

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

+ **CS(OS) 1913/2002**

Reserved on : January 30, 2008
Decided on : February, 18, 2008.

TIME WARNER ENTERTAINMENT, L.P.& ORS. Plaintiff
Through Mr. C.M. Lall, Advocate with
Mr.Manish Dhir, Advocate

versus

SUDHIR SHIVRAM JADAV Defendant
Through

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether reports of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

MR. JUSTICE S. RAVINDRA BHAT

1. In the present suit the Plaintiffs seek decree of permanent injunction, restraining the Defendant from infringing their copyright, from using any unlicensed copies of their works and also to direct the defendants to hand over infringing copies and plates as well as to render accounts of the profits made by it.

2. The relevant facts of the case are as follows. The plaintiffs are nine Corporations incorporated in the Unites States who, either

themselves and/or their associated and affiliated companies carry on business of film production; they are owners, co-owners, assignees, licensees of rights, titles and have interests in and to the copyrights in the films produced by them. The Plaintiffs' films are widely distributed in formats such as Video Cassettes, Video Compact Discs (VCD), Laser Discs (LD) and Digital Versatile Discs (DVD). The Defendant, a video library, regularly sells and gives on rent and hires well-known Indian titles through their outlet or by way home delivery.

3. On 23rd May 2002 a Police raid against the Defendant was conducted resulting in a seizure of pirated 872 Video Compact Discs (VCD's) and 249 DVD's from their godown at Shabana Cottage, Ground Floor, Janhu Gauthan Door NO.2, Juhu, Mumbai and FIR No. 10/2002 was registered against them. Another raid was conducted on October 16th, 2002 once again resulting in a large seizure of 889 VCD's and 130 DVD's. In furtherance of the same, a First Information Report (FIR) bearing No. 20/2002 was registered with the Police Station Social Service Branch, Mumbai. This suit was instituted thereafter.

4. It is averred by the Plaintiffs, that they are the producers & the copyright owners of various titles, which have either been released and/or are due for release in the near future. It is alleged that the defendant deals with films (whose copyright vests with the

Plaintiffs) without a license and suit copies are used by cable networks all over India to exhibit the movies on their local channels. The Plaintiffs submit that the exhibition of even a single unauthorized film is capable of causing irreparable injury and damage to them. They aver that exhibition of pirated copies of films, duplicated for the purpose of sale or rental by the Defendant, results in reduced viewership at cinema halls and theaters, which additionally results in huge losses to the exchequer by way of collection of taxes, including entertainment tax. Therefore, they aver that the Court must grant a mandatory injunction in their favour and that Defendant must render accounts in relation to profits.

5. On 26th November 2002 the plaint was registered and summons were issued to the Defendants. Since repeated summons to the Defendants did not yield results, through order dated September 17th 2003, it was the Defendant was sent down ex-parte. By virtue of an order passed in I.A. No. 10966/2002 (Plaintiffs' application under Order XXXIX Rule 1 & 2 CPC) the Defendant were restrained from dealing with infringing copies of works in which the Plaintiffs enjoy copyright and also from doing anything without a license granted by the Plaintiffs, the exclusive right for doing which under the relevant laws are conferred upon the Plaintiffs. However, injunction was granted only with respect to those works, titles of

which were submitted with the Plaint and no injunction was granted for future works. The same was upheld in appeal.

6. In support of their claims the Plaintiffs have filed a list of titles in which they own copyrights (Ex PW1/3), a compact disc containing the list of titles held by the Plaintiffs (Ex PW1/4), copies of film certification granted to the Plaintiffs by the Central Board of Film Certification (Ex PW1/A), copies of Power of Attorney granted in favour of their constituted attorney (Ex PW1/1 and Ex Pw1/2) by the Plaintiffs and also the certified copies of the FIR filed in Mumbai (Ex PW1/B). The Plaintiffs have also filed copies of injunction orders granted in their favour against cable operators from using the copyrighted works of the Plaintiffs without license (Ex PW1/C and Ex PW1/D). Evidence by way of affidavit also given by Sh. K S Saha, the Constituted Attorney of the Plaintiffs and the same was duly recorded by the Court on 18th January 2007.

7. The pleadings and materials on record, and the testimony led in support of its case, establishes that the plaintiff are owners of copyright in respect of the film titles Ex PW1/3 and Ex PW1/4. The defendant, a video library, was found in possession of 1771 infringing copies of VCDs and 379 DVD seized during two separate raids. The plaintiff has also shown that criminal proceedings are pending against the defendant. Sections 13, 14 and 17 of the Copyright Act protect

the plaintiff's copyrights in the works. The defendants have chosen not to contest these proceedings. On the available materials, the plaintiffs are entitled to a decree for permanent injunction restraining the defendants from infringing the copyright of the plaintiffs in the works mentioned in Ex PW1/3.

8. So far as future work of the plaintiffs are concerned, the relief is a sort of blanket and universal injunction. The nature of works which are likely to be produced, nature and kind of infringement, propensity of the defendant to indulge in further infringement etc. have not been disclosed. The plaintiff also does not have any cause of action - nor does the suit disclose any so far as the defendant's likelihood of infringing its future works are concerned. Therefore, permanent injunction in respect of future works and copyright for such work cannot be granted.

9. For the above reasons, the suit deserves to succeed. The suit is decreed in terms of para 7 of this judgment; let a decree for permanent injunction restraining the defendants from infringing the plaintiff's copyrights in the works mentioned in Ex. PW-1/3 be drawn.

10. No costs.

S. RAVINDRA BHAT,J

FEBRUARY 18, 2008