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

+ CS(COMM) 289/2021

SONY PICTURES NETWORK INDIA
PRIVATE LIMITED

..... Plaintiff

Through Ms. Shilpa Gannani, Adv.

Versus

WWW.SPORTSALA.TV AND OTHERS

..... Defendants

Through Mr. Chetan Sharma, ASG with

Mr. Harish Vaidyanathan Shankar, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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04.06.2021

This hearing is conducted through video-conference.

IA No.7461/2021(court fees)

The court fees may be filed within six weeks from today.

The application stands disposed of.

IA No. 7462-63/2021(exemption)

The applications are allowed subject to all just exceptions.

IA No. 7464/2021(u/s 80 CPC)

In view of averments made in the present application, the same is allowed. The plaintiff is exempted from serving a notice under section 80 of the Code of Civil Procedure, 1908.

I may note that learned Solicitor General has appeared for Union of India in the matter on receipt of an advance copy of the present suit.

CS(COMM) 289/2021

Let the plaint be registered as suit.

Learned Additional Solicitor General has entered appearance for Union of India.

Issue summons to the other defendants by email, returnable for 14.07.2021.

IA No. 7459/2021(Order 39 Rules 1 & 2)

1. This application is filed under Order 39 Rules 1 & 2 CPC. It has been filed seeking the following reliefs:-

“I. Pass an order of interim injunction restraining the Defendants, their partners, proprietors, their officers, servants, agents and representatives, franchisees, head-ends and all others in capacity of principal or agent, acting for and on their behalf from:

a. broadcasting / communicating, telecasting, to subscribers or otherwise, through any means, the India Tour of Australia 2020 (typographical mistake in the application), whether through the Plaintiff's Channels (viz. SONY TEN 1, SONY TEN 1 HD, SONY TEN 2, SONY TEN 2 HD, SONY TEN 3, SONY TEN 3 HD, SONY TEN 4, SONY TEN 4 HD, SONY SIX, SONY SIX HD, or any other channel or any other signal piracy;

b. transmitting / communicating to public / making available any match, footage, clip, audio-video, audio only and/or any part of the India Tour of Australia 2020 (typographical mistake in the application), including live score updates, play-by-play and/or textual and/or audio only commentary, through any website, application and/or any other digital platform through internet, mobile and /or radio delivery and;

c. reproducing, making sound and/or visual recordings of

the Plaintiff's Channels or the feed thereof and communicating the same to the public without authorization of the Plaintiff; or doing any other thing as is likely to lead to infringement of the exclusive rights of the Plaintiff in the Sporting Events, shall form part of the Plaintiff's channel.

II. Pass an order making the aforesaid injunction order applicable to the mirror/redirect/alphanumeric websites created by the Defendant Nos. 1 to 46 or by any other person to grant access to the websites of Defendant Nos. 1 to 46;

III. Pass an order directing the Station House Officer(s) of the concerned police station(s) to render necessary assistance to the Plaintiff in restraining the Defendants from violating/infringing the Plaintiff's copyright in the broadcast and related activities, pertaining to the Sporting Events;

IV. Pass an order giving the Plaintiff liberty to notify all search engines and seek take down/deletion from their search results pages, listings of websites/ URLs which are infringing upon the Plaintiff's copyright and broadcast reproduction rights;

V. Pass an order directing the Registry to assist with the service of notice of injunction on "Ashok Kumars" / MSOs / LCOs as and when the Plaintiff finds any unlicensed communication to the public of the India Tour of Australia 2020 from specific locations / head-ends;

VI. Pass an order directing Defendant Nos. 112-143 to disclose the details of all servers being used by Defendant Nos. 1 to 50; and any other websites that are found to be indulging in the unauthorized /pirating activity;

VII. Pass an order directing Defendant Nos. 112-145 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;

VIII. In respect of Defendants that are currently not identified and/or are unknown as of date, an order may be passed imposing the following conditions:

- i. The said Defendant(s) be restrained in terms of prayer (I) stated above;
 - ii. The prayer for appointment of two (2) Local Commissioners with the attendant powers may be applied in respect of the said Defendants as well;”
2. The reliefs as prayed in the suit are as follows:-

“I. Pass a decree of permanent injunction restraining the Defendants, their partners, proprietors, their officers, servants, agents and representatives, franchisees, head-ends and all others in capacity of principal or agent, acting for and on their behalf from:

a. broadcasting / communicating, telecasting, to subscribers or otherwise, through any means, the India Tour of England 2021 and the India Tour of Sri Lanka 2021, whether through the Plaintiff’s Channels (viz. SONY TEN 1, SONY TEN 1 HD, SONY TEN 2, SONY TEN 2 HD, SONY TEN 3, SONY TEN 3 HD, SONY TEN 4, SONY TEN 4 HD, SONY SIX, SONY SIX HD or Plaintiff’s Platform, or any other channel or any other signal piracy;

b. transmitting / communicating to public / making available any match, footage, clip, audio-video, audio only and/or any part of the India Tour of England 2021 and the India Tour of Sri Lanka 2021, including live score updates, play-by-play and/or textual and/or audio-only commentary, through any website, application and/or any other digital platform through internet, mobile and /or radio delivery and;

c. reproducing, making sound and/or visual recordings of the Plaintiff’s Channels or the feed thereof and communicating the

same to the public without authorization of the Plaintiff; or doing any other thing as is likely to lead to infringement of the exclusive rights of the Plaintiff in the India Tour of England 2021 and the India Tour of Sri Lanka 2021, shall form part of the Plaintiff's channel.

II. Pass an order making the aforesaid injunction order applicable to the mirror/redirect/alphanumeric websites/mobile applications created by the Defendant Nos. 1 to 50 or by any other person to grant access to the websites/mobile applications of Defendant Nos. 1 to 50;

III. Permit the Plaintiff to file an affidavit before the Joint Registrar to implead the mirror/redirect/alphanumeric websites/mobile applications under Order I Rule 10 CPC in the event they merely provide new means of accessing the same primary infringing websites that have been enjoined;

IV. Pass an order giving the Plaintiff liberty to notify all search engines and seek take down/deletion from their search results pages, listings of websites/ URLs/mobile applications which are infringing upon the Plaintiff's copyright and broadcast reproduction rights;

V. Pass an order directing Defendant No. 112-143 to disclose the details of all servers being used by Defendant Nos. 1 to 50; and any other websites/mobile applications that are found to be indulging in the unauthorized/pirating activity;

VI. Pass an order directing the Registrants of Defendant Nos. 43– 46 websites to disclose the name of the owners of the aforesaid websites which distribute the application Thop TV;

VII. Pass an order for damages in favour of the Plaintiff subject to infringement of Plaintiff's right by Defendants, as stated in this Suit;

VIII. In respect of Defendants that are currently not identified and/or are unknown as of date, an order may be passed imposing the following conditions:

i. The said Defendant(s) be restrained in terms of prayer(I) stated above;

ii. The prayer for appointment of two (2) Local Commissioners with the attendant powers may be applied in respect of the said Defendants as well;

IX. 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;

X. An order for delivery up of all the apparatus that the Defendants may use to re-transmit and/or store the broadcasts of the India Tour of England 2021 and the India Tour of Sri Lanka 2021, and related content or any other infringing material to the authorized representatives of the Plaintiff for the purpose of destruction;”

3. It is pleaded in the accompanying suit that the suit is filed seeking an order of permanent injunction against the defendants to restrain them from infringing the rights of the plaintiff in the forthcoming India – England International Cricket Series 2021 (India Tour of England 2021) as well as the India–Sri Lanka International Cricket Series 2021 (India Tour of Sri Lanka 2021). It is stated that The India Tour of Sri Lanka consists of three (3) T-20 matches and three (3) one-day matches whereas The India Tour of England 2021 consists of five (5) test matches scheduled in July and August respectively.

4. It is stated that the plaintiff has acquired an exclusive license for exploitation of media rights and right to sublicense in respect of the said Sporting Events. It is pleaded that the present suit is initiated against

websites/ Uniform Resource Locators (URLs), Multi System Operators (MSO)/ Local Cable Operators (LCO) who are habitual defaulters and have in the past also infringed the Plaintiff's exclusive rights for the broadcast of such matches. The Internet Service Providers (ISP's) and Statutory government bodies have been impleaded as proforma parties for the purpose of implementation of order of this court against the infringing parties.

5. It is the case of the plaintiff that it has acquired from England and Wales Cricket Board Limited (ECB) and Sri Lanka Cricket (SLC) an exclusive license to broadcast / communicate to the public in the territories of India, Pakistan, Afghanistan, Sri Lanka, Nepal, Bangladesh, Bhutan, Myanmar and the Maldives for the India Tour of England 2021 and worldwide, excluding Sri Lanka in respect of the India Tour of Sri Lanka 2021. The rights acquired by the plaintiff have been spelt out in the plaint.

6. Defendants No. 1 to 42 are said to be websites engaged in the business of uploading pirated and unlicensed content. Among the various illegal acts done by them are live streaming of Sporting Events. Unauthorized communication to public of the Sporting Events will result in losses to the Plaintiff as also losses to the Government of revenue collected through taxes, which is not recovered /recoverable from these pirated websites. Defendant No. 43 – 46 are websites which distribute the mobile platform named “Thop TV” which illegally exploits the Plaintiff's content by permitting its users to view/download the same through phones/laptops without having obtained a license or authorization from the Plaintiff. Defendant Nos. 47 to 50 are collaborator websites of Defendant Nos. 43 – 46. Defendant No. 51 to 111 are multi system operators (MSO) and local cable operators (LCO) respectively which are governed by the Cable

Television Networks (Regulation) Act, 1995 and the Telecom Regulatory Authority of India Act, 1997. It is stated that there are several such operators all over the country who are engaged in unauthorised and unlicensed reproduction and broadcast on the local channels and through other means, of various copyrighted content, including but not limited to the matches of the said sporting events through the cable network. Defendant Nos. 112–143 are Internet Service Providers who are engaged in the business of providing basic telephony, mobile services and broadband network all over the world and are covered under the Information Technology Act, 2000, the Copyright Act, 1957, the Telecom Regulatory Authority of India Act, 1997 and Ministry of Communications and Information Technology. These Defendants, it is stated, provide a medium to access World Wide Web (WWW) and telecommunication services through wired and wireless telephony to their respective customers. It is pleaded that in the absence of any specific order from this court, the plaintiff's objective of protecting its copyright in the said matches cannot be obtained.

7. The defendant Nos. 144 and 145 are Union of India through the Ministry of Electronics and Information Technology and Union of India through the Department of Telecommunications under the Ministry of Communications. It is urged that defendant Nos. 112 to 143 have been made a party for the limited purpose of enabling compliance of this court's directions. Similarly, defendants No. 144 and 145 have been arrayed as defendants in the present proceedings purely for ensuring compliance.

8. Defendant No. 146 is an unknown person who the plaintiff apprehends will infringe the copyright of the Plaintiff as regards broadcast and digital transmission rights for the said sport events. The said defendant

named as 'Ashok Kumar' has been impleaded with a view to facilitate the service of summons upon, and the extension of the injunction to parties who violate the plaintiff's rights. It is pleaded that owing to the special nature of broadcasting and digital transmission rights in the Sporting Events, it is not possible to specifically identify all the defendants at this stage.

9. In view of the submissions made in the plaint, application and supporting affidavits and documents, the fact that the plaintiff has exclusive media rights from ECB and SLC as detailed hereinbefore, a prima facie case is made out in favour of the plaintiff to have protection against the illegal transmission, broadcasting, communication, telecast and unauthorized distribution of any event, match, footage, clip, audio-video, audio only of India Tour of England 2021 scheduled to be held from 04.08.2021 till 14.09.2021 and India Tour of Sri Lanka 2021 to be held from 13.07.2021 to 27.07.2021. In case the plaintiff is not granted an injunction protecting its rights against the defendants, the plaintiff is likely to suffer an irreparable loss and injury, which cannot be compensated in terms of money. I find the balance of convenience in favour of the plaintiff.

10. Therefore, the following interim directions to protect the interest of the plaintiff are issued:-

(i) Defendant nos. 1 to 50 are restrained from, in any manner, hosting, streamlining, reproducing, distributing, making available to the public and/or communicating to the public or facilitating the same on their websites through the internet in any manner whatsoever, any cinematograph work, content, programme and show or event in which the plaintiffs have copyright.

(i)(a) This injunction shall also operate in respect of the mirror/redirect/alphanumeric websites, which are put in play by defendant nos. 1 to 50 to grant access to the websites.

(ii) Defendant nos. 112 to 143 are directed to block access to the websites of defendant nos. 1 to 50.

(ii)(a) This direction will also operate *qua* mirror/redirect/alphanumeric websites, which have their roots in the websites of defendant nos. 1 to 50.

(iii) Defendant nos. 51 to 111 and defendant No. 146 are restrained from, in any manner to host, stream, reproduce, distribute, broadcast, make available to the public and/or communicate to the public any unauthorized and unlicensed reproduction or broadcast on the local channels or through other means of various copyrighted content, including but not limited to the matches of the said sporting events through cable network.

(iv) Defendant nos. 144 and 145 shall issue necessary directions/notifications calling upon various ISPs, in general, to block access to the websites of defendant nos. 1 to 50 as also *qua* mirror/redirect/alphanumeric websites of the said defendants.

(iv) The plaintiffs are given liberty to file an application under Order I Rule 10 of the CPC to array other rogue websites if the same are discovered after the issuance of the instant interim order. The purpose being that the Court, in these cases, needs to dynamically monitor such egregious illegality and, if necessary, pass interim orders to restrain similar rogue websites from illegally streaming the creative content in which the plaintiffs have a copyright.

11. Learned Additional Solicitor General has entered appearance for Union of India.

12. Issue notice to the other defendants by email, returnable for 14.07.2021.

13. The plaintiff to comply with the provision Order 39 Rule 3 CPC within one week from receipt of the copy of this order.

IA No. 7460/2021 (u/O 26 R 9 CPC)

1. The plaintiff/applicant seeks appointment of Local Commissioners. Learned counsel for the plaintiff submits that presently at least 2 Local Commissioners may be appointed.

2. In view of the above said reasons, this court considers appropriate to appoint Local Commissioners in respect of the defendants who are Multi System Operators (MSOs) and Local Cable Operators (LCOs). Accordingly (i) Mr. K. M. Singh, Advocate (Mobile No.: 9818333616) (ii) Mr. Siddhant Asthana, Advocate (Mobile No.: 9818501011) are appointed as Local Commissioners.

3. As and when these Local Commissioners or either of them receive information from the plaintiff, they are entitled to undertake the following steps: -

(i) to ascertain whether these defendants are unauthorizedly distributing or transmitting the said events, namely, India Tour of England 2021 scheduled to be held from 04.08.2021 till 14.09.2021 and India Tour of Sri Lanka 2021 scheduled to be held from 13.07.2021 to 27.07.2021 or communicating/redistributing the said events/matches without the licence of the plaintiff;

(ii) to search the property and inspect/seize the equipment's being used for unauthorized distribution or redistribution and take the same into custody, if in case they are found to broadcast, distribute or communicate to

the public, the contents of either of the events or part thereof and upon preparing the inventory and sealing them, release the same on *Superdari* to the said defendants.

(iii) to seize books of accounts including ledgers, cash books etc. in the said premises of the defendants if they are found unauthorizedly distributing or transmitting the said sporting events. The Local Commissioner(s) will be at liberty to break open locks.

(iv) to make a sample recording of illegal transmission, if possible and take the photographs.

4. The Local Commissioner(s) shall be empowered to have the assistance of SHO of the area concerned, if so required. In case such assistance is asked for by the Local Commissioner(s), the same shall be provided without any fail by the concerned SHO. The defendants are directed to cooperate with the Local Commissioner(s). The representatives and the learned counsel for the petitioner are also allowed to assist the Local Commissioner(s). The Local Commissioner(s) shall be paid a fee of Rs.1,00,000/- per day apart from actual expenses. The plaintiff will provide all necessary facilities to the Local Commissioners.

5. The application stands disposed of.

JAYANT NATH, J

JUNE 4, 2021/rb