

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

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CS (OS) 607/2000

Reserved on 30.01. 2008

Date of decision : 29th February, 2008

Time Warner Entertainment Company I.P & Others Plaintiffs

Through : Mr. C.M. Lall, Advocate

:: VERSUS ::

RPG NETCOM LTD.,

... Defendant

Through:

CORAM:

Mr. Justice S. Ravindra Bhat :

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| 1. | Whether reporters 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 ¹ Digest? | Yes. |

MR. JUSTICE S. RAVINDRA BHAT:

1. The Plaintiffs in the present Civil Suit seek a decree of permanent injunction restraining the Defendant from telecasting or broadcasting on their cable network any cinematograph film, the copyright in which vests in them. They also seek from this Court, a decree directing the Defendant to hand over possession of infringing copies and a decree in their favour for the profits made by the Defendant.

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2. The facts of the case may be summarized as follows. The Plaintiffs, US based corporations, along with their affiliated companies and concerns are carrying on business of film production. They own various interests in and to the copyright in the films produced by them. It is averred that investigations conducted at the behest of the Plaintiffs revealed that Defendants were exhibiting films on its network. The copyrights in those works belong to the Plaintiffs and the defendants were exhibiting them without licenses. The Plaintiffs also allege that most of the times the films so shown were pirated copies of their works. In relation to these causes, the plaintiffs have approached this Court, claiming perpetual injunction to restrain the defendant from committing acts of infringement. Their claims, they submit in the present action are not limited to existing films in which copyright subsists but also in relation to future works.

3. The Plaintiffs aver that by virtue of their films having been published in a country included in the First schedule of the International Copyright Order, 1991, read with the relevant provisions of the Copyright Act, 1957 (hereafter referred to as “the Act”), they have exclusive claims to the rights mentioned in section 14 of the Act. The Plaintiffs aver as to the complex nature of the film production process, the various stages of release of the films, the distribution networks and the impact of new media on the film industry. Especially, they aver as to the impact of the cable television revolution on the film industry and the subsequent need to protect the interests of the producers in the said works. They aver that such unauthorized telecasting of their works causes irreparable harm and injury to them. The plaintiffs submit that this trend not merely affects their

rights in the existing titles but also affects their future releases. They insist that even one unauthorized telecast is capable of reaching several thousand homes and to that extent they suffer huge losses in relation to release and sale rights.

4. The Plaintiffs have relied on a number of newspaper reports and proceedings at National Conference on Challenges to Indian Cinema in relation to the impact of cable television on film producers. Relying on the website of the Defendant, they submit that the latter has a 75% cable market share in Calcutta and is providing cable signals to 216 franchisees covering more than 2200 cable operators. The plaintiffs also allege that the Defendant intended to launch a joint venture company with M/s Satyam Infoway Ltd. to provide value added services, including video on demand. Emphasizing the need for a regulator to monitor the content of the cable network providers, the plaintiffs aver that the cable operators thrive in a culture of impunity as it is very difficult for Plaintiffs to collect evidence of such unauthorized licensing and police the network.

5. The Defendant avers that the suit is liable to be dismissed for non-joinder of necessary parties to the present action. It alleges that the suit discloses no cause of action against it and that all allegations made in the plaint pertain to a cable operator in New Alipore, Kolkata. The Defendant submits that it is registered as a Cable TV operator under the Cable TV Networks (Regulations) Act, 1995 (hereafter referred to as the Cable TV Act). It submits that it only receives satellite/terrestrial transmission of various channels and carries television software produced by independent production houses and delivers the same at the Signal Injection Point of various other cable operators.

Thereafter, these signals are relayed to individual subscribers. It submits that it has no control over these Cable Operators, as far as the programmes aired by them are concerned.

6. The defendants further submit that Ms. Dalia Sen Oberoi cannot act as the constituted attorney of the Plaintiffs as she had been a lawyer with the law firm engaged by the Plaintiffs to file the present case. It is also submitted that the Power of Attorney filed by the Plaintiff is neither stamped nor proper and is not admissible as evidence.

7. After filing their written statement, the defendants stopped appearing in the proceedings. They were, consequently, set down *ex-parte*. The plaintiffs were permitted to lead affidavit evidence.

8. The Plaintiffs have filed evidence by way of affidavit (Exhibit –PW 1/X) and the same was recorded in Court on 18th September 2007. They have also filed copies of Power of Attorney in favour of Mr. Kapil Saha (Exhibit PW 1/2), a list of titles in which they own copyright (Exhibit PW1/3), a compact disc containing the list of films (Exhibit PW1/4) and also photocopies of certificates of the Censor Board in relation to some of the aforesaid films.

9. Section 13 (1) (b) of the Copyright Act, 1957 provides that copyright subsists in cinematograph films. According to Section 14, "copyright" means the exclusive right subject to the provisions of the Act, to do or authorize the doing of anything (in the case

of cinematograph films) to make a copy of the film, including a photograph of any image forming part thereof; to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions and to communicate the film to the public.

10. The plaintiffs have averred that they own copyright in relation to the cinematograph works mentioned in the annexure to the suit. It is also averred, and the plaintiffs' witness has deposed in that regard, that the defendant indulged in acts of infringement on the various dates specified, by exhibiting the cinematograph works in its system, without license. The defense of the defendant is that it only provides content to the other cable operators, but has no control over their activities.

11. The Cable Television Networks (Regulation) Act, 1995 (hereafter "the Cable Act"), provides, by Section 2 (c) that "cable television network" means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers. Section 21 of the Cable Act provides that the application of other laws, including the Copyright Act is not barred. Rule 6 (3) of the Cable Television Network Rules 1994 states that:

"No cable operator shall carry or include on his cable service any programme in respect of which copyright subsists under the Copyright Act, 1957 unless he has been granted a licence by owners of copyright under that Act in respect of such programme."

12. There can be no denial of the fact that the defendant is a cable television network owner, in terms of Section 2(c) of the Cable Act; it is therefore in control of closed transmission paths and associated signal generation, and owns control and distribution equipment, designed to provide cable service for reception by multiple subscribers. That some of these subscribers happen to be cable operators, who are able to manipulate the system, or indulge in acts of piracy, is no excuse for the defendant, in law. Its primary obligation is to ensure that the closed transmission paths and associated signal generation are carried out in such manner as to not result in violation of others' rights, in existing laws, such as the Copyright Act.

13 . As far as multiplicity of plaintiffs and their common representation in the proceedings are concerned, the provision of Order 1 Rule 1 CPC enables several parties to join as plaintiffs, all persons under the right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions exists. In view of this provision, and Section 134 (4) of the Trade and Merchandise Marks, 1999, since the plaintiffs have offices in New Delhi, this Court possesses jurisdiction to try the suit.

14 . During the submissions, the counsel for plaintiffs had restricted the claim to the decree for injunction, in respect of the plaintiffs' specified and future works. This Court is of the opinion that the plaintiffs have established a case for grant of injunction as regards the existing and specified titles. However, as far as future works are concerned, the relief would be based on assumption of future violation by the defendants. No evidence is forthcoming that the defendant's business, or process of carrying on business is such that there is imminent threat of infringement. In any case, the plaintiff has not established how injunctions for anticipated threats to future properties can be granted.

15 . In view of the above discussion, and the fact that the defendant has not stepped forward to refute the allegations of the plaintiff, deposed by its witness, the court finds for the plaintiff. Accordingly, the court issues a permanent injunction against the defendant, its servants, agents, distributors, etc, restraining them from doing any act, or transmitting signals or broadcasting, or carrying in its network, any cinematograph film or work mentioned in the Annexure to the suit, without prior license of the plaintiff.

16 . The suit is decreed in the above terms. No costs.

Dated : 29th February,2008

(S. RAVINDRA BHAT)
JUDGE