

MANU/DE/0413/2003

**Equivalent Citation:** 2003(26)PTC473(Del)

**IN THE HIGH COURT OF DELHI**

FAO (OS) Nos. 83, 84, 85 and 86 of 2002

Decided On: 17.03.2003

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

**Vs.**

Respondent: **Siti Cable Network and Ors.**

**Hon'ble Judges/Coram:**

B.A. Khan and R.S. Sodhi, JJ.

**Counsel:**

For Appellant/Petitioner/plaintiff: C.M. Lall and Saurabh Banerjee, Advs

For Respondents/Defendant: Rajiv Nayar, Sr. Adv. and Pratibha M. Singh, Adv. in FAO (OS) No. 83/2002, V.V. Lalit and Atul Sharma, Adv. in FAO (OS) No. 84/2002 and Anup Bhambhani, Adv. in FAO (OS) Nos. 85 and 86 of 2002

**Subject: Intellectual Property Rights**

**Acts/Rules/Orders:**

Copyright Act, 1957 - Section 14; Code of Civil Procedure, 1908 (CPC) - Order 39 Rules 1, Code of Civil Procedure, 1908 (CPC) - Order 39 Rules 2

**Cases Referred:**

Gujarat Bottling Company Ltd. v. Coca Cola Company, AIR 1995 SC 2372, 1996 PTC 89(SC); Wander Ltd. v. Antox India Pvt. Ltd., 1990 Supreme Court Cases (Suppl) 727, 1991 PTC 1(SC)

**Citing Reference:**

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**Case Note:**

**Intellectual Property Rights – telecast of picture – Section 14 of Copyright Act, 1957 and Order 39 Rules 1 and 2 of Code of Civil Procedure, 1908 – appellant engaged in film production – appellants filed injunction suit for restraining respondents from unauthorisedly telecasting a particular film made by them – Trial Court dismissed suit – appeal against such Order – appellant claimed that it was maker of film and owned its copyright and enjoyed its exclusive rights of communicating film by all available modes and means – company will suffer irreparable injury and loss even by a single telecast of respondents and their distributors – respondents temporarily restrained from telecasting film on their networks and from allowing their feed signals to be used by distributors for such purpose.**

**JUDGMENT**

**B.A Khan, J.**

1. The 'Monsoon Wedding' may have come and gone but the litigation generated by it was still raging. The present controversy though rendered irrelevant in the course of time relates to rejection of appellant's request for interim injunction to restrain respondents and their distributors, franchisees and assignees from unauthorisedly telecasting/screening this film on their cable networks.

2. Appellant is the producer of the film and respondents are cable television network operators providing cable television network, cable internet access and other several related services in several parts of the country through their associate/subsidiary companies, distributors, franchisees, assignees, head ends and cable

3. It appears that before the film was released, appellant filed injunction suits in a peremptory action to restrain respondents and their distributors, franchisees and assignees from unauthorisedly telecasting/screening it and also filed applications for temporary restraint orders in this regard. While doing so, appellant claimed that it was the maker of the film and owned its copyright and enjoyed its exclusive rights of marketing, distribution, exhibition, makings of its copies and selling these or giving on hire and of communicating the film by all available modes and means including the cable networks. The company alleged that respondents were habitual offenders in telecasting pirated copies of films and were out to do so in case of 'Monsoon Wedding' also and if not restrained, it would cause irreparable injury and loss to the company and deprive it of enjoying the fruits of its work.

4. Respondents, on their part, denied that they were engaged in any such activity or operation. They explained that they were providing two categories of feed signals, (i) one of satellite television channels received by them via satellite and re-transmitted by them to their distributors and franchisees, (ii) the other of their two television channels namely 'Cine Cable Channel' and 'Win Cable Channel' owned and operated by them. The content of satellite TV channel was being decided by the companies/entities who owned them and that of local cable channels by the local operators. Though these local operators were enrolled as their distributors, franchisees and assignees, they were separate legal entities who were broadcasting their own programmes and screening films using the video cassette player/video cassette recorder/digital video disk or similar other gazettes and over whom they had no control. They also pointed out that in case appellant had any grievance in this regard, it could as well invoke the relevant provisions of Cable Television Network (Regulation) Act, 1995 and the Rules made there under to seek redressal.

5. Ld. Trial Judge, on consideration of the matter, accepted the stand of respondents and rejected the applications of appellant by impugned order dated 28.2.2002 primarily on the ground that the distributors and franchisees of Respondents were separate legal entities and not under their control.

6. All these appeals are directed against this which are identical in nature and are being disposed of by this common order.

7. Appellant's main grievance is that even though it had proved a prima facie case and had satisfied other requirements governing grant of interim injunction like balance of convenience being on its side and likelihood of irreparable injury/loss being caused to it if the relief was not granted, but yet Ld. Trial Judge had ignored all this and had rejected its applications. He had also ignored his own restraint orders passed in Suit No. 9172/2000 in case of film 'Lagaan' and a Division Bench order of this Court in FAO (OS) Nos. 53 & 54/99 dated 22.2.1999 passed in case of film 'Kachhe Dhaage' and also several undertakings furnished by respondents in various cases before courts on their behalf and on behalf of their distributors, franchisees and assignees including in case of film 'Mission Kashmir'. Ld. Judge had also overlooked the ratio of two Supreme Court judgments in Gujarat Bottling Company Ltd. v. Coca Cola Company, MANU/SC/0472/1995 : AIR1995SC2372 and Wander Ltd. v. Antox India Pvt. Ltd., 1990 SCC (Supp) 727 : 1991 PTC 1 and had also unjustifiably rejects its request to bring some crucial documents on record which could have shown the true nature of relationship of respondents and their distributors franchisees and assignees. Reference in this regard is made to the Joint Venture Agreement executed by them and the record of the Registrar of Companies which allegedly indicated that respondents and their distributors, franchisees and assignees could not have transmitted or retransmitted signals to their subscribers which were not transmitted by the respondents' network without the prior consent of these respondents and that respondents were running their operations through related companies and were holding shares in these and those of their distributors and franchisees and in most of the cases the Directors of these companies were also common.

8. The power to grant or refuse an ad interim injunction being discretionary, we are conscious of the limitations of an Appellate Court to interfere in the exercise of the, discretion by the court of first instance. The appellate court would not normally re-assess the material on record before that court and substitute its view to grant or refuse a temporary injunction. It would also not disturb the order in this regard even where a contrary view or conclusion was possible. But it would not hesitate to intervene where the impugned order was found ignoring settled principles of law regulating grant or refusal of interlocutory injunction or where it proceeded on non-appreciation of nature of controversy or the material on record. These parameters are laid down by the Supreme Court in Wander Ltd. v. Antox India Pvt. Ltd., 1991 PTC 1.

"The appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken

9. The principles governing grant or refusal of ad interim are beaten track by now. According to these, a plaintiff asking for an interlocutory injunction would have to show (i) a prima facie raising a bona fide contest and serious issues for adjudication and decision, (ii) the balance of convenience in his favor which means that inconvenience likely to be caused to him should be far more than the one if it was granted, and (iii) last but not the least irreparable injury and loss which could not be compensated in monetary terms. Where the plaintiff showed all this and satisfied the requirements, he would qualify for grant of ad interim injunction.

10. It is true that the relief of injunction is founded on equity and that it can't be sought as a matter of right. It was also liable to be refused where the court found that plaintiff had approached it with unclean hands by suppressing material facts and had acted in an unfair and inequitable manner. But where his claim was found bona fide prima facie, his rights would have to be preserved pending adjudication of his claim in the suit because the purpose was to mitigate injustice to him and avoid the possibility of his being non-suited. This legal position stands summarized by the Supreme Court in Gujarat Bottling Company's case :-

"The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial. The need for such protection has, however, to be weighed against the corresponding need to the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the balance of conveniences lies."

11. All that was required to be examined in this conspectus, Therefore, is whether appellants (plaintiffs) had discharged its obligation of showing a prima facie case, the balance of convenience on its side and the irreparable injury and loss likely to be caused to it by withholding the relief and whether the Ld. Trial Judge had ignored all these principles to reject its applications for interim relief.

12. We have no doubt that appellant had done its part as its claim that it owned the film's copyright and enjoyed its exclusive right to deal with it, be that in its marketing, distribution or selling it or communicating it by whatever means including through cable networks and that none else, least at all respondents, had any interest or claim in the film or any right to indulge in its exhibition or communication had gone uncontroverted in the absence of respondents' written statement. So had its plea that the balance of convenience was on its side and that it would suffer irreparable loss and injury even by a single telecast of respondents and their distributors, franchisees which could reach several lakhs of homes at one time.

13. Besides, it was Respondents own case that they were running their own network- two channels namely Cine Cable Channel and 'Win Cable Channel' and were also supplying feed signals of their distributors, franchisees, assignees and local operators who could not telecast/broadcast/communicate any film or programme without using these signals. As a matter of fact, they and their distributors, franchisees and assignees were restrained and had faced similar restraint orders passed by this court in case of other films also and in some case they had also furnished undertakings not to resort to any unauthorised telecast of such films,

14. Given regard to all this, nothing more was required of appellant for grant of its request for temporary injunction at least against respondents, if not their distributors, franchisees and assignees. But all this seems to have escaped the notice of Ld. Trial Judge while passing the impugned order denying relief to appellant merely on the premise that distributors, franchisees and assignees of respondents were separate legal entities over whom respondents had no control. This premise, in our view, was not correct because even if it was assumed that these distributors, franchisees, assignees and local operators were separate legal entities, it could not be overlooked that they were using the feed signals of respondents for telecasting/broadcasting/screening their programmes including films, etc. Therefore, if respondents could not illegally or authorisedly telecast/screen any programme or for that matter the film in question on their own, their distributors, franchisees and assignees also could not do so by using their feed signal, otherwise it would result in absurdity tantamounting what could not be done by respondents directly could be done by their distributors, franchisees and assignees clandestinely.

15. That is apart from appellant's complaint that it was not allowed to bring some important documents on record which could have shown the nexus between the respondents and their distributors, franchisees and assignees. These documents, according to appellant, included the Joint Venture Agreement executed by respondents and records of Registrar of Companies showing that respondents and their related companies, their distributors, franchisees and assignees were hand in glove with each other and were all involved in

16. It is not that appellant was disabled from bringing such documents on record because respondent had yet to file the written statement in the suit. On the contrary, it would have been in the interest of justice to look at these documents for the purpose of drawing a prima facie satisfaction whether respondents were involved and to what extent in the operation of their distributors, franchisees and assignees and whether interests of appellants (plaintiffs) could be protected as against them also. The legal status of the distributors, franchisees and assignees of the respondents would have paled into insignificance in that situation.

17. It was also immaterial whether appellant had any alternative remedy of seeking redressal under the Cable Television Network. (Regulation) Act, 1995 because that by itself could not have dis-entitled it either to file the suit or to ask for grant of interim relief.

18. All this persuades us to set aside the impugned order dated 28.2.2002. These appeals are accordingly allowed and respondents are temporarily restrained from telecasting/screening/exhibiting the film 'Monsoon Wedding' on their networks and from allowing their feed signals to be used by the distributors, franchisees, assignees and cable operators for this purpose. However, nothing said in this order shall be construed as any expression of opinion by this court on the merit of rival claims of parties in the suit.