

YOUTUBE LLC AND ANR V/S M/S SHREE KRISHNA INTERNATIONAL AND ORS

Present: Mr. M.L. Sarin, Senior Advocate
with Mr. Nitin Sarin, Advocate
and Mr. Ritesh Aggarwal, Advocate
for the appellants.

Mr. Ashwani Talwar, Advocate
and Mr. Jagjit Singh Chatrath, Advocate
for the caveators/respondents.

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Learned counsel for the appellants also the caveators/respondents have been heard.

The instant regular first appeal is directed against the judgment and decree dated 27.09.2019 in a suit instituted by the plaintiff's (respondents herein) and by virtue of which the following relief has been granted;

“As a sequel to my findings on the above-said issues, the suit of the plaintiff is decreed to the effect that the defendants, their officers, employees, agents, servants and representatives and all other acting on their behalf and in active concert of participation with them or any of them are restrained in the act of infringement of the plaintiff's copyrights and they are further restrained from causing, contributing to, inducing, enabling facilitating or participating in the infringement of any Cinematographs Films, audio visual work(s) in which the plaintiff owns exclusive, valid and subsisting copyright(s) on their websites.

The plaintiff is also awarded lump sum amount of ₹ 50,000/- to be paid by the defendants within 2 months failing which the amount so awarded shall be recoverable alongwith interest at the M/s. Shree Krishna International etc. Versus Google India Pvt. Ltd. and others rate of 9% per annum from the date of filing of the suit till actual realization. Plaintiff shall be entitled to proportionate costs.”

Suffice it to notice that the plaintiff's/respondents had instituted the civil suit alleging infringement of copy right in respect of 18 cinematic films.

Learned senior counsel has inter alia contended that the appellants herein would fall within the expression of "intermediary" as defined under Section 2 (1) (w) of The Information Technology Act, 2000 and whereas the impugned judgment proceeds on the premise that the appellants are up-loaders of the content on the website. It is urged that the appellants rather only provide a platform for communication and sharing of information. Further argued that there has been a clear infringement of Section 51(a) (ii) of the Copyright Act 1957 in as much as no notice as regards the alleged infringement had ever been served prior to filing of the suit. Counsel has even adverted to the observations contained in the impugned judgment in paragraph-23 that "at present the content/material/songs of the films of plaintiff has not been shown on youtube despite the fact that no URLs (Uniform Resource Locators) have been provided to the defendants". It is argued that in spite of such observation a blanket injunction as reproduced hereinabove has been granted.

During the course of hearing it has also transpired that even though copy-right infringement in respect of 18 cinematic films had been alleged the plaintiff's (respondents herein), had already assigned the rights in respect of 15 movies to a third party i.e., Shemaroo. Counsel for the caveators/respondents herein is not in a position to controvert the assertion made on behalf of the appellants that in respect of such 15 movies, the appellants are in an agreement with Shemaroo.

Admitted.

To be listed for final hearing within a period of six months.

No coercive steps in pursuance to the impugned judgment shall be taken against the appellants in the meanwhile.

(TEJINDER SINGH DHINDSA)
JUDGE

December 17th, 2019.
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