

Certified copy of Judgment

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M/s Shree Krishna International etc. Versus Google India Pvt. Ltd. and others

IN THE COURT OF SUDHIR PARMAR: ADDITIONAL DISTRICT
JUDGE: GURUGRAM.

Civil Suit Number	135A of 13.09.2011/12.04.2016
CNR number	HRGR01- 008145-2013
CIS number	CS/1358/2014
UID CODE	HR-0157
Decided on	27.09.2019

1. M/s Shree Krishna International having its office at 132 Park Street, 2, Janki Devi, School Road, S.V.P. Nagar, Andheri (West) Mumbai-400 053 Through its proprietor Shri Suneel Darshan.
2. M/s Shree Krishna Audio having its office at 132 Park Street, 2, Janki Devi School Road, S.V.P. Nagar, Andheri (West) Mumbai-400 053 Through its proprietor Sh. Suneel Darshan.
3. M/s Shree Krishna Films Exports having its office at 132 Park Street, 2, Janki Devi School Road, S.V.P. Nagar, Andheri (West) Mumbai-400 053 Through its proprietor Shri Suneel Darshan.

....Plaintiffs

Versus

1. Google India Pvt. Ltd. 8th & 9th Floors, Tower C Building No.8, DLF Cyber City, Gurgaon- 122 002 (Haryana) through its director.
2. YouTube LLC 901- Cherry Avenue, San Bruno, California (USA)
Also at: 8th & 9th Floors, Tower C Building No.8, DLF Cyber City, Gurgaon- 122 002 (Haryana) trough its director.
3. Google INC. 1600 Amphitheatre, Parkway, Mountain View, California (USA).

.....Defendants.

Suit for permanent Injunction, Damages and Accounts and otherwise as are or may be conferred by law for infringement of Copyright of plaintiff.



17/09/19
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10/10/19

M/s Shree Krishna International etc. Versus Google India Pvt. Ltd. and others

Present: Shri N.K.Bhardwaj and Shri Bikash Ghurai, Advocates for the plaintiff.
Shri Hemant Singh, Shri Saransh Jain and Shri Shrutima Ehersa, Advocates for defendants.

Arguments heard. Vide my separate judgment of even date, the suit of the plaintiff is decreed. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.

Announced in Open court:
27.09.2019

Parveen


(Sudhir Parmar)
Additional District Judge,
Gurugram.
UID Code No. HR-0157

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of the Indian Evidence Act-1973

26/9/19

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Present: Shri N.K.Bhardwaj and Shri Bikash Ghurai, Advocates for the plaintiff.
Shri Hemant Singh, Shri Saransh Jain and Shri Shruttima Ehersa, Advocates for defendants.

JUDGMENT:

The present suit is filed by the plaintiff Shri Suneel Darshan against the defendants being the sole proprietor of M/s Shree Krishna International, M/s Shree Krishna Films Exports and M/s Shree Krishna Audio and is competent to sign, verify the present plaint, institute the same and do all other necessary deeds. The defendants who are the owners and operators of the Internet website www.YouTube.com are knowingly and intentionally exploiting and misappropriating the valuable intellectual property of the plaintiff, primarily the copyright in Plaintiffs Cinematograph Films, Audio Visual Songs, Sound Recording including but not limited to the underling Literary & Musical Works and their public performance and Communication to the Public etc. (copyrighted works) for defendants own profit without any license or authorization from, or any payment made to the plaintiff.

2. The plaintiff owns all the copyrights in respect of all the works/movies mentioned in Para no.9 of the plaint. It is further submitted that defendant No.2 is a limited liability company organized and existing under the laws of the State of Delaware in the United States of America and with its principal place of business at 901-Cherry Avenue, San Bruno California (U.S.A.) and also having its office at 71E, Third Avenue, SanMateom California 94401 (U.S.A.).

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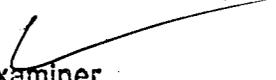
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The defendant No.3 is a publicly held corporation organized and existing under the laws of the State of Delaware in the United States of America and with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California (U.S.A.). Google has an Indian arm, the defendant No.1 with several offices in this country including an office at Google India Private Limited, 8th and 9th Floors, Tower C Building No.8, DLF Cyber City, Gurugaon 122002 and the operations of all the defendants are also run from the office of Google at Gurgaon, Haryana.

3. It is further submitted that the defendant No.2 is a popular website that enables users to upload, view and share video and audio clips and other material without charge including popular commercial material such as popular film, music, sports broadcasts, music videos, concert footage, television programs, movies and other mainstream media content and artistic works and the defendants are deriving profits including from advertising revenues generated through the popularity of their websites and projected value as a site platform or destination. These unauthorized and infringing copies are made and stored on computer servers owned and/or controlled by defendants in order to facilitate the further unauthorized copying distribution, public display and performance of the works to as many users as possible. Google participates directly in the infringing activities on defendant No.2 website.

4. The movies of the plaintiff which were made under Shree

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Krishna International are being uploaded by defendant No.2 in order to promote the infringement of plaintiff copyright by providing facility to down load the infringing including through "YouTube Downloader", thereby causing huge financial loss to the plaintiff.

5. It is further averred in the plaint that piracy of copyrighted material is particularly damaging to the plaintiff because it earns maximum revenue from the films and their contents like music and audio video songs etc. The defendants have engaged in willful and deliberate infringement of the plaintiff's copyright causing substantial loss to the plaintiff. Print outs from the defendant No.2 website showing the same are being filed in the present proceedings. The defendants without the permission or consent of the plaintiff and without authority are reproducing, publicly performing and communicating to the public the plaintiffs copyrighted audio visual works. The defendants conduct constitutes direct infringement of the plaintiff exclusive rights under the Copyright Act 1957 to publicly perform/communicate to the public, reproduce the plaintiff's copyrighted Cinematographs Films, audio visual works. In this way, infringing activities are seriously hampering the direct revenues that can be earned by the plaintiff through exploitation of the copyrighted content. The said expected revenue loss is incalculable.

6. It is further submitted that the defendants have conducted and continue to conduct the aforementioned activities through the defendant No.2 website without obtaining any permission, authorization

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or license for any of the aforementioned activities from the plaintiff and without paying the requisite license fee for such activities. The defendants on account of their aforesaid illegal activities are infringing the plaintiff's exclusive right under 14(a) (i) of the Copyright Act, 1957 i.e. the right to reproduce the literary and musical works in any medium including storing of the work. When the defendants 'stream' the content to users personal computers for viewing, the defendants infringe the exclusive right of the plaintiff under Section 14(a) (iii) of the Copyright Act, 1957 to publicly perform or communicate to the public, the song, which is a composite work containing literary and musical works. The defendants also infringe the exclusive rights of the plaintiff under Section 14(e) (iii) of the Act to communicate to the public, the Cinematograph Films, sound recording etc. The defendants also infringe the exclusive rights of the plaintiff under Section 14(d) of the Act in the audio-visual songs/videos. Hence the present suit.

7. Upon notice, defendants appeared and filed the written statements.

8. The defendant No.1 in his written statement has submitted that the present suit is filed by the plaintiff just to harass the defendants. The defendant No.1 is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at No.3, RMZ Infinity, Tower E, 4th Floor, Old Madras Road, Bangalore and is engaged in the business of advertising, marketing, selling, licensing of software solutions and designing engineering solutions and also carries out

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research and development of software solutions/programs. The
answering defendant is a subsidiary of Google Inc./defendant No.3
incorporated under the law of United States of America and having its
office at 100, Amphitheatre, Parkway Mountain View,
California,U.S.A. and does not have any right or control over Google
Inc., its parent company or over the business and operations of Google
Inc. It is further submitted that the defendant No.1 is a service
provider/intermediary, it is even otherwise exempted from any liability
under the provisions of Section 79 of the Information Technology Act,
2000. It is denied that the answering defendant is the owner or operator
of the internet website www.youtube.com . It is further denied that the
answering defendant in general are in any manner misappropriating the
valuable intellectual property of the plaintiff. It is submitted that the
answering defendant is not the owner of the internet website
www.youtube.com.

9. It is denied by the answering defendant that the defendants
have chosen not to take reasonable precautions to deter infringement on
their sites. It is submitted that the defendant No.2 has a well placed
mechanism and technology to curb the infringement of the work of the
right holder. It is also denied that the answering defendant invites or
encourages users to view, share, save and post unauthorized copies of
any works that are available on the defendants No.2's website. It is
further denied that the answering defendants invites or encourages
viewers to upload additional content on the site of the defendant No.2.

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It is incorrect that any unauthorized or infringing copies are stored on computer servers owned/controlled by the answering defendant. It is submitted that the services in questions are not provided by the answering defendant. It is relevant to mention here that every webpage of the defendant No.2 has several icons including icons such as 'about, press & blogs, copyright, creators and partners, advertising, developers' etc., a fact which has been purposely concealed by the plaintiff. A simple click on the 'copyright icon' on the webpage of defendant No.2 leads to a link, which elaborates the steps that can be taken by a right holder in cases of infringement of its copyright. This clearly reflects that the defendant No.2 has a well-placed mechanism and is not in any manner assisting in the infringement of copyright. It is denied that the answering defendant is allowing access to the infringing material by millions of users. Denying rest of the averments made in the plaint, dismissal of the suit is made by the defendant No.1.

10. Defendants No.2 and 3 filed their joint written statement in which they took the preliminary objection of jurisdiction. It is submitted by the answering defendants that the present suit has been filed in complete disregard to the statutory immunity provided to a service provider for any third party content linked or hosted by the service provider, so long as the intermediary does not select or modify the information contained in the transmission. It is submitted that the answering defendants provide the services available on www.google.com or www.google.co.in and www.youtube.com and

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therefore qualify to be intermediaries in terms of Section 2 (w) of the
information and Technology Act,2000 (as amended upto date) (“IT
Act”) and being a mere service provider/intermediary, the defendants
do not control or participate in or select the content uploaded by its
users. As an intermediary, the defendants are exempt from liability
under Section 79 of the IT Act excludes network service providers from
liability for any third party information or data made available by him if
he proves that the offence was committed without his knowledge or that
he had exercised all due diligence to prevent the commission of such
offence.

11. It is further submitted that the defendants do not directly
upload any content or its website, but merely provides a platform to its
users for uploading content under certain terms and conditions, which
are described in detail in the Terms of Service. The defendants do not
have any actual or indirect knowledge of the content being uploaded by
the world-wide community of users and does not play any role
whatsoever, or have any say in the selection of the content uploaded.
Further, the said defendants do not have the ability to control the
activities of the users beyond the ability to remove access to material
posted on or stored in its systems once the defendants are notified by a
copyright owner of the presence and location of alleged infringing
content on the defendant’s website. The location of the uploaded
content by any particular user is identified only by a ‘URL’ (Uniform
Resource Locator). To simplify, a URL is akin to a person’s street

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address and identity. It specifies where an identified content is available on the Internet and the mechanism for retrieving the same. Since a website is accessible on the World Wide Web across the globe without any distinction of territory by Internet users of all nationalities, any upload of control on to such website can be identified only through a URL. It is further submitted that the answering defendants have no way of monitoring the plaintiff's ownership of rights or of ascertaining the scope and extent of plaintiff's rights in such content. Existence of the plaintiff's copyright in videos on the website can not be ascertained. There is no copyright in a song, but rather copyright exists in the individual components of a song, such as lyrics, musical work, sound recordings etc., making it almost impossible to track the ownership of the individual components of the work. Copyright is a private right and is, therefore, not possible for the defendants to conclusively determine the ownership of plaintiff's right in the individual elements of a song, without being notified of such rights. It is not enough for the plaintiff to state that they own a certain body of work-they must clarify in a very specific manner the rights that they own in individual elements of each song. Rest of the averments made in the plaint were denied in toto and it is prayed that the suit of the plaintiff may kindly be dismissed.

12. From the pleadings of the parties, following issues were framed:

1. Whether the defendants have permitted for profit, a place/platform to be used for communication of the plaintiffs' works to the public which amounts to infringement of Copyright under Section 51 (supra) (II)

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of the Copyright Act, 1957? OPP

2. Whether the defendants have directly or indirectly infringed the plaintiffs' Copyright? OPP

3. Whether the suit is bad for mis-joinder of necessary parties? OPD(1)

4. Whether the defendants are entitled to immunity under Section 79 of the Information Technology Act, 2000? If so its effect? OPD

5. Whether this Court has no jurisdiction to try and decide the suit? OPD

6. Whether the failure of the plaintiff to follow the prescribed procedure to notify the defendants regarding the existence of the alleged Copyrighted content, renders the suit non-maintainable? OPD

7. Relief.

13. In order to prove its case, the plaintiff has examined PW1 Suneel Darshan, Proprietor M/s Shree Krishna International, PW2 Abhimanyu Dhawan and tendered following documents:

Ex.PW1/1 Copy of Trade Mark Certificate bearing No.135514;

Ex.PW1/2 Copy of Trade Mark Certificate bearing No.2418176A;

Ex.PW1/3 Copy of Trade Mark Certificate bearing No.135515;

Ex.PW1/4 Copy of agreement of assignment dated 08.09.2008 between

M/s Shree Krishna Films and M/s Shree Krishna International, for 6

films; Ex.PW1/5 Copy of agreement of assignment dated 08.09.2008

between M/s Shree Krishna Pictures and M/s Shree Krishna

International; Ex.PW1/6 Copy of agreement between M/s Chirag Deep

International and M/s Shree Krishna Films Exports, Ex.PW1/7,

Ex.PW1/8, Ex.PW1/10, Ex.PW1/12, Ex.PW1/14, Ex.PW1/16,

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Ex.PW1/18, Ex.PW1/20, Ex.PW1/22, Ex.PW1/24, Ex.PW1/26, Ex.PW1/28, Ex.PW1/30, Ex.PW1/32, Ex.PW1/34, Ex.PW1/35 are copies of Certificate of Central Board of Film Censors of movies; Ex.PW1/9, Ex.PW1/11, Ex.PW1/13, Ex.PW1/15, Ex.PW1/17, Ex.PW1/19, Ex.PW1/21, Ex.PW1/23, Ex.PW1/25, Ex.PW1/27, Ex.P1/29, Ex.PW1/33, Ex.PW1/36, are Copyright registration certificate bearing No.CF-2013/20 and No.CF-2023/2010, No.CF-2018/2010, No.CF-2017/2010, No.CF-2016/2010, CF-2024/2010, CF-2026/2010, CF/2015/2010, CF-2014/2010, CF-2025/2010, CF-2019/2010, CF-2022/2010, CF-2021/2010, CF-2020/2010; Ex.PW1/37 are the pages of the website of defendants, Ex.PW1/38 copies of screenshots and printouts, Ex.A the quote given to plaintiff by defendant of film 'Karle Pyaar Karle', Ex.B quote given by defendant and Ex.C page of the website of defendant No.3

14. On the other hand, the defendants have examined DW1 Gitanjali Duggal, DW2 Debra Tucker and tendered the following documents:

Ex.PY1 to Ex.PY10, showing placement of advertisement with the infringing content of plaintiff; Ex.PY/11 copy of certificate of registration, Ex.PX page of the website of defendant No.2; Ex.DA certified extracts of the resolution passed at the meeting of the board of directors of the Google company held on 31.03.2008; Ex/DD Power of Attorney.

15. I have heard the learned counsel for both the parties and

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have gone through the record carefully. My issue-wise findings are as
under:

ISSUES No.1&2:

16. Both these issues are inter-connected and inter-linked, hence, taken up together for adjudication.
17. The onus to prove these issues was on plaintiff. Learned counsel for plaintiff argued that plaintiff is a Film Producer/Director and has produced several movies as described in para No.9 of the plaint. The plaintiff is also owner of copyright of these movies and the defendants infringed the copyright of the plaintiff regarding the said movies/films by uploading the same on their website 'You Tube' and thereby displaying/communicating these movies to public and earning huge profits by advertisement during the telecast of movies/films/audio visual songs and other contents of the said movies/films.
18. It is further submitted by learned counsel for the plaintiff that the plaintiff has never authorized the defendants to telecast the said films/movies on their websites. This act of defendants amount to infringement of copyright of the plaintiff. In this regard requests were also made by the plaintiff to the defendants to stop displaying movies/their songs and other contents on their websites but they did not pay any heed to his requests, thereby, forcing him to approach this court for seeking redressal of his grievances. The plaintiff in order to prove its case examined himself as PW1 and tendered documents Ex.PW1/1 to Ex.PW1/38. It is further submitted by learned counsel for the

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