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Date of decision: 21.10.2010

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NEO SPORTS BROADCAST PRIVATE LTD. .... Plaintiff  
Through : Sh. Jagdish Sagar and Ms. Tanvi Misra, Advocates.

versus

NEW SANJAY CABLE NETWORK & ORS. .... Defendants  
Through : Sh. Varun Singh, Advocate, for Defendant No.4.

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

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

**MR. JUSTICE S.RAVINDRA BHAT, J (OPEN COURT)**

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1. Learned counsel for the plaintiff submits that upon instructions the claim against Defendant Nos. 1 to 3 may be treated as abandoned. The suit is therefore, dismissed against the said defendants.
2. The fourth defendant, M/s. Hotel Sunbeam has not filed a written statement. This Court had entertained the suit and issued summons in this case on 17.10.2008. The plaintiff *inter alia* claims permanent injunction for alleged copyright infringement of its broadcast rights. It alleges that the third defendant was unauthorizedly transmitting feeds to its customers for commercial gains. As far as the fourth defendant hotel is concerned, it is claimed that the offering of such broadcasts to its customers amounts to unauthorized public performance. In these circumstances, apart from permanent injunction, the plaintiff also claims other consequential reliefs.

3. On the first date of hearing, the Court issued temporary injunction in the following terms:

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*Issue notice in terms of the above order, for 27th January, 2009.*

*The plaintiff is a broadcaster having copyright over broadcasting of test matches between India and other countries pursuant to agreement entered into between the plaintiff and Board of Control for Cricket in India (BCCI). Learned counsel for the plaintiff has drawn my attention to Section 2(dd) and (ff) read with Sections 30 and 37 of the Copyright Act, 1957. He has also drawn my attention to the allegations made against the defendants in paras 18, 19 and 20 of the plaint. It is submitted that the defendant Nos. 1 to 4 are violating copyright of the plaintiff.*

*In view of the above, I feel that the plaintiff has been able to make out a case for grant of ex parte injunction and irreparable loss will be caused to the plaintiff if defendant Nos. 1 to 4 are not restrained from violating copyright of the plaintiff. Accordingly, defendants and their directors, partners, proprietors, officers, servants, agents and representatives are restrained from unauthorizedly broadcasting, telecasting, distributing and transmitting television programmes on the NEO SPORTS and NEO CRICKET channels contrary to the provisions of the Copyright Act, 1957. It is clarified that the defendant nos. 1-4 will be entitled to broadcast and distribute television programmes on NEW SPORTS and NEO CRICKET in accordance with law.*

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4. The Local Commissioner, Ms. Renu, Advocate appointed by the Court visited the fourth defendant’s premises on 19.10.2008; her report records as follows:

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4. *That we entered in the Hotel and went to the bar Room. I noticed that the projector was already displaying LIVE telecast of NEO SPORTS AND NEO CRICKET and on my directions few photographs were taken.*

5. *That after seeing the LIVE Telecast of the channel I called a man who was present there and on asking he told me his name as Subhash working at the post of Captain. I asked him that I wanted to meet the higher officer of the hotel. I was informed that the General Manager is incharge and is responsible for running activities of the Hotel and he is out of town. Then I asked as to who is the next officer after him. He told that Mr. Naveen is the manager and incharge of the Hotel after General Manager then I met him and told about the order passed by the Hon’ble High Court of Delhi. The copy of the said order was handed over to him and he accordingly read it. After going through the said order he refused to accept and the same was not signed and returned the order sheet back. On*

*inquiry about the LIVE Telecast of NEO SPORT Channel he admitted the fact that it is transmitting not only in the Bar Room but all over the rooms in the Hotel. I asked him to produce the agreement/certificate/license for using the said channel. He told that it would be in possession of General Manager. He did not show me any relevant document to me about the said use of the channel.*

6. *That on inquiry about the General Manager he told me that Mr. Vikram Vig is out of town. Then the manager contacted Mr. Vig on telephone and I had also talked to him and I inquired from him on telephone about the illegally and unauthorized broadcasting, telecasting, distributing and transmitting, NEO SPORTS AND NEO CRICKET, he told me that he is out of town and can not come to-day and his Administrative and Accounts branch is closed due to Sunday. I specifically asked about the illegally and unauthorizedly telecasting, distributing and transmitting, NEO SPORTS AND NEO CRICKET, and documents in that regard but he did not gave any satisfactorily answer.*

7. *That the photographs were taken of the projector displaying the NEO SPORTS along with the background of the Bar Room with a man named Mr. Dinesh Kumar who is bar steward having register of Hotel Sunbeam displaying the Hotel's logo only for assurance that he is the permanent employee of the hotel. But the same was not received due to technical problem in the camera. The camera was only flashing lights.*

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5. The fourth defendant has, despite service and entering appearance not chosen to file any written statement. The time permitted by the Court to file such defence has long since expired. In the circumstances, the Court is of the opinion that the averments in the suit and the materials placed on the record are sufficient to proceed to exercise its powers under Order VIII Rule 10. The suit averments are that the plaintiff is a separate broadcasting channel engaged in producing, procuring and telecasting sports-based television programmes to the public. It owns two separate channels – NEO SPORTS and NEO CRICKET. It is claimed that the plaintiff distributes the content in the said two channels on 24-hour basis on payment. It is further stated that Nimbus Communication Limited was licensed to exploit, distribute various events organized by the Board of Control for Cricket in India (BCCI) through a license agreement dated 28.02.2006. It also refers to a contract dated 01.03.2006 between Nimbus Communication Limited and Zenith Sports Private Ltd. The plaint describes various sporting events, particularly cricket matches, which were being telecast through satellite on various dates; it is contended that the plaintiff's business depends on the intellectual property rights, particularly, broadcast and representation rights granted under the Copyrights Act.

6. The plaintiff complains in the suit that the first second and third defendants - cable operators in Delhi, Ghaziabad and Moradabad were broadcasting the India-Australia matches without appropriate licensing or authorization. As far as the fourth defendant is concerned, it is claimed that it is a hotel which similarly makes available the cricketing events broadcast through NEO SPORTS & NEO CRICKET to its clients leading to unauthorized public performance

7. In support of the averments, the plaintiff has produced various documents, including license agreements with Nimbus Communication Limited and Zenith Sports Private Limited. The plaintiff has also produced documents in support of its claim that its programmes are popular; in addition, it relies upon the previous orders of this Court in cases involving allegations of copyright infringement.

8. The plaintiff claims that its broadcast reputation rights embodied in Section 37 so far as the telecast of the live events are concerned, and the copyrights subsisting by virtue of Section 14(1)(c), are infringed. The materials on record, particularly the Local Commissioner's report indicates that the defendants were causing live broadcasts in the NEO Sports and NEO Cricket to be viewed by their clients. The definition of "communication to the public" in Section 2(f)(f) of the Copyright Act, 1957 reads as follows:

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“communication to the public” means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

*Explanation- For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.*

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9. Similarly, “broadcast” is a species of communication to the public; it has been defined by Section 2(d)(d) as follows:

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“broadcast” means communication to the public-  
(i) By any means of wireless diffusion, whether in any one or more of the

*forms of signs, sounds or visual images; or*  
(ii) *By wire, and includes a re-broadcast;]*

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10. By virtue of Section 51(a), when anyone, without a license granted by the owner of the copyright or in contravention of conditions of license or of any license imposed by competent authority, does anything the exclusive right to which is conferred on the copyright owner, it amounts to infringement. The making available to the fourth defendant’s clientele, (even if to selected clientele, of those who frequent the bar or certain sections of hotel), of the broadcast, in this Court’s opinion, amounts to commercial use of the broadcast and also amounts to making available the content to the public. In these circumstances, the defendants, to the extent of placing a television set and making available the sports channels for viewing by its customers/clientele does infringe the copyright. However, the evidence on record shows that the infringement was only in one instance. In the circumstances, ends of justice would be met with if decree for permanent injunction and reasonable or nominal costs are granted. In view of the above discussion, the suit is decreed in terms of paras 25(i); the plaintiff shall also be entitled to costs quantified at ₹ 50,000/-; same shall be paid to the plaintiff within three months. The suit is decreed in the above terms.

**S. RAVINDRA BHAT**  
**(JUDGE)**

**OCTOBER 21, 2010**  
**‘ajk’**