

MANU/DE/0702/2002

Equivalent Citation: AIR2002Delhi433

IN THE HIGH COURT OF DELHI

I.A. 10934, 10935, 10936 and 10945/2001 in S. Nos. 2411, 2412, 2413 and 2414/2001

Decided On: 28.02.2002

Appellants: **Mirabai Films Pvt. Ltd.**

Vs.

Respondent: **Hathway Cable and Datacom Pvt. Ltd. and Anr.**

AND

Appellants: **Mirabai Films Pvt. Ltd.**

Vs.

Respondent: **Indus in Media and Communications**

AND

Appellants: **Mirabai Films Pvt. Ltd.**

Vs.

Respondent: **7 Star Satellite Network**

AND

Appellants: **Mirabai Films Pvt. Ltd.**

Vs.

Respondent: **Siti Cable Network**

Hon'ble Judges/Coram:

Mukundakam Sharma, J.

Counsels:

For Appellant/Petitioner/plaintiff: C.M. Lall, Adv

For Respondents/Defendant: A.J. Bhambhani, Pratibha M. Singh and Teena James, Advs.

Subject: Media and Communication

Subject: Civil

Acts/Rules/Orders:

Code of Civil Procedure, 1908 (CPC) - Order 39 Rules 1, Code of Civil Procedure, 1908 (CPC) - Order 39 Rules 2; Copyright Act ;Cable Television Networks (Regulation) Act, 1995 ;Cable Television Networks Rules, 1994 ;Specific Relief Act - Section 36, Specific Relief Act - Section 37

Disposition:

Applications dismissed

Case Note:

a) The case discussed the discretion of Court to grant injunction under Order 39 Rules 1 and 2 of the Civil Procedure Code,1908 – It was ruled that injunction could not be granted of mere wild and generalised statements – The discretion has to be exercised by the Court in a judicial manner

b) The case discussed the scope of the grant of perpetual injunction under Section 37 of the Specific Relief Act,1963 – The plaintiff sought interim injunction to restrain defendants from restraining or broadcasting the film in their network channels – In the instant case, all the defendants did not had any control over the local cable television operators – It was held that defendants could not be made responsible for act of the distributors and franchises at their own – Thus injunction was denied

JUDGMENT

Mukundakam Sharma, J.

manupatra 1. The plaintiff herein has filed several suits as against different defendants, almost on the same subject matter. In the said suits the plaintiff has also sought for temporary injunction, as prayed for in the applications filed under Order 39 Rules 1 & 2 of the Code of Civil Procedure for making the same operative till the final disposal of the suits. As the contents of the said applications are almost similar and as the issues are also similar, I propose to take up all the applications filed by the plaintiff herein, together and dispose of the same by this common judgment and order.

2. The plaintiff has stated that the plaintiff carries on the business of film production and that recently it was engaged in the production venture of the film MONSOON WEDDING, which was completed and was ready for screening, when the present suits were filed by the plaintiff against the defendants.

3. The defendant herein are all cable television network operators providing cable television network, cable internet access and other related services in several parts of the country. It is stated by the plaintiff in the plaints that the plaintiff has produced the aforesaid film and by virtue of the provisions of the Copyright Act, the plaintiff has the exclusive right to make a copy of the film including a photograph of any image forming part thereof and 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 and to communicate the film to the public. It is also stated that distribution and exploitation of the film is crucial to the success of a film and that a film represents a bundle of rights that may be exploited in a variety of media including theatrical and non-theatrical performances, communication to the public through satellite TV, cable TV and Pay TV, issue of copies of the film through Home Video and other formats both in India and overseas. It is also stated that as the first stage of the distribution strategy generally involves theatrical release as the window, it is vital that the film be available to the public only at a few select theatres and that the time period set for the first window release may vary depending on many factors. It is further stated that once the film has run its course at the theatres/cinema halls, the film is generally released through a second window, which is normally in the form of home videos and thereafter the stage is set for releases of the film through other windows and media.

4. It is alleged that new films are shown unscrupulously all over India on the networks of the defendants without any authority whatsoever from the owners of copyrights therein and most of the time these cinematograph films are infringing/pirate copies, which these cable operators produce and/or procure and that the defendants herein are habitual offenders and in spite of several injunction orders passed against them have not restrained from showing films on their network for which they have no authorisation. It is further alleged that the defendants completely control and are responsible for the management and operation of a cable television network and that the said defendants provide these services almost all over India through their associate and/or subsidiary companies, its distributors, agents, franchises, distributors, head-ends and cable operators and, Therefore, the suits were filed seeking for permanent injunction restraining the defendants, their proprietor, partners, directors, servants, agents, representatives, franchises, distributors, assigns, cable operators and head-ends from telecasting, broadcasting or in any other way communicating to the public either by means of wireless diffusion or by wire, the plaintiff's cinematograph film MONSOON WEDDING, the copyright of which vests in the plaintiff. Along with the plaints applications for temporary injunction were also filed seeking for almost similar reliefs, by way of temporary injunction.

5. While issuing summons and notices, this court passed ad interim injunctions in favor of the plaintiff and against the defendants, restraining the defendants, its partner, representatives, servants, distributors, cable operators and franchises from telecasting, broadcasting or by means of wireless diffusion, the plaintiff's cinematograph film MONSOON WEDDING or in any other manner infringing the copyright of the plaintiff/petitioner with respect to the aforesaid film.

6. After service of summons and notices, some of the defendants have entered appearance and I heard the counsel appearing for the parties on the aforesaid applications filed by the plaintiff under Order 39 Rules 1 & 2 of the Code of Civil Procedure on the basis of the documents on record. The defendants, who have entered appearance, contested the aforesaid applications on the ground that the defendants are Multi-Services-Operators engaged in the business of providing cable and satellite television feed signal, internet services and other emerging technologies and services to customers by way of cables. It is stated on their behalf that the Cable Television Feed Signal service provided by the defendants comprises two categories of feed signals - (a) feed signal of satellite television channels received by the defendants via satellite and re-transmitted by the defendants to their distributors and franchises, e.g. Star TV, Zee TV, ESPN Channel, Discovery Channel etc; and (b) feed signal of cable television channels owned and operated by the defendants, which at present are only two, namely, "Cine Cable Channel" and "Win Cable Channel". It is also stated on their behalf that the defendants supply feed signal of the above two categories to local cable television operators, who run their business in various localities and colonies i.e. in Delhi and surrounding areas and that the content of satellite cable television channels is decided by the companies/entities that own such satellite television channels and not by the defendants. It is also stated that it is common knowledge that local cable television operators in various colonies and localities run their own local cable television channels whereby they broadcast programmes, including cinematograph films over a local area cable network using a video cassette recorder/video cassette player/digital video disk player or similar other gadgets and while such local cable television operators may be enrolled as distributors/franchises of the defendants inasmuch as they receive feed signal in respect of satellite television channels, the defendants have no control over the control that such local cable operators broadcast over their own local cable channels. The defendants have also stated

manupatra that as the said local cable operators are not within the control of the defendants, except for the purpose of feed signals of satellite television channels like Star TV, Zee TV, ESPN Channel, Discovery Channel etc., the defendants cannot be made liable and responsible for anything that is done by the said small time local cable operators particularly when they are separate and distinct legal entities. The defendants are the multi-services-operators and their franchises and distributors wherever they are operating, are operating at their own except for receiving the feed signals in respect of those channels like Star TV, Zee TV, ESPN Channel, Discovery Channel etc. The said local cable operators have no connection or relationship with the defendants. The defendants have also stated that they have never televised any film unauthorisedly and/or taken resort to any deceit as sought to be alleged by the plaintiff and/or that it has become a standard practice on the part of film producers that prior to releasing any new film they invariably approach Courts for injunction relief, which is an abuse of process of law and of this court, particularly when the plaintiff has made sweeping and generalised statement and the apprehension sought to be made only is a figment of imagination and there is no basis for such apprehension. It was also submitted that if there be any violation, the plaintiff can seek for the protection under the provisions of Cable Television Networks (Regulation) Act, 1995 and the Cable Television Networks (Rules), 1994 and the plaintiff can always approach such authorities in the event of threatened or suspected infringement of copyright in its work on case-to-case basis, which should be the appropriate remedy instead of filing the suit of a nature as is sought to be filed by the plaintiff, in order to damage reputation of the defendants.

7. Having heard the counsel of the parties and upon perusal of the records, I proceed to record my reasons and findings. The principle relating to grant of injunction under Order 39 Rules 1 & 2 of the Code of Civil Procedure and the Specific Relief Act, is well-settled. An injunction could be of two kinds, namely, temporary and perpetual as laid down under Section 36 of the Specific Relief Act. Section 37 thereof provides that a perpetual injunction is based on a final determination of the rights of the parties and is intended permanently to prevent infringement of those rights and obviate the necessity of bringing action after action in respect of every such infringement.

8. The interlocutory injunctions are those which continue until the hearing of the cases upon the merits, or generally until further order. A temporary injunction, may as it very often does, consists of two stages, one granted without finally disposing of the application for injunction to operate immediately till the disposal of the said application and the other granted while finally disposing of the main application to ensure generally till the disposal of the suit. While the former is generally classed as ad interim injunction, the latter is generally called temporary injunction.

9. The perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit. It is, in effect, a decree of the court. The defendant is thereby perpetually restrained from the assertion of a right or from the commission of an act, which would be contrary to the rights of the plaintiff. As is indicated by its name, a perpetual injunction is unlimited in duration. It is, in effect a decree and concludes a right and in the matter of procedure is regulated by the law relating to decrees and in the matters of its grant by the provisions of the Specific Relief Act. In these respects a perpetual injunction differs from a temporary or interlocutory injunction. The interlocutory or an interim injunction, which is granted in order that the position of the parties shall be preserved either in status quo or in some other appropriate manner until a final adjudication by the Court of the rights of the parties subsequently takes place. Both perpetual injunctions and also interlocutory and interim injunctions may at any time be dissolved by the Court by which they were granted, should it subsequently become appropriate to do so.

10. The jurisdiction to grant an injunction is discretionary and not of right and, Therefore, the plaintiff cannot demand issue of an injunction, on proving his case, as a matter of right, as he can demand his remedy by way of damages but the granting or withholding of an injunction rests in the discretion of the court. It is no doubt true that the aforesaid discretion shall not be exercised in an arbitrary manner but the same shall have to be exercised judicially and the same is to be exercised according to something like a settled rule, and in such a way to prevent the defendant doing a wrongful act, and thinking that he could pay damages for it. Such a discretion shall have to be sound and reasonable and it must have regard to all the circumstances of the particular case.

11. It is an admitted position that the present suits were filed by the plaintiff on apprehension or for a threatened injury. The breach alleged, had not taken place in the case when the present suits were filed. The present suits were instituted on the ground that such a breach is apprehended or threatened. In order to get relief under the aforesaid provisions, the person approaching the court must prove that he has a strong case of probability that the apprehended mischief would arise and shall be caused by the defendants. There must be such a great probability that, in the view of ordinary men, using ordinary sense, the injury would follow and thus except in a very clear case, the Court will not restrain by injunction something which is not real but purported, illusory and not distinct. The court would not, on mere vague allegations, issue such an injunction as the same is not sufficient. In order to get relief of threatened injury, the plaintiff has to establish that he has a right which has already been infringed and that further infringement is threatened to a material extent and then only he is entitled to an injunction restraining the threatened infringement upon the ordinary principles upon which the Court acts in granting injunction. The aforesaid is the general principle on which a party can seek for and could be granted relief as against a threatened injury or on the ground of apprehension of such threat of infringement of his valuable rights.

12. In the present case, the plaintiff is stated to be the producer of the film MONSOON WEDDING. At the time when the suit was filed, the said movie was ready to be released but was not, in fact, released in any theatre/cinema hall or any other place. The contention of the plaintiff that the defendants are habitual offenders and that in spite of several injunction orders, the said defendants have been telecasting all the latest films on their cable television networks, are prima facie found to be sweeping and generalised statements, as there is no corroborating records in support of the said allegations. The defendants herein are multi-services-operators engaged in the business of providing cable and satellite television feed signal, internet services and other emerging technologies and services to the customers by way of cables and they have established their reputation in the market. They possess a goodwill and have an established market and have assumed a good reputation over the years in respect of the business, which they carry out. Cable Television Feed Signal service provided by the defendants comprises two categories of feed signals i.e. (a) feed signal of satellite television channels received by the defendants via satellite and re-transmitted by the defendants to their distributors and franchises, e.g. Star TV, Zee TV, ESPN Channel, Discovery Channel etc; and (b) feed signal of cable television channels owned and operated by the defendants. In respect of such re-direction and re-transmission of the satellite television channels received by the defendants via satellite, to their distributors and franchisees, in respect of Star TV, Zee TV, ESPN Channel, Discovery Channel etc., they have appointed certain distributors and franchisees only for the aforesaid purpose, amongst whom there are local cable television operators, who operates in their own field and they are the distributors and franchises of the defendants only to the extent of receiving feed signals from the defendants in respect of the satellite television channels, as stated above. One of the defendants herein, of course, has two channels of their own which are Cine Cable Channel and Win Cable Channel. Except for the same, the said defendants have no control over such local cable operators, who may broadcast their own programmes through their local cable channels. Therefore, can the defendants be made liable for infringement of copyright of any cinematograph film, including the film MONSOON WEDDING that may take place over such local cable channels? The answer to the aforesaid question shall have to be an emphatic no.

13. All the defendants herein cannot and do not have any administration or any other control over the said local cable television operators. How could, Therefore, these defendants be made responsible for any act done by such distributors and franchises at their own? So far the defendants are concerned, they have stated that they are working honestly and bonafide in their business activities. It is also stated that at the inception there were no large operators or multi-services-operators such as the defendants by only small local cable television operators, who had set-up small local area networks by laying cables and operating head-end control rooms from their house and roof-tops etc. At that stage, the business of cable television was totally uncontrolled, unregulated and operated in a very un-planned and unprofessional manner and upon larger operators, such as the defendants, entering this business, they have made an effort to consolidate smaller operators with a view to better organise the business of cable television networks. Therefore, the process of enrolling cable operators as franchises and distributors is part of such effort. It is further stated by the defendants that invariably, however, each cable operator running a cable television business in a certain locality or colony always had and continues to have his own local television channel over which he shows such programmes as he chooses and the defendants have no control over the content broadcast over such local cable television channels. The defendants have otherwise denied that they have ever telecast any pirated film. The defendants have vehemently stated that they have never telecast to the public, through cable television channel, any Indian or Hollywood production without requisite copyright license of the concerned authority.

14. As against the aforesaid statement specifically made during the course of the arguments and also in the reply filed to the allegations of the plaintiff in the plaint, only generalised and sweeping statements are made by the plaintiff without there being any material placed on record, in support of such averments. The allegations made against the defendants in the plaint as also in the applications filed by the plaintiff under Order 39 Rules 1 & 2 of the Code of Civil Procedure are vague and general in nature. No specific averment is made and the allegations are ambiguous. In my considered opinion such wild and vague allegations cannot form the basis for claiming equitable relief in a court of law. The defendants have their own goodwill and reputation in the industry and an injunction cannot be sought for as against such defendants by making wild and vague allegations and in respect of such activities in which the defendants cannot be held liable at all. It is also brought to light and indicated that it has practically become a standard practice on the part of the film producers that prior to releasing any new film, they invariably approach courts for injunction relief on the plea that such action is taken under a presumption that someone at some point of time will definitely seek to pirate the film of the producer.

15. Under the provisions of Cable Television Networks (Regulation) Act, 1995 and the regulations and rules framed therein, detailed provisions have been enacted in order to protect the interest of a producer of a film, like the plaintiff. Even otherwise, under the provisions of the Copyright Act itself there are elaborate provisions, basing upon which, in a case of infringement of the copyright, the plaintiff could approach the court for being provided with the consequential relief. Although it has become a regular feature for the film producers to rush to the court for seeking an injunction of the nature, as sought for here, it would be the duty of the court to scrutinise what is the basis for such apprehension and what is nature of documents filed in support of such contention and apprehension. Surely, an injunction cannot be granted on mere wild and generalised statements. The court has to exercise its discretion in a judicial manner but such discretion should not be arbitrary or mechanical. Just because a producer before the release of a new film would rush to the court and

manupatra would seek for getting an injunction, the court would not, in the natural course grant, such an injunction to such a film producer unless the allegation is supported by corroborative documents to show that the defendants are habitual offenders of the nature and because of their past conduct such breach is anticipated or right of the plaintiff is threatened. The court while exercising such a discretion would have to draw a line of a balancing act and then grant injunction of the nature sought for in an appropriate case and deny such relief in all other cases. The plaintiff herein has sought for an injunction in respect of the franchises and distributors also with a further prayer that they should also be restrained from telecasting the said movie MONSOON WEDDING in their cable television network. How could the present defendants, under the aforesaid circumstances, be restrained for an act of a separate legal entity, who operates the business of its own in a particular area and is connected and related to the defendants for a particular purpose and not beyond that.

16. The injunction sought for is as against the defendants and the others are sought to be restrained through the defendants, but for whose activities, the defendants are not responsible, they being separate legal entities of their own. The defendants have their own reputation and goodwill in the industry and no incident is shown to prove even prima facie that they have ever pirated or have telecast any movie unauthorisedly. Under the aforesaid, circumstances, I am constrained to hold that in these cases, the plaintiff is not entitled to any injunction, as sought for in the present suits. All the applications filed under Order 39 Rules 1 & 2 of the Code of Civil Procedure, in the aforesaid suits accordingly are held to be without any merit and are dismissed.

S. Nos. 2413/2001, S. No. 2411/2001,

S. No. 2412/2001 & S. No. 2414/2001

Renotify on 29.7.2.2002.

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