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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 418/2024**

APPLAUSE ENTERTAINMENT PRIVATE LIMITED

..... Plaintiff

Through: Mr. Harsh Kaushik, Ms. Anushree Rauta, Mr. Shwetank Tripathi, Mr. Deepank Singhal, Mr. Mohit Bangwal and Mr. Y. Prakash, Advocates.

versus

WWW.9XMOVIES.COM.TW & ORS.

..... Defendants

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
20.05.2024

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I.A. 29938/2024 (*seeking impleadment of additional websites and mirror websites, redirects or alphanumeric variations as defendants in the memo of parties*)

1. Counsel for Plaintiff states that subsequent to the filing of the present suit, the Plaintiff has identified additional websites who are infringing Plaintiff's trademark and copyright.
2. Since summons in the suit have not been issued yet, no notice in the instant application is required to be issued to the proposed Defendants. The additional websites mentioned in the application are impleaded as Defendant Nos. 14 to 19. The amended memo of parties is taken on record.
3. Disposed of.



I.A. 29725/2024 (seeking leave to file additional documents)

4. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.

5. Applicant, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the said Act.

6. Disposed of.

I.A. 29726/2024 (seeking exemption from filing originals/ certified copies/ and/ or clean typed/ translated/ legible copies with proper margin of documents)

7. Exemption is granted, subject to all just exceptions.

8. The Plaintiff shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

9. Disposed of.

I.A. 29727/2024 (seeking pre-suit mediation)

10. As the present suit contemplates urgent interim relief, in light of the judgment of Supreme Court in *Yamini Manohar v. T.K.D. Krithi*,¹ exemption from attempting pre-institution mediation is granted.

11. Disposed of.

I.A. 29728/2024 (seeking exemption from issuing notice to Defendant No. 12 and Defendant No. 13)

12. Issue notice to Defendant Nos. 12 and 13, by all permissible modes, upon filing of process fee, returnable on the next date of hearing.

13. Reply, if any, be filed within four weeks from the date of service.

¹ 2023 SCC OnLine SC 1382.



Rejoinder thereto, if any, be filed within two weeks thereafter.

14. Re-notify on 23rd October, 2024.

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15. Let the plaint be registered as a suit.

16. Upon filing of process fee, issue summons to the Defendants by all permissible modes, including over WhatsApp and SMS. Summons shall state that the written statement(s) shall be filed by the Defendants within 30 days from the date of service. Along with the written statement(s), the Defendants shall also file affidavit(s) of admission/denial of the documents of the Plaintiff, without which the written statement(s) shall not be taken on record.

17. Liberty is given to the Plaintiff to file replication(s) within 15 days of the receipt of the written statement(s). Along with the replication(s), if any, filed by the Plaintiff, affidavit(s) of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication(s) shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

18. List before the Joint Registrar for marking of exhibits on 22nd August, 2024. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

19. List before Court for framing of issues thereafter.

I.A. 29724/2024 (under Order XXXIX Rules 1 & 2 r/w Section 151 of CPC, 1908)

20. At the outset, Mr. Harsh Kaushik, counsel for Plaintiff, points out that there is a typographical error in describing Defendant No. 2. The name of



Defendant No. 2 shall be referred to as mentioned in the amended memo of parties.

21. Mr. Kaushik, presents the following facts and contentions for grant of *ex-parte ad-interim* injunction against Defendants No. 1, 2, 14 to 19:

21.1. The Plaintiff, Applause Entertainment Private Limited, is engaged in the business of creation, production, acquisition, exploitation, distribution and monetization of various audio-visual contents such as web series, motion picture, etc., on digital as well as non-digital platforms. Plaintiff is one of India's leading studios/producers of fictional as well as non-fictional shows/ web-series/ films, and has a reputation for producing high quality diversified content.

21.2. Over the years, Plaintiff has emerged as one of the most reputed names in the Media and Entertainment industry with respect of OTT ('Over the Top') content. One such web show/series produced by the Plaintiff is titled "UNDEKHI"², which is an Indian, Hindi language crime-thriller, whose first season premiered on the platform "SonyLIV", in the year 2020. Owing to the successful first season of the series, Plaintiff produced the second season thereof, which was released on the platform in the year 2022 and recently on 10 May, 2024, the third season of the Plaintiff's series was released.

21.3. Plaintiff's series is a work of visual recording accompanied by sound recordings, which qualify as 'cinematograph film' under Section 2(f) of the Copyright Act, 1957³. Being the producer of the said series, the Plaintiff is the author and/or the first owner of the copyright in its series as per Section

² "Plaintiff's series"

³ "Copyright Act"



2(d) read with Section 17 of the Copyright Act. Therefore, the Plaintiff has exclusive right to communicate its series to the public. To this end, Plaintiff has entered into a license agreement dated 17th April, 2020 with Culver Max Entertainment Private Limited (*formerly known as Sony Pictures Network India Private Limited*) which owns the platform “SonyLIV”⁴.

21.4. Plaintiff owns copyrights in its series, therefore, no other entity without the Plaintiff’s authorization, can make the series available to the public for download and/or streaming or reproduce or authorise others to reproduce, download and/or communicate the Plaintiff’s series in any manner whatsoever, through any transmission and/or internet and/or online platform and/or websites and/or mobile application for viewing/downloading on devices such as computers, laptops, mobile phones, tablet computers, etc.

21.5. Plaintiff has filed the present suit against Defendant Nos. 1, 2, 14 to 19⁵, which are rogue websites/URLs appearing to be engaged in the business of broadcasting/relaying/communicating pirated and unlicensed content, including the Plaintiff’s series.

21.6. After the third season of the Plaintiff’s series was released on 10th May 2024, the Plaintiff was surprised to come across a news article published on the website “www.fimlybeat.com” stating that the third season of the Plaintiff’s series has been leaked online on multiple websites for free download within hours of its release.

21.7. Thereafter, the Plaintiff’s anti-piracy team conducted investigations which revealed that Defendants No. 1 and 2 are the websites that are

⁴ “Licensed platform”

⁵ “Defendants’ websites”



providing the Plaintiff's series for free download. These Defendant's websites do not provide any contact details or take down mechanisms for infringing content, however, they mention that they will take down infringing links brought to their attention *via* email. Therefore, to protect its copyrights, the Plaintiff served a legal notice to Defendant No. 1 and 2's websites calling upon them to cease and desist from engaging in infringing activities and take down the Plaintiff's series from their websites. However, Defendant No. 1 and 2's websites have neither responded to the legal notices, nor taken down the Plaintiff's series from their websites. It is pertinent to note that after filing the present suit, the Plaintiff came across additional mirror/redirect/alphanumeric variations of Defendant No. 2's website and other websites which are exploiting the Plaintiff's series. These additional websites are arrayed as Defendants No. 14 to 19.

21.8. This Court *vide* judgment dated 10th April, 2019 passed in ***UTV Software Communications Ltd. v. 1337x.to and Ors.***, [CS(COMM) 724 of 2017]⁶, has recognized the parameters for determining rogue websites and granted a 'dynamic injunction' exercising its inherent powers under Section 151 of the CPC to allow the Plaintiff to implead additional websites under Order I Rule 10 of CPC by delegating the power to adjudicate on the impleadment of additional websites to an existing blocking order, to the Joint Registrar of this Hon'ble Court. Since the facts of the present case fulfil the test laid down in the UTV Order for identifying rogue websites, considering that there is a rampant increase in the usage of rogue websites for facilitating piracy of the Plaintiff's content, there is an urgent need for injunction in the present case.



21.9. Furthermore, since the Defendants’ websites are anonymous in nature and hide behind domain privacy services offered by various Domain Name Registrars⁷, which enable a website owner to hide behind a veil and often not disclose any (or any accurate) contact details publicly, to protect their privacy, it is virtually impossible to bring the owners of the websites before this Court to ensure compliance with the Court’s orders. In order to overcome this, the Plaintiff has arrayed internet service providers as Defendant Nos. 3 to 11, in order to ensure the effective implementation of any relief that this Court may be inclined to grant in favour of the Plaintiff. Similarly, the limited relief claimed against DoT and MeitY is only to assist in enforcing/ensuring compliance with any orders of injunction and/or blocking of these websites that this Court may be inclined to grant in favour of the Plaintiff, i.e., the issuance of a notification to the internet service providers registered with them, to disable access to the Defendants’ websites in India.

22. The Court has considered the afore-noted facts, submissions and documents placed on record by the Plaintiff. It is clear that the Plaintiff is the lawful owner of the copyrights in the series “UNDEKHI” and which is licensed to be available on the platform “SonyLIV”. Further, on a *prima facie* assessment, it is observed that the Defendant’s websites host content which is otherwise exclusively available on established licensed streaming platforms. Given the fact that the Plaintiff’s series is currently available for free viewing and download on the Defendants’ websites without being authorised or licensed, the said websites are engaged in piracy of content.

⁶ “UTV judgment”

⁷ “DNR”



23. Further, applying the test laid down in UTV judgement to the facts in the present case, it is clear that the Defendants' websites are rogue websites which have the primary purpose and/or effect of infringing or facilitating or inducing infringement of content which would otherwise be available only on verified and licensed platforms. Therefore, the Defendants' websites are also liable for the acts of infringement by third parties by way of inducement or pursuant to Section 51(a)(i) of the Copyright Act.

24. In light of the above, the Court finds that the Plaintiff has made out a *prima facie* case in its favour and in case no *ex-parte* ad-interim injunction is granted, Plaintiff will suffer an irreparable loss; balance of convenience also lies in favour of the Plaintiff and against the Defendants.

25. Accordingly, till the next date of hearing, the following directions are issued:

25.1. Defendants No. 1, 2, 14 to 19, and/or any person acting on their behalf, are restrained from communicating, hosting, streaming, screening, disseminating, reproducing, distributing or making available to the public for viewing/downloading, without authorization, of any part of the Plaintiff's "UNDEKHI" web series/show in which the Plaintiff holds copyright, on any electronic or digital platform, in any manner whatsoever.

25.2. Defendants No. 11 to 14, i.e., internet service providers are directed to block the websites of Defendants No. 1, 2, 14 to 19, immediately upon receiving copies of this order from the Plaintiff. Defendants No. 12 and 13, i.e., DoT and MeitY respectively, are directed to issue necessary directions for blocking the said websites.

25.3. The Plaintiffs are directed to file an appropriate application under Order I Rule 10 of CPC for impleadment of websites that are found to be



mirror/ redirect websites or alphanumeric websites, or any variations thereof, which are discovered to be engaging in infringing the Plaintiffs' exclusive rights, with sufficient supporting evidence. Such applications shall be listed before the Joint Registrar, who, on being satisfied with the material placed on record, shall issue the appropriate directions to the internet service providers and the Defendants No. 12 and 13, DoT and MeitY respectively.

26. In the unique facts of this case, Plaintiff is permitted to ensure compliance of Order XXXIX Rule 3 of the CPC through email, within a period of one week from today.

27. Issue notice to the Defendants, by all permissible modes, upon filing of process fee, returnable on the next date of hearing. Reply(s) be filed within four weeks from the date of service. Rejoinder(s) thereto, if any, be filed within a period of two weeks thereafter.

28. List before the Court 23rd October, 2024.

SANJEEV NARULA, J

MAY 20, 2024

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