

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) through 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.**



Examined
Deputy Magistrate
Distt. & Sessions Judge
Gurugram

6/10/19

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 Shruttima 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

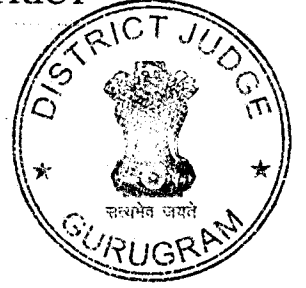
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District & Sessions Court, Gurugram
Authorized Under Section 19
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16/10/19

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

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

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.....Defendants.

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

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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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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, Gurugram 122002 and the operations of all the defendants are also run from the office of Google at Gurugram, 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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plaintiff that it has never granted any licence to the defendants to reproduce or to communicate to the public the films produced/directed by him. It is further argued by learned counsel for the plaintiff that 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. Lastly, it is prayed by learned counsel for the plaintiff that these issues may kindly be decided in favour of plaintiff.

19. On the other hand, learned counsel for the defendants argued that the defendants have no role to play in the creation/upload/modification or otherwise such contents uploaded by third party. The defendants No.2 and 3 merely provide a platform for communication and sharing of information for without charge. The contents are uploaded by the third party/user, therefore, the defendants have not committed any infringement. It is submitted by counsel for defendants that the case of the plaintiff is limited alleged infringement of copyright by third party using the platform of defendants No.2 and 3, therefore, Section 51(a)(i) of the Copy Right Act, 1957 has no application as there is no copyright infringement. Further, Section 51(a) (ii) of the Copy Right Act, 1957 provides for indirect infringement if any person knowingly permits for profit its place to be used for communication for infringing work. Meaning thereby knowledge is an essential ingredients for this provision. Therefore, no liability can be

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20. It is submitted by learned counsel for defendants that plaintiff has merely provided list of titles of 18 films alleging them to be infringing their copyright but no URLs of the said titles of movies or portions thereof were provided to the service provider/You Tube. Therefore, in absence of prior notice, specific knowledge of the location/ URLs of the alleged infringing contents on the part of defendants No.2 and 3, no liability of direct or indirect infringement can be ascertained upon the defendants. Lastly, it is submitted by learned counsel for the defendants that both these issues be decided against the plaintiff.

21. It is an admitted fact that the plaintiff is a film

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 producer/director and produced several movies. He is also owner of
 copyright of the movies produced/directed by him. It is also an admitted
 fact that these movies/their songs and other contents are
 displayed/communicated to the public at large by allowing the upload
 of the same on their websites by the defendants. It is also needless to
 say that the plaintiff has never authorize them to telecast its films on
 their websites. The plaintiff being owner of copyright of these films as
 exclusive right to do various act as provided under Section 14 of the
 Copyright Act, 1957 (to refer Section 14(d) (i)(d) (ii) and d(iii))

Section 14-Meaning of Copyright.

- (i) to make a copy of the film including a photograph of any image forming part thereof;*
- (ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;*
- (iii) to communicate the film to the public.*

The rights available to the plaintiff in the above mentioned section 14 of the Copyright Act have been infringed by the defendants by uploading the movies of the plaintiff on their website You Tube. This fact is established from the testimony of plaintiff witness Mr.Sunil Darshan. This witness proved the various documents (Ex.PW1/1 To Ex.PW1/38), relating to ownership of copyrights in his favour in respect of the films mentioned in para No.9 of the plaint. The plaintiff clearly established this fact on record that he has never granted any

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 authority/licence or consent and permitted for profit the defendants' place/platform to be used for communication of the plaintiff's work/films to the public and that the defendants have illegally and unauthorizedly earned huge illegal profits by showing advertisements. They communicating the films of the plaintiff without licence or consent and thereby clearly infringed the copyrights of the plaintiff.

22. The case of the plaintiff is also proved from the testimony of DW2 Debra Tucker who is working as Manager You Tube Legal Operation since 2011 and deals with the complaints of viewers of defendant No.2 and takes care of legal action. As per her statement You Tube keeps records of material uploaded and watch and has access to such record which are need based. She admitted that the infringing contents of the movies of plaintiff were removed by them but still infringing contents are available on You Tube with advertisements running on the same as Ex.PY/1 to Ex.PY/10. She also accepted this fact that when a complaint is received regarding displaying of content thereby infringing the rights of a person then it has become their duty to verify the genuineness of their complaint and even after the complaint is found genuine there is no policy to compensate the aggrieved (owner of copyright). She further admitted that the contents owner and You tube share monetary benefits and the details of the same can be produced before the court. The defendants also maintains the data/loss of revenue earned and data of Adsense respectively. As per her testimony You Tube(Defendant No.2) has not taken any civil or

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criminal action against any of the infringing uploader.

23. It is an admitted fact that at present the content/material/songs of the films of plaintiff has not been shown on You Tube despite the fact that no URLs (Uniform Resource Locators) have been provided to the defendants. Meaning thereby the defendants could have stopped displaying the contents/movies of the plaintiff after passing the injunction order dated 17.10.2011 without providing the URLs. Moreover, the defendants even after becoming aware of the title of the contents can locate the URL. As such, the contention of the defendants that the said contents/movies/songs of the plaintiff's movies can not removed unless the defendants is provided the URL, is of no substance because Ms. Debra Tucker DW2 during her cross-examination on 05.01.2016 has categorically admitted this fact that once a title is known URL could be located:

"If particular title is shown in You Tube, we cannot locate its URLs. Again said URLs could be located through search but can not come to know as to whom such title belongs to. The Defendant Nos. 2 & 3 did not try to locate the URLs of the titles mentioned in Para No. 9 of the plaint".

24. In the present case the defendants were fully aware about the title of the plaintiff as mentioned in para No. 9 of the plaint but neither they tried to locate nor removed the contents of the movies of the plaintiff.

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25. With these observations this court has no hesitation to decide the issues No.1 and 2 in favour of the plaintiff.

ISSUE NO.3:

26. The onus to prove this issue was on the defendants. It is argued by learned counsel for the defendants that the suit is bad for mis-joinder of parties and defendant No.1 i.e. Google India Limited is not necessary party to the suit. As such, the suit is liable to be dismissed.

27. On the other hand, learned counsel for plaintiff submitted that the suit is not bad for mis-joinder of the parties and this issue has already been decided upto High Court.

28. After careful perusal of the case file, it is observed that defendant No.1 had raised this issue before this court by filing an application dated 11.09.2012 under Order 1 Rule 10 (2) CPC for deletion of name of defendant No.1. The said application was dismissed by this court vide order dated 13.09.2012. Aggrieved by the order of this court, defendant No.1 also filed a Civil Revision Petition No.7034 of 2012 before Hon'ble Punjab and Haryana High Court, who dismissed the said Revision Petition vide order dated 26.11.2012 by maintaining the order of this court dated 13.09.2012. Meaning thereby the order dated 13.09.2012 passed by this court has already attained finality as the same was not challenged further. In view of this, this issue is decided against the defendants.

ISSUE NO.4:

29. The onus to prove this issue was on defendants. It is

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submitted by learned counsel for the defendants that the defendants are entitled to the immunity under Section 79 of the Information Technology Act, 2000, because of insertion of advertisement by defendant No.2 is an automated process and does not in any manner modified the content of the uploaded video. It is further submitted by learned counsel for defendant that in case of **Myspace Inc.'s case (Supra)**, it was held by Hon'ble Division Bench that insertion of advertisement via an automated process is a modification to the format of the video and not to the actual content. Defendant No.2 i.e. You Tube meets the tests as interpreted in the **Myspace Inc.'s case (Supra)**, decision in as much as its being proven at trial that like **Myspace Inc.'s case (Supra)**, it is a platform that stores temporary information to further its main goal providing smooth access to permanent contents. Therefore, it is entitled to avail of the defence under Section 52 (1)(b) and (c) of Copyright Act, 1957.

30. On the other hand, learned counsel for the plaintiff submitted that defendant No.2 modifies the contents by inserting advertisement before the Videos being uploaded on their websites, thus, failing the criteria under Section 79(2) (b)(iii) of I.T.Act.

On Immunity under IT Act

The plaintiff refers and relies on the following:

- a) *Section 2(w)- Intermediary*
- b) *Section 79- Exemption from liability*
(The information/data or communication link do not include an Audio or Video Song or Cinematograph Film).

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c) *Sub-Section 2(a) of Section 79
((Information does not cover Audio or Video Song or
Cinematograph Film)*

d) *Section 81- Act to have overriding effect*

*Proviso to Section 81 stats that "Provided that nothing contained
in this Act shall restrict any person from exercising any right
conferred under the Copyright Act, 1957(14 of 1957) or the
Patent Act, 1970 (39 of 1970)"*

e) *Harmonious- dictionary meaning attached.*

31. Learned counsel for plaintiff submitted that the law cited by learned counsel for defendants i.e. **Myspace Inc.'s case (Supra)**, is not applicable to the facts and circumstances of the case. The said order passed by Division Bench is not a final rather it is an interim order and therefore, the observations made thereunder not to be relied upon in the present case and as such are not applicable to the facts of the present case. The plaintiff in order to substantiate that the interim orders are not precedent has relied upon the following judgments:

1.State of Assam Versus Barak Upatyaka D.U. Karamchari Sanstha (MANU/SC/0387/2009); and

2.Karam Singh and Others Versus Union of India and Others (22.12.2015-PHHC): MANU/PH/4898/2015-DB.

32. The plaintiff also relied upon the law laid down in **Christian Louboutin SAS Versus Nakul Bajaj and others MANU/DE/4019/2018** which is fully applicable to decide the said issue and the relevant paragraphs of the judgment are reproduced for the sake of convenience

"66. An analysis of the said Section shows that an intermediary is not

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liable for third party information, data links hosted on the platforms.

However, Section 79(2) and 79(3) qualify the manner in which the said protection is granted to intermediary. The protection is not absolute.

Under Section 79(2)(b) the intermediary should not

- . Initiate the transmission,*
- . select the receiver of the transmission and*
- . select or modify the information contained in the transmission.*

67. *If any of the above is done by the intermediary, it may lose the exemption to which it is entitled. It extends under the circumstances contained in the provision itself which are:*

a) *Under 79 (2) (a), if mere access is provided through the communication system to the third party or if there is temporary storage or hosting of the information;*

b) *Under 79 (2) (b) (i), if the platform is not responsible for initiating the transmission, i.e., placing the listing on the website;*

c) *Under 79 (2) (b) (ii), if the platform is not involved in selecting the persons who receive the information;*

d) *Under 79 (2) (b) (iii), if the platform does not have the power to select or modify the information;*

e) *Under 79 (2) (b) (c), the platform has the obligation to observe overarching due diligence.*

68. *Section 79(1) is also qualified by sub-Section 79(3). The exemption under Section 79(1) would not apply if a platform is an active participant or is contributing in the commission of the unlawful*

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act. The words conspired, abetted, aided or induced have to be tested on the basis of the manner in which the business of the platform is conducted and not on a mere claim by the platform. Section 79(3) has two dimensions i.e., Section 79(3)(a) and Section 79(3)(b). The latter relates to having a policy to take down information or data or link upon receiving information. However, the former is an integral part of the exemption granted under Section 79(1). Section 79(3)(a) limits the exemption only to those intermediaries i.e. platforms and online market places who do not aid or abet or induce the unlawful act. Any active contribution by the platform or online market place completely removes the ring of protection or exemption which exists for intermediaries under Section 79."

"75. Under Section 81 of the IT Act, the said Act is stipulated to have overriding effect. The provision reads as under:

Section 81-Act to have overriding effect.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Provided that nothing contained in this Act shall restrict any person from exercising any right conferred under the Copyright Act 1957 or the Patents Act 1970."

76. The overriding nature of the IT Act has application only if the provisions of the Trade Mark Act are inconsistent with the provisions of the IT Act. The Intermediary Guidelines 2011 themselves require compliance with the TM Act by the persons to host, display or upload

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the products or services. The provisions of Section 29, Section 101 and Section 102 of the TM Act, are being looked at in order to interpret as to what constitutes 'conspiring, abetting, aiding or inducing' the commission of an unlawful act, in the context of trade mark rights. The provisions of the TM Act are not in any manner inconsistent with the provisions of the IT Act. Hence Section 81 of the IT Act does not grant any immunity to intermediaries who may be in violation of the provisions of the TM Act....."

33. Thus, in view of the law laid down in **Christian Louboutin SAS's case (Supra)** it is abundantly clear that the defendants cannot take shelter of immunity under the provisions of Section 79 of the Information Technology Act, 2000 and hence, this issue is decided against the defendants.

ISSUE NO.5:

34. The onus to prove this issue was on the defendants. The learned counsel for defendants submitted that this court has no jurisdiction to try and decide the suit and the suit is liable to be dismissed on this ground.

35. Admittedly, a civil suit is required to be filed as per Section 20 of Civil Procedure Code, however, Section 62 of Copyright Act, 1957 is an additional form for filing a suit as held by various courts. The plaintiff has placed reliance upon **SumitKline Beecham Plc and Others Versus Sunil Singhi and Others (MANU/DE/0361/2001); Texem Engineering Versus Texcomash**

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**Export (MANU/DE/1579/2011 and Popat and Kotecha Property
Versus State Bank of India Staff Association
(MANU/SC/0516/2005).**

36. Admittedly, the defendant No.1 has an office in Gurugram and being subsidiary of defendants No.2 and 3, it is also involved in the activities subject matter of the present suit. Accordingly, this issue is also decided against the defendants.

ISSUE NO.6:

37. The onus to prove this issue was on the defendants. In this regard this court is of the opinion that after receipt of copy of the plaint the defendants were fully aware of the contents of the plaintiff's case and the same should be treated as notice and the defendants were also required to remove the contents/songs/movies of the plaintiff from their website. The provision of Section 52 (i) (b) and (c) of Copyright Act were inserted with effect from 21.06.2012 whereas the present case filed in the year 2011 and hence, the provision are not applicable to the facts of the present case and as such no notice was required to be given to the defendants. Similarly, the proviso to Section 81 of the Information Technology Act, 2000 was inserted w.e.f. 27.10.2009 (much prior to filing of the present suit) to protect the owners of copyright and patent whose rights were found to be infringed by the websites like that of the defendants. Hence, this issue is also decided against the defendants.

38. Since, it has been found as a matter of fact that the

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defendants have indulged in infringement of copyright qua the contents/songs of Hindi movies produced by the plaintiff, then as a necessary consequence, it can well be said that due to said act of infringement plaintiff has suffered monetary loss. This is precisely the reason that he has claimed damages. Though, no exact amount of loss suffered by him is mentioned in the plaint but looking to para 40(iv) of the plaint, he appears to be claiming damages to the tune of ₹ 1,00,000/- only. In my considered opinion, in the facts and circumstances of the present case, it would be just and proper to award lump sum amount of ₹ 50,000/- Relief of rendition of accounts, thus, has become infructuous which is accordingly denied.

ISSUE NO.7 (RELIEF):

39. 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

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rate of 9% per annum from the date of filing of the suit till actual
realization. Plaintiff shall be entitled to proportionate costs.

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.

Registration No. 18579
Date Presentation of application 16/10/19
Record Received 16/10/19
Date of preparation of copy 16/10/19
No. of Pages 26
Urgent fee
Copy of fee 28/-
Search fee 1/-
Name Copyist
Date of Delivery 29/10/19
Total Fees 29/-

CERTIFIED TO BE TRUE COPY

Examiner

District & Sessions Court, Gurugram
Authorised Under Section-76
of the Indian Evidence, Act-1979

16/10/19

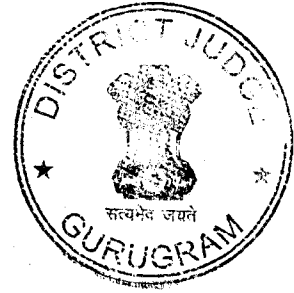
Cardinal copy in deersheet

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

1

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.**

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ENGLISH CIVIL FORM NO. 124

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Gurugram

Claim for : It is, in-light of the above the plaintiff prays that this Hon'ble Court may be most graciously pleased to :

- (i) grant an order of permanent injunction restraining the defendants, their officers,

employees, agents, servants and representatives and all others acting on their behalf and in active concert or participation with them or any of them from reproducing, adapting, distributing, communicating, transmitting, publicly performing, disseminating or displaying on their websites or otherwise infringing in any manner any Cinematograph Films, audio visual work(s) in which the plaintiff owns exclusive, valid and subsisting copyright(s);

(ii) grant an order to permanent injunction restraining the defendants, their officers, employees, agents, servants and representatives and all others acting on their behalf and in active concert or participation with them or any of them from causing, contributing to, inducing, enabling, facilitating or participating in the infringement of any Cinematograph Films, audio visual work(s) in which the plaintiff owns exclusive, valid and subsisting copyright(s) on their websites or otherwise;

(iii) grant an order of rendition of accounts by the defendants to the plaintiff;

(iv) grant an order requiring the defendants jointly and severally to pay damages as stated here-in-above to the plaintiff;

(v) grant costs of the instant suit to the plaintiff; and

(vi) pass any other such order(s) in favour of the plaintiff and against the defendants as may be deemed fit and proper by this Hon'ble Court in the interest of justice and equity.

MEMORANDUM OF APPEAL

M/s Shree Krishna International etc. — Appellants.

Google India Pvt. Ltd. and others — Respondents.

This civil suit coming on for final hearing on 27.09.2019 before me
(Sudhir Parmar) Additional District Judge, Gurugram.

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In the presence: 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.

It is ordered that 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 rate of 9% per annum from the date of filing of the suit till actual realization. Plaintiff shall be entitled to proportionate costs.

MEMO OF COST.

Appellant(s) (Rs.)		Respondent(s) (Rs.)
5400	Stamp for appeal	—
2	Stamp for power	4
50	Service of process	—
---	Pleader's fee	---
50	Misc.	30
		—
5520/-	Total	34

Given under my hand and the seal of this court, this 27th day of September, 2019.

Registration No. 8579
Date of presentation of application 28/9/19
Record Received 28/9/19
Date of preparation of copy 28/9/19
No. of Pages 3
Urgent fee
Copy of fee 9/29
Search fee
Name Copyist
Date of Delivery 9/10/19
Total Fees 16110/19

(Sudhir Parmar)
Additional District Judge,
Gurugram : 27.09.2019

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of the Indian Evidence, Act-1979

28/10/19