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

+ **CS(COMM) 880/2022**

**ENTERTAINMENT NETWORK (INDIA) LIMITED. Plaintiff**

**Through: Mr. Abhishek Malhotra and Mr.  
Rabindra Mitra, Advs.**

versus

**HTTPS//TUNEINCOM/PODCASTS/ARTS--CULTURE-  
PODCASTS/BANGLA-SUNDAY-SUSPENSE-P2082186/  
AND ORS**

..... Defendants

**Through: Mr. Munish Mehra, Mr.  
Himanshu Bagai, Ms. Riddima Sharma and  
Mohd. Umar, Advs. for Defendants 15 and  
28**

**Ms. Mamta Rani Jha, Mr. Rohan Ahuja, Ms.  
Shruttima Ehersa, Mr. Vatsalya Vishal, Ms.  
Akanksha Bahuguna and Ms. Amishi  
Sodani, Advs. for Defendant 26**

**Ms. Nidhi Raman, CGSC with Mr. Zubin  
Singh, Adv. for Defendants 63 and 64**

**CORAM:**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**ORDER**

**22.12.2022**

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1. The plaintiff alleges infringement, by the defendants, on the podcasts which resolved to the web links impleaded as Defendants 1 to 25, of the plaintiff's copyright in various sound recordings, which have been created by the plaintiff and of which the plaintiff is the originator. These sound recordings relate to original works, essentially in the nature of suspense stories written by various noted authors. The right to create sound recordings in respect of the said works is stated to have been conferred on the plaintiff by a


Broadcasting License Agreement dated 22<sup>nd</sup> August 2022 between the plaintiff and Ananda Publishers Pvt. Ltd., a Kolkata based company, which is said to hold the rights in respect of the said original works.

2. The plaintiff is a well known company operating FM Stations across the country and internationally under the registered trademarks “Mirchi” and “Radio Mirchi”, of which “Radio Mirchi” is a radio channel over which the plaintiff broadcasts its audio content. Commencing 8<sup>th</sup> June 2009, the plaintiff avers, the plaintiff commenced production and broadcasting of audio adaptations of various suspense stories written by renowned authors such as Satyajit Ray and Ruskin Bond along with accompanying music, in a program titled “Sunday Suspense”. Simultaneously, avers the plaintiff, the plaintiff was also offering the audio content relating to these recordings over the internet via digital platforms, including YouTube and, later, Spotify. After the initial transmission of the program of the content on the “Sunday Suspense” program, the plaintiff avers that the content was uploaded onto the platforms by the intermediaries, on which they could be accessed by users who could stream the content.

3. The plaintiff asserts that the plaintiff is the registered proprietor of the following marks:

<b>Sl. No.</b>	<b>Trademark</b>	<b>Class</b>	<b>Registration Number</b>	<b>Date of Filing</b>	<b>Renewal</b>
1.	Sunday Suspense	9	2985729	June 14, 2015	June 14, 2025
2.	Sunday Suspense	16	2985730	June 14, 2015	June 14, 2025
3.	Sunday Suspense	35	2985731	June 14, 2015	June 14, 2025
4.	Sunday	38	2985732	June 14,	June 14,

	Suspense			2015	2025
5.	Sunday Suspense	41	2985733	June 14, 2015	June 14, 2025
6.	Sunday Suspense	42	2985734	June 14, 2015	June 14, 2025
7.	Mirchi	9	1165273	January 9, 2003	January 9, 2023
8.	Mirchi	9	3282728	June 10, 2016	June 10, 2026
9.	Mirchi	9	1160102	December 19, 2002	December 19, 2022
10.	Mirchi	16	1165272	January 9, 2003	January 9, 2023
11.	Radio Mirchi	9	998074	March 20, 2001	March 20, 2031
12.	Radio Mirchi	9	1046431	September 20, 2001	September 20, 2031
13.	Radio Mirchi	9	1774804	January 16, 2009	January 16, 2029
14.	Radio Mirchi	9	1119415	July 17, 2002	July 17, 2032
15.	Radio Mirchi	16	998079	March 20, 2001	March 20, 2031
16.	Radio Mirchi	18	1140676	October 3, 2002	October 3, 2032
17.	Radio Mirchi	25	1140678	October 3, 2002	October 3, 2032
18.	Radio Mirchi	35	1242632	October 13, 2003	October 13, 2023
19.	Radio Mirchi	36	1242631	October 13, 2003	October 13, 2023
20.	Radio Mirchi	37	1242630	October 13, 2003	October 13, 2023
21.	Radio Mirchi	38	1242629	October 13, 2003	October 13, 2023
22.	Radio Mirchi	39	1242628	October 13, 2003	October 13, 2023
23.	Radio Mirchi	40	1242627	October 13, 2003	October 13, 2023
24.	Radio Mirchi	41	1242626	October 13, 2003	October 13, 2023
25.	Radio Mirchi	42	1242625	October 13, 2003	October 13, 2023

4. The plaintiff also claims to be the registered owner of the device mark  in respect of which, too, the plaintiff holds various registrations. All these registrations are stated to be subsisting as on date.

5. The right to create copyrighted audio recordings based on the aforesaid literary works, according to the plaint, stands conferred on the plaintiff for three years commencing 22<sup>nd</sup> August 2022, which continues till 21<sup>st</sup> August 2025.

6. The plaint also asserts that, on the YouTube channel of the plaintiff alone, the aforesaid audio content has garnered over 500 million views.

7. The plaintiff also entered into a Podcasts License Agreement dated 23<sup>rd</sup> September 2021 with Spotify AB, a well known application which streams music, whereunder Spotify was granted the exclusive license to transmit and communicate the copyrighted audio content of the plaintiff for three years.

8. Defendants 1 to 25 are alleged to be rogue URLs, engaged in unauthorized and illegal broadcasting transmission and communication of the plaintiff's copyrighted audio content. These URLs, it is stated, used well known platforms operated by entities such as Apple and YouTube to broadcast their content. Accordingly, the URLs, as already noted, have been impleaded as Defendants 1 to 25, the intermediaries whose platforms are used to transmit the said

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URLs have been impleaded as Defendants 26 to 30 and the internet service providers, providing internet broadband services which are required to access the said content have been impleaded as Defendants 31 to 62. The Ministry of Electronic and Information Technology (MEITY) and the Department of Telecommunications (DoT) have been impleaded as Defendants 63 and 64. Defendant 65 has been impleaded generally as representing unknown entities, who may be involved in such infringement.

**9.** The plaint also sets out the manner in which the plaintiff's copyrighted content was being infringed through the URLs, impleaded as Defendants 1 to 25. A screenshot of the websites, through which such infringement takes place, has also been provided. The case that the plaintiff sets up is that Defendants 1 to 25 URLs, when accessed, provide further access to the copyrighted audio content of the plaintiff, under the head "Sunday Suspense", and also refer to the Mirchi tagline of the plaintiff.

**10.** In these circumstances, the present plaint has been instituted, seeking

- (i) a decree of permanent injunction restraining the defendants and others acting on their behalf from broadcasting/transmitting/communicating the radio adaptation of literary works in which the plaintiff has copyright, under the brand name "Sunday Suspense" on any webpage/web link/application/intermediary platform or in any other mode whatsoever,
- (ii) using, in any manner, the plaintiff's "Sunday Suspense" or "Mirchi" or "Radio Mirchi" trademarks, in a manner as

would infringe the plaintiff's rights therein,

(iii) restraining the defendants from creating any audio adaptation or audio recordings in respect of the literary works in which the plaintiff has been assigned the right to do so under the Broadcasting License Agreement,

(iv) taking down of all infringing content by Defendants 26 to 30,

(v) disclosure, by Defendants 31 to 62 of the server being used by Defendants 1 to 25 and blocking of access to the infringing content, apart from damages and costs.

**11.** Having heard learned Counsel and perused the material on record, a *prima facie* case of infringement, over the web links as identified as Defendants 1 to 25, using the platforms of Defendants 26 to 30, is made out.

**12.** The plaintiff would, therefore, be entitled to interlocutory injunctive reliefs.

**13.** In view thereof, let the plaint be registered as a suit. Issue summons in the suit. Summons are accepted on behalf of Defendants 15 and 28 by Mr. Munish Mehra, on behalf of Defendant 26 by Ms. Mamta Rani Jha and on behalf of Defendants 63 and 64 by Ms. Nidhi Raman.

**14.** Written statement, accompanied by affidavit of admission and denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission and denial

of documents filed by the defendants within 30 days thereof.

15. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission and denial of documents and marking of exhibits on 15<sup>th</sup> February 2023, whereafter the matter would be placed before the Court for framing of issues, for case management hearing and further proceedings.

**I.A. 21551/2022 (Pre-institution mediation)**

16. In view of the judgment of the Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd<sup>1</sup>* and given the nature of reliefs sought in the suit, the requirement of pre-institution mediation is dispensed with.

17. This application is allowed accordingly.

**I.A. 21550/2022**

18. This application seeks exemption from the requirement of prior notice on the defendants. Most of the defendants are unidentified URLs. As such, the prayer for exemption from advance service is granted.

19. The application is allowed accordingly.

**I.A. 21549/2022**

20. Subject to the plaintiff filing legible copies of any dim or

illegible documents on which it may seeks to place reliance within 30 days weeks from today, exemption is granted for the present.

**21.** The application stands disposed of.

**I.A. 21548/2022**

**22.** Mr. Malhotra, on instructions, submits that the deficient court fee shall be paid within one week from today. Subject thereto exemption is granted for the present.

**23.** The application is disposed of.

**I.A. 21547/2022 (Order XXXIX Rules 1 and 2 of the CPC)**

**24.** This application seeks interlocutory interim reliefs. The prayer clause in the application reads thus:

“In light of the aforementioned facts and circumstances and submissions made, it is prayed that this Hon'ble Court be pleased to:-

I. Pass an order of interim injunction restraining the Defendants, their partners, proprietors, their officers, servants, agents and representatives, and all others in capacity of principal or agent, acting for and on their behalf from broadcasting/transmitting/ communicating to users or otherwise the Audio Content being audio adaptations of Literary Works broadcast and transmitted under the brand name "Sunday Suspense" through internet/web pages/weblinks/applications/intermediary platforms or in any other mode or manner;

II. Pass an order of interim injunction restraining the Defendants, their partners, proprietors, their officers, servants, agents and representatives, and all others in capacity of principal or agent, acting for and on their behalf from using the posters and/or other Artistic Works concerning "Sunday Suspense" that is produced and



owned by the Plaintiff in conjunction with the Plaintiffs Audio Content or any other audio recordings.

III. Pass an order of interim injunction restraining the Defendants, their partners, proprietors, their officers, servants, agents and representatives, and all others in capacity of principal or agent, acting for and on their behalf from using the Plaintiffs Trademarks "Sunday Suspense", "Mirchi" or "Radio Mirchi" either in the form of logo/device mark or audio mark in conjunction with the Plaintiffs Audio Content or any other audio recordings in any internet/webpages/weblinks/applications/intermediary platforms or in any other mode or manner;

IV. Pass an order of interim injtmction restraining the Defendants, their partners, proprietors, their officers, servants, agents and representatives, and all others in capacity of principal or agent, acting for and on their behalf from creating any audio adaptation/ audio recordings in respect of the Literary Works of which the Plaintiff is the exclusive Licensee.

V. Pass an order giving the Plaintiff liberty to notify all search engines and intermediaries including Defendant Nos. 26-30 and seek take down/deletion of the Infringements from their search results pages, listings of websites/ URLs/mobile applications which are infringing upon the Plaintiff's Intellectual Property Rights;

VI. Pass an order directing ISP Defendant Nos. 31 to 62 and Intermediary Defendant 26 to 30, to disclose the details of all servers being used by Defendant Nos. 1 to 25 and any other websites/mobile applications that are found to be indulging in the unauthorized use of Plaintiff's Intellectual Property Rights and to comply with Plaintiff's requests to block access to the unlicensed content of the infringing websites, upon the Plaintiff giving notice of the infringing activity to the said ISPs and Departments;

VII. In respect of Defendants that are currently not identified and/or are unknown as of date, an order may be passed restraining such unnamed Defendants in terms of prayers (I), (II), (III) and (IV) stated above;

VIII. In order to effectuate the above orders, the Registry may be directed to issue extra summons in the name of Ashok Kumars/ Unnamed Defendants, whose details would be supplied by the Plaintiff as and when the Plaintiff receives information regarding the same;

IX. Pass an urgent ex-parte order in terms of reliefs prayed above for reasons as set out in this application; AND/ OR

X. Pass any such further order as this Hon'ble Court deems fit in the facts and circumstances of this case. ”

- 25.** Issue notice, returnable on 3<sup>rd</sup> March, 2023 before the Court.
- 26.** Reply, if any, be filed within four weeks from today, with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto, if any, within four weeks thereof.
- 27.** Before/till the next date of hearing,
- (i) Defendants 26 to 30 are directed to take down the URLs reflected as Defendants 1 to 25 from their platforms forthwith and
  - (ii) Defendants 31 to 62 are directed to disclose the details of the server being used by Defendants 1 to 25 or any other websites/mobile applications, which may be indulging in infringement or unauthorised use of the plaintiff's copyrighted material, to which the present plaint relates and to block access to such unlicensed content.
- 28.** As this order has been passed *ex parte*, the plaintiff shall also comply with Order XXXIX Rule 3 of the CPC within a period of one week from today. Compliance, in respect of Defendants 1 to 25, is dispensed with for the present, as the identity of the infringers is unknown.
- 29.** Mr. Munish Mehra, learned Counsel for Defendant 28 submits that Defendant 28 has been wrongly impleaded and that the correct

Defendant would be Apple Distribution International Limited. Mr. Malhotra undertakes to file an amended memo of parties accordingly.

**C.HARI SHANKAR, J**

**DECEMBER 22, 2022**

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