

\$~

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

+ CS(COMM) 768/2018

UTV SOFTWARE COMMUNICATIONS

LTD.& ORS.

..... Plaintiffs

Through

Mr. Sai Krishna Rajagopal with
Mr. Sidharth Chopra, Ms. Suhasini
Raina and Ms. Disha Sharma,
Advocates

versus

BMOVIES.IS AND ORS.

..... Defendants

Through

None

CORAM:**HON'BLE MR. JUSTICE MANMOHAN****ORDER**

% 04.04.2018

I.A. No.4330/2018

Keeping in view the averments in the application, plaintiffs are exempted from filing the certified/clear/translated/legible copies of the documents at this stage.

Needless to say, this order is without prejudice to the rights and contentions of the parties.

Accordingly, present application stands disposed of.

I.A. No.4331/2018 (U/s. 80 CPC)

Issue notice to the non applicants/defendant Nos.26 and 27 by all modes including *dasti*, returnable for 25th May, 2018 before the Court.

CS(COMM) No.768/2018

Let the plaint be registered as suit.

Issue summons in the suit to the defendant Nos. 1 to 3 by email and upon other defendants by all modes including email and *dasti*, returnable for 04th May, 2018 before the Joint Registrar for completion of service and pleadings.

The summons to the defendants shall indicate that a written statement to the plaint shall be positively filed within four weeks of the receipt of the summons. Liberty is given to the plaintiffs to file a replication within two weeks of the receipt of the advance copy of the written statement.

The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.

Admission/denial of documents shall be filed on affidavit by the parties within two weeks of the completion of the pleadings. The affidavit shall include the list of the documents of the other party. The deponent shall indicate its position with regard to the documents against the particulars of each document.

List the matter before Court on 25th May, 2018.

I.A. No. 4329/2018

Issue notice to the defendant Nos. 1 to 3 by email and upon other defendants by all modes including email and *dasti*, returnable for 04 May, 2018 before the Joint Registrar.

It is pertinent to mention that present suit has been filed for permanent injunction, rendition of accounts, damages etc.

It is stated in the plaint that the plaintiffs and/or their affiliates are amongst the leading global entertainment companies engaged in the business of creation, production and distribution of motion pictures and cinematograph films. It is averred in the plaint that the plaintiffs have devoted enormous creative efforts and resources in the production, marketing, exploitation, communication and distribution of various popular films to the public through various media.

It is further stated in the plaint that the plaintiffs' films being works of visual recordings and which also include sound recordings accompanying such visual recordings qualify as a 'cinematograph film' under Section 2(f) of the Copyright Act (hereinafter referred to as the Act) and the plaintiffs are entitled to all rights and protections granted under the Act for cinematograph films. It is contended that the cinematograph films produced by the plaintiffs and/or their affiliates are 'works' within the meaning of Section 2(y) of the Act and the plaintiffs being authors and first owners and owners of the pictures under Section 17 of the Act have all the rights in such cinematograph films granted under Section 14(d) of the Act.

It is also stated in the plaint that defendant Nos.1 to 3 are websites, that substantially indulge in online piracy by making available for download and otherwise providing access to infringing in illegal content. It is stated that online piracy has severe repercussions on the entertainment industry.

It is stated in the plaint that the defendant-websites are anonymous in nature and the information provided in the public domain regarding the owners of the websites is either incomplete, incorrect and/or protected

behind a veil of secrecy. It is stated that these defendant-websites hide behind domain privacy services offered by various domain name Registrars, which enable a website owner to hide behind a veil and not disclose any contact details publicly, to protect his privacy. It is, therefore, stated that it is virtually impossible to bring the owners of the websites before this Court in order to ensure that the orders of this Court are complied with. In order to overcome this, the plaintiffs have arrayed Internet Service Providers (ISPs) as defendant Nos. 4 to 25 to ensure the effective implementation of any relief that this Court may be inclined to grant in favour of the plaintiffs. The plaintiffs have also arrayed the defendant No. 26, Department of Telecommunication (DoT) and defendant No. 27, Department of Electronics and Information Technology (DEITY) to assist in enforcing/ensuring compliance with any order of injunction that this Court may grant in favour of the plaintiffs and to protect its rights from being infringed by the defendant-websites within the territory of India.

It is stated in the plaint that the defendant-websites use additional domains to redirect to their current site or establish proxy or mirror sites to illegally host, stream, reproduce, distribute, make available to the public the plaintiffs' original content and such unknown domains/website operators have been named 'Ashok Kumars' in the plaint and the plaintiffs are seeking an injunction in the nature of *john doe* order against these defendants.

Learned counsel for plaintiffs states that the websites in question are vehicles of infringement whose business model is designed to provide members of the public with access to copyright content without authorisation and the same is evident from the vast volume of content available on the said websites, the systematic, organised and intentional nature of infringement

and the regularity and consistency with which content is uploaded on the said websites.

Learned counsel for the plaintiffs states that defendants are rank infringers inasmuch as the actions of the defendant-websites are in contravention of Sections 51(a)(i), 51(a)(ii) and 51(b) of the Act as they encroach upon the exclusive right of the plaintiffs to reproduce, make available and communicate to the public their cinematograph films.

He states that the defendant-websites are actively facilitating the hosting, streaming, reproducing, distributing, making available to the public and/or communicating to the public all kind of copyright works by ensuring top quality content is made available on the said websites.

Learned counsel for the plaintiffs further states that the defendant Nos. 1 to 3 are habitual infringers and access to the websites of these defendants has been restrained by various courts of several jurisdictions. In support of his submission, he relies upon an order passed by the Federal Court of Australia in *Roadshow Films Pty Ltd & Ors v Telstra Corporation Limited & Ors (NSD269/2017)* as well as by the District Court of Frederiksberg in its order dated 08th February, 2017 (BS FOR-2317/2016).

He lastly states that that though several notices were served upon defendant-websites calling upon them to take down the infringing content and cease engaging in infringing activities, the same have not been responded to by them and defendant-websites are still indulging in aforesaid illegal practices.

Keeping in view the aforesaid, this Court is of the opinion that a *prima facie* case is made out in favour of the plaintiffs and balance of convenience is also in their favour. Further, irreparable harm or injury

would be caused to the plaintiffs if an interim injunction order is not passed.

Consequently, till further orders, the defendants Nos.1 to 3 are restrained from, in any manner, hosting, streaming, reproducing, distributing, making available to the public and/or communicating to the public or facilitating the same on their websites through the internet in any manner whatsoever, any cinematograph work/content/programme/show in relation to which plaintiffs have a copyright.

The defendant Nos.4 to 25, their directors, owners, partners, proprietors, officers, affiliates, servants, employees and all others in capacity of principal or agent acting for and/or on their behalf or anyone claiming through, by or under it are directed to block access to the defendant Nos. 1 to 3 websites identified as under:-

A) Defendant No. 1 –

Domain	URL	IP Address
bmovies.to	https://bmovies.to	104.31.86.38 104.31.87.38
bmovies.is	https://bmovies.is	104.24.98.151
fmovies.is	https://fmovies.is	87.120.36.22
fmovies.se	https://www1.fmovies.se/	104.31.17.3
fmovies.to	http://fmovies.to	87.120.36.22
bmovies.se	https://bmovies.se	104.24.112.4 104.24.113.4

B) Defendant No. 2 –

Domain	URL	IP Address
fmovies.taxi	http://fmovies.taxi	104.27.143.24 104.27.142.24
bmovies.pro	https://bmovies.pro	104.31.71.201 104.31.70.201
bmovies.ru	http://bmovies.ru	104.24.108.89 104.24.109.89

C) Defendant No. 3 –

Domain	URL	IP Address
fmovies.world	http://fmovies.world	104.27.131.168

Defendant Nos.26 and 27 are directed to issue requisite Notifications calling upon the various internet and telecom service providers registered under it to block access to the defendant Nos. 1 to 3 websites as identified hereinabove.

To avoid the injunction order from becoming too broad, wide and omnibus, the plaintiffs are given liberty to approach this Court in accordance with law in the event they become aware of any other websites which are hosting, streaming, reproducing, distributing, making available to the public and/or communicating to the public in any manner whatsoever, any cinematograph work/content/programme/ show in relation to which plaintiffs have a copyright.

Let provisions of Order 39 Rule 3 CPC be complied within a period of one week by all modes including email.

Order *dasti* under the signature of Court Master.

MANMOHAN, J

APRIL 04, 2018

rn