

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 17.11.2022

Date of decision: 30.11.2022

+ CS(COMM) 95/2020 & I.A. 2778/2020

STAR INDIA PVT. LTD.

..... Plaintiff

Through: Mr.Vivek Ayyagiri, Adv.

versus

WATCHONLINEMOVIESHD.ONLINE & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

I.A. 18851/2022 (U/o XIII-A read with Section 151 of the Code of Civil Procedure, 1908)

1. The Plaintiff has filed the present suit *inter-alia* praying for the following reliefs:

“59. In light of the foregoing, it is most respectfully prayed that this Hon'ble Court may be pleased to:

i. Pass an order and decree of permanent injunction restraining the Defendants No. 1 to 32 (and such other websites / entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiffs exclusive rights and Copyrights), their owners, partners, proprietors, officers, servants,

employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, from in any manner communicating, hosting, streaming, and/or making available for viewing and downloading, without authorization, on their websites or other platforms, through the internet in any manner whatsoever, the Film and content related thereto, so as to infringe the Plaintiffs exclusive rights and Copyrights,

ii. Pass an order and decree directing the Defendant No. 34, its directors, partners, proprietors, officers, affiliates, servants employees, and all others in capacity of principal or agent acting for and, on its behalf, or anyone claiming through, by or under it, to suspend the domain name registration of domain names of Defendants No. 1 to 4 by Defendant No. 34 (GoDaddy) as already identified by the Plaintiff in the instant suit in Memo of Parties or such other domain names that may subsequently be notified by the Plaintiff to be of Rogue Websites which infringe its exclusive rights;

iii. Pass an order and decree directing the Defendant Nos. 35 to 43, their directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, to block access to the various websites identified by the Plaintiff in the instant suit at S. No. 2 of the Documents or such other websites that may subsequently be notified by the Plaintiff to be infringing of its exclusive rights,

iv. Pass an order and decree directing the Defendant Nos. 44 and 45 to issue a notification calling upon the various internet and telecom service providers registered under it to block access to the various websites identified by the Plaintiff in the instant suit at S. No. 2 of the Documents or such other websites that may subsequently be notified by the Plaintiff to be infringing of its exclusive rights.

v. An order for damages of Rs. 2,00,01,000/- to be paid by the Defendant Nos. 1 to 36 and such other

websites / entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiffs exclusive rights, to the Plaintiff on account of their illegal and infringing activities and a decree for the said amount be passed in favour of the Plaintiff (the Plaintiff reserves its right to claim additional damages and amend the pleadings accordingly once the magnitude of the Defendants' illegal / infringing activities and the revenues earned by the Defendants' in pursuance to such illegal / infringing activities is ascertained upon discovery in the instant action);
vi. An order for costs in the present proceedings in favour of the Plaintiff;"

2. The Plaintiff has impleaded the Domain Name Registrar as the defendant no. 34. The Plaintiff has also impleaded various Internet Service Providers (in short, "ISPs") as the defendant nos. 35 to 43, and the concerned departments of the Government of India, namely, the Department of Telecommunications (in short, "DoT") and the Ministry of Electronics and Information Technology (in short, "MEITY"), as the defendant nos. 44 and 45 respectively. The ISPs and the concerned government departments have been impleaded for the limited relief of compliance with any directions of this Court granted in favour of the Plaintiff. The Plaintiff has also impleaded the co-producer of the cinematograph film as the defendant no.33 as a *proforma* party.

3. The Plaintiff is a leading entertainment and media Company in India. The Plaintiff and its division Fox Star Studios are leading film production and distribution companies in India and the exclusive licensees of media rights in various films across varied genres and languages. The Plaintiff has produced and/or has acquired the rights to

various Hindi films such as ‘Chhapaak’, ‘Housefull 4’, ‘Lootcase’, ‘Chhichhore’ and ‘Mission Mangal’, to name a few.

4. The Plaintiff states that Fox Star Studios (now a division of the Plaintiff Company which was earlier a separate company known as Fox Star Studios India Private Limited), and the defendant no. 33 were the producers of the film, ‘BAAGHI-3’ (hereinafter referred to as “the Film”) which was theatrically released on 06.03.2020. Further, in June 2018, Fox Star Studios India Private Limited merged with the Plaintiff Company. The Plaintiff therefore submits that by virtue of the said merger and Fox Star Studios India Private Ltd. being the producer of the Film, the Plaintiff along with the defendant no. 33 are the exclusive right holders of the Film. The Plaintiff being the Producer of the Film, has the exclusive distribution rights to publicly exhibit and communicate the Film and all content associated with it through theatrical exhibition. Therefore, the Plaintiff has the exclusive rights enumerated under 14(d) of the Copyright Act, 1957 (hereinafter referred to as “the Act”).

5. The claim of the Plaintiff is premised on the allegation of illegal and unauthorized distribution, transmission and streaming of the Plaintiff’s Film by the defendant nos. 1 to 32 (hereinafter referred to as the ‘Rogue Websites’). It is the case of the Plaintiff that as a result of the unauthorized transmission of their content, the Rogue Websites infringe the Exclusive rights of the Plaintiff, which have been granted protection under the Act.

6. The Plaintiff, vide an investigation conducted by an independent investigator, learnt of the extent of the infringing activity of the Rogue Websites, in as much as the Rogue Websites have infringed the

Plaintiff's Exclusive Rights under the provisions of the Act in their content by streaming or hosting and/or by facilitating the use of the Rogue Websites, *inter alia* by downloading and streaming the Plaintiff's content in which the copyright vests.

7. The learned counsel for the plaintiff submits that it is a fit case for passing a Summary Judgment under Order XIII-A read with Section 151 of the CPC, as applicable to commercial disputes of a specified value.

8. The grounds for filing the above application, as enumerated by the Plaintiff in the same, are as follows:

- a. All the defendants have been duly served by the Plaintiff;
- b. The defendants nos. 1 to 32 are illegally playing the Plaintiff's Film on their websites and even after being duly served by the Plaintiff, have decided not to contest the present suit.
- c. The defendants have no real prospect of successfully defending the claim of copyright infringement and have further not chosen to contest the said claim.
- d. Additionally, there is no other compelling reason why the present suit should not be disposed of before recording of oral evidence particularly in view of the fact that there is no dispute regarding the illegal activities of the defendants nos. 1 to 32 and in any event, in the absence of any challenge or opposition to the factual allegations made in the Plaint, in view of provisions of Order VIII Rule 5 of the CPC, there is no occasion for recording of oral evidence in the present suit.

9. The learned counsel for the Plaintiff also relies upon the judgments dated 10.04.2019 passed by this Court in a batch of suits, including ***UTV Software Communication Ltd. & Ors. v. 1337X.to & Ors.***, 2019 SCC OnLine Del 8002, which dealt with the determination of rogue websites.

10. I have heard the learned counsel for the Plaintiff.

11. In ***UTV Software*** (*supra*), this Court, on the question of Rogue Websites, identified the following illustrative factors to be considered in determining whether a particular website falls within that class:

“59. In the opinion of this Court, some of the factors to be considered for determining whether the website complained of is a FIOL/Rogue Website are:-

- a. whether the primary purpose of the website is to commit or facilitate copyright infringement;*
- b. the flagrancy of the infringement, or the flagrancy of the facilitation of the infringement;*
- c. Whether the detail of the registrant is masked and no personal or traceable detail is available either of the Registrant or of the userX*
- d. Whether there is silence or inaction by such website after receipt of take down notices pertaining to copyright infringement.*
- e. Whether the online location makes available or contains directories, indexes or categories of the means to infringe, or facilitate an infringement of, copyright;*
- f. Whether the owner or operator of the online location demonstrates a disregard for copyright generally;*
- g. Whether access to the online location has been disabled by orders from any court of another country or territory on the ground of or related to copyright infringement;*
- h. whether the website contains guides or instructions to circumvent measures, or any*

order of any court, that disables access to the website on the ground of or related to copyright infringement; and i. the volume of traffic at or frequency of access to the website;
j. Any other relevant matter.

60. *This Court clarifies that the aforementioned factors are illustrative and not exhaustive and do not apply to intermediaries as they are governed by IT Act, having statutory immunity and function in a wholly different manner.*

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69. *Consequently, the real test for examining whether a website is a Rogue Website is a qualitative approach and not a quantitative one.”*

12. This Court, in **UTV Software** (*supra*) further held as under:

“29. *It is important to realise that piracy reduces jobs, exports and overall competitiveness in addition to standards of living for a nation and its citizens. More directly, online piracy harms the artists and creators, both the struggling as well as the rich and famous, who create content, as well as the technicians-sound engineers, editors, set designers, software and game designers-who produce it and those who support its marketing, distribution and end sales. Consequently, online piracy has had a very real and tangible impact on the film industry and rights of the owners.*

30. *The Indian Copyright Act, 1957 (“the Copyright Act”) confers a bundle of exclusive rights on the owner of a “work” and provides for remedies in case the copyright is infringed.*

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82. *One can easily see the appeal in passing a URL blocking order, which adequately addresses over-blocking. A URL specific order need not affect the remainder of the website. However, right-holders claim that approaching*

the Court or the ISPs again and again is cumbersome, particularly in the case of websites promoting rampant piracy.

83. This Court is of the view that to ask the plaintiffs to identify individual infringing URLs would not be proportionate or practicable as it would require the plaintiffs to expend considerable effort and cost in notifying long lists of URLs to ISPs on a daily basis. The position might have been different if defendants' websites had a substantial proportion of non-infringing content, but that is not the case.

84. This Court is of the view that while passing a website blocking injunction order, it would have to also consider whether disabling access to the online location is in the public interest and a proportionate response in the circumstances and the impact on any person or class of persons likely to be affected by the grant of injunction. The Court order must be effective, proportionate and dissuasive, but must not create barriers to legitimate trade. The measures must also be fair and not excessively costly (See: L'Oréal v. eBay, [Case C 324/09]).

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86. Consequently, website blocking in the case of rogue websites, like the defendant-websites, strikes a balance between preserving the benefits of a free and open Internet and efforts to stop crimes such as digital piracy.

87. This Court is also of the opinion that it has the power to order ISPs and the DoT as well as MEITY to take measures to stop current infringements as well as if justified by the circumstances prevent future ones."

13. In the present Suit as well, vide order dated 27.02.2020, this Court had granted an *ex-parte ad-interim* injunction against the defendant nos. 1 to 32 (and such other domains/domain owners/website operators/entities which have been engaging in infringing the Plaintiff's exclusive rights), restraining them from making available, streaming or

communicating the Film on their impugned websites herein or any other mirror websites.

14. This Court had further directed the defendant no. 34 to block the domain names mentioned hereinbelow:-

SL. NO.	DOMAIN NAME
1.	<i>watchonlinemovieshd.online</i>
2.	<i>hindi-torrent.xyz</i>
3.	<i>shof4u.com</i>
4.	<i>moviesktm.in</i>
5.	<i>filmi4wap.wapkiz. com</i>
6.	<i>thepiratebay0.org</i>
7.	<i>world4ufree.icu</i>
8.	<i>thepiratezbay.org</i> <i>thepiratetpb.xyz</i>
9.	<i>torrentdownload. siteunblocked.info</i>
10.	<i>thepiratebay 1 .info</i>
11.	<i>rdxh1.club</i>
12.	<i>torrentfunk.unblocked2.vip</i>
13.	<i>pirateproxy.uno</i>
14.	<i>ar.shofcima.tv</i>
15.	<i>piratemirror.live</i>
16.	<i>pirateiro.unblockit.red</i>
17.	<i>galaxy2gchufcb3z.onion.pet</i> <i>torrentgalaxy.daytorrents.com</i>
18.	<i>ofilmyzilla.net</i>
19.	<i>hdwebmovies.live</i>
20.	<i>fanhaolou.com</i>
21.	<i>moviesbaba.io</i>

22.	<i>dirtytorrents.com</i>
23.	<i>extratorrent.unblockit.red</i>
24.	<i>www3.filmymeet.co</i>
25.	<i>etv.siteunblocked.club</i>
26.	<i>downpit.com</i>
27.	<i>etv.siteunblock.pw</i>
28.	<i>bejotorrent.com</i>
29.	<i>downloadhub.blog</i>
30.	<i>7starhd.rest</i>
31.	<i>9xmovies.rocks</i>
32.	<i>9xmovies.works</i>

15. This Court had further directed the defendant no. 34 to suspend the domain names of the defendants.

16. This Court also directed the defendant nos.35 to 43 to block access to the said websites. Further, the defendant nos.44 and 45 were directed to issue a notification calling upon the ISPs and telecom service providers to block access to the listed Rogue Websites.

17. The learned counsel for the Plaintiff submits that pursuant to the order dated 27.02.2020, the defendant nos. 34 to 45 have complied with the said order of injunction.

18. Thereafter, the defendant no. 34, being a *pro forma* defendant in the present suit, sought its deletion from the Memo of Parties as it had complied with the order of injunction of this Court dated 27.02.2020.

This Court vide order dated 17.08.2021 directed that the name of the defendant no.34 be deleted from the Memo of Parties.

19. Thereafter, on 17.08.2022, the learned Joint Registrar (Judicial), passed the following order:-

“...Counsel for plaintiff submits that all the defendants have been duly served and affidavit to this effect has already been filed.

Further, the subject matter has expired long back and, therefore, matter may be decreed in accordance with law. As prayed, matter be placed before the Hon'ble Court on 18.10.2022 for further directions.”

20. Thereafter on 18.10.2022, this Court noted that the defendants nos. 1 to 32 have chosen not to file any written statement or contest the suit. They were accordingly proceeded *ex-parte* in the present suit.

21. Since the defendant nos. 1 to 32 have chosen not to enter appearance in the present suit despite service of notice, in my opinion, the suit can be heard and decided summarily. The defendant nos. 1 to 32 have no real prospect of defending the claim of infringement of the Plaintiff's Exclusive rights and have further chosen to not contest the said suit. The present matter is mainly concerned with enforcement of the injunction orders which are passed against the Rogue Websites who use the anonymity offered by the internet to engage in illegal acts of infringement. This is a fit case for passing a Summary Judgment invoking the provisions of Order XIII-A of the CPC, as applicable to commercial disputes, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules 2022 (in short, “IPD Rules”).

22. In the present case, applying the test as laid down in *UTV Software (supra)*, and considering the documents filed and the averments made in the Plaint, which remained uncontroverted, it has to be held that the defendant no. 1 to 32 are 'Rogue Websites', with their primary purpose being to commit and facilitate infringement of the Exclusive rights of the Plaintiff. The Plaintiff is therefore held entitled to a decree in terms of prayers made in paragraph no. 59 (i), (iii) and (iv) of the Plaint.

23. Accordingly, I.A. 18851 of 2022 under Order XIII-A read with Section 151 of the CPC, as applicable to commercial disputes, seeking a Summary Judgment is allowed.

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24. In view of the above, the suit is decreed in terms of prayers mentioned in paragraph no. 59 (i), (iii) and (iv) of the Plaint. As far as the defendant no. 34 is concerned, it has already complied with the prayer in terms of paragraph no. 59 (ii) of the Plaint and has subsequently been deleted from the Memo of Parties vide order dated 17.08.2021. The Plaintiff is also permitted to implead any mirror/redirect/alphanumeric websites which provide access to the defendants nos. 1 to 32 websites by filing an appropriate application under Order I Rule 10 of the CPC, supported by affidavits and evidence as directed in *UTV Software (supra)*. Any website impleaded as a result of such application will be subject to the same decree.

25. The suit and the pending application is accordingly disposed of.

26. Let a decree sheet be drawn up accordingly.

NAVIN CHAWLA, J.

NOVEMBER 30, 2022/DJ



Signature Not Verified

Digitally Signed By:RENUKA

NEGI

Signing Date:01.12.2022CS(COMM) 95/2020

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