are anonymous

in nature and it is virtually impossible to locate the owners of such websites or obtain the contract details of such owners. It is further submitted that these defendant websites also hide behind domain privacy services offered by various domain name Registrars, which enables a website owner to hide behind a veil and not disclose any contact details publicly, to protect its privacy. It is submitted that when a website seeks the protection of such domain privacy services, only the information of a forwarding service is made publicly available and no personal details, contact address or e-mail IDs of owners of such websites is made publicly available. Consequently it is extremely difficult, almost impossible, to get in touch with these websites to call upon them to cease their infringing conduct. Unless the domain name registrars of the respective websites which use such domain privacy services are directed to disclose the details of the owners of the Defendant Websites, it would be impossible to get the address, location and contact details of the owners to the Defendant Websites.

The plaintiff has also arrayed the defendant Nos. 76 to 93, Department of Telecommunications (DoT) (D-94), and the Department of Electronics and Information Technology (DEITY) (D-95), for similar reason, i.e. to enforce/ensure compliance with any orders of injunction to protect its rights from being infringed by the defendant websites within the territory of India. The limited relief being claimed against the D-94 and D-95 is to issue orders to block/disable access into India of such Rogue Websites. It is submitted that since no formal remedy/relief as prescribed under the Copyright Act, 1957 is being claimed against D-94 and D-95, the provisions of Section 80 of the Code of Civil Procedure, 1908 have no application. By virtue of the obligations that have been imposed upon an ISP under its License Agreement with the Department of Telecommunications, the ISPs are mandated to ensure that content which infringes intellectual property is not carried on its network. Per Clause 33.3 of the License Agreement for the Provision of Internet Services between the Department of Telecommunications and the concerned ISP, and clause 40.3 of the License Agreement for Unified License (Access Services) between the Department of Telecommunication and the concerned ISP, whichever is applicable, the ISPs have an obligation to ensure that content which infringes intellectual property is not carried on its network. The plaintiff has, it is stated, issued letters to the ISP defendants dated 10.03.2015 informing them of the illegal nature of activities of these Rogue Websites and calling upon them to disable access to them. However, till date, no reply has been received from the said ISPs. It is submitted that the said ISPs continue to provide access to these Rogue Websites.

After having heard the learned counsel for the plaintiff and going through the plaint, the accompanying documents and after having seen the various past ex parte ad interim injunction orders passed by this Court, I am of the view that the plaintiff has been able to make out a case for grant of interim injunction. I am also of the view that if the interim injunction is not granted ex parte the very purpose of granting this relief would be defeated. Accordingly, till the next date of hearing:-

(i) the defendants Nos. 1 to 75, their directors, partners, etc. as also all other persons who are unknown at present but are found to be similarly infringing the broadcast reproduction rights of the plaintiff, are hereby restrained from, in any manner, hosting, streaming, broadcasting, re-broadcasting, retransmitting, exhibiting, making available for viewing and downloading, etc. on their websites, through the internet in any manner whatsoever, the plaintiff's broadcast, as broadcast/contained in Channels- Star Sports 1, Star Sports 2, Star Sports 3, Star Sports 4, Star Sports HD1, Star Sports HD2, Star Sports HD3, Star Sports HD4, www.starsports.com (or its mobile equivalent), www.hotstar.com (or its mobile equivalent) in relation to the sporting events to which the plaintiff has exclusive rights including the ongoing ICC Cricket World Cup 2015 and content related thereto, so as to infringe the Plaintiff's broadcast reproduction rights;

(ii) The defendants No. 76 to 93, their directors, partners, etc. are directed to block access to the various websites identified by the plaintiff in the instant suit at S.No.1 of the Documents or such other websites that may subsequently be notified by the plaintiff to be infringing of its exclusive rights, as elaborated in Clause (i) above;

(iii) The defendants Nos. 94 and 95 are directed to issue orders/directions calling upon the various internet and telecom service providers registered under it to block access to the various websites identified by the plaintiff in the instant suit at S.No.1 of the Documents or such other websites that may subsequently be notified by the plaintiff to be infringing of its exclusive rights,

(iv) The Domain Name of Registrar's of each of the websites listed at suit at S.No.1 of the Documents filed with the plaint are directed to disclose the contact details and other details about the owner of the said websites.

Compliance of the provisions of Order XXXIX Rule 3 CPC be done by the plaintiffs within ten days.

Copy of this order be given dasti to the Counsel for the plaintiffs under the signatures of the Court Master.??

JAYANT NATH, J

MARCH 18, 2015

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CS(OS) 696/2015 Page 8 of 8

§ A-36