

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

% Judgment delivered on: 24th November, 2014

+ **I.A. No. 16913/2009 in CS(OS) No.2509/2009**

AMB TALENT MEDIA PRIVATE LIMITED Plaintiff
Through Ms. Vaishali Mittal, Adv. with
Ms. Neha Reddy and Mr.
Siddhant Advs.

versus

AMANDEEP S. KHURANA Defendant
Through Defendant already ex-parte

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The plaintiff has filed a suit for permanent injunction restraining infringement of copyright, misappropriation of trade secrets/confidential information, malicious falsehood and for damages, rendition of accounts of profits, delivery up etc. against the defendant.
2. The plaintiff is a private limited Company which was incorporated in March 2009 with the objective *inter alia* of carrying on talent searches, promoting such talent and providing work opportunities and coaching of people in various art forms.
3. Mr. Preet Kanwar Singh Bedi is one of the Directors of the plaintiff and has a long and rich experience in the media and entertainment industry as well as in the field of advertising, production, distribution and marketing of Films and Television Shows etc.

4. It is the case of the plaintiff that due to lack of a structured and easily accessible professional platform for individuals to showcase their talent, Mr. Bedi conceptualized the idea of an online search portal for individuals to showcase their talent and avail of growing opportunities in the entertainment field. Thereafter, in August 2007, Mr. Bedi came across the phrase “*Ab Meri Baari*” which appealed to him instantly due to the phrase’s perfect application with Mr. Bedi’s idea.

5. The website www.abmeribaari.com (in its present and final format) was developed by the plaintiff with the help of two other entities namely, M/s Hungry and Foolish Creative Products India (P) Ltd. (hereinafter referred to as ‘Hungry and Foolish’] and M/s Rage Communications (P) Ltd (hereinafter referred to as Rage Com.). The plaintiff is the first owner of the copyright of the said website by virtue of the assignment deeds vested in its favour.

6. The structure and concept of the plaintiff’s website, in addition to being completely unique and set apart from other “talent promotion” websites is confidential information and constitutes a valuable trade secret of the plaintiff. The complex structure of the website was developed without the defendant’s involvement, long after he had dissociated himself from the plaintiff Company. Further, the details of the unique and complex structure of the website have never been disclosed to the defendant.

7. The plaintiff’s website has a highly unique and developed original structure which offers unparalleled services to its members, details of which has been given in para 6 of the plaint.

8. The case against the defendant as alleged by the plaintiff is that Mr. Bedi and the defendant who is a web developer were personally known to each other. In the year 2007, Mr. Bedi approached the defendant being aware of his experience in website development and in the hope of acquiring assistance in raising investment capital for the venture and upon the request of Mr. Bedi, the defendant had registered the domain name www.abmeribari.com in November 2007.

9. It is alleged that from the beginning, there was a very clear understanding that while Mr. Bedi would handle the commercial, administrative, marketing and distribution and the day to day affairs of the plaintiff Company, the defendant was to manage the website, its maintenance and supporting technology.

10. It is stated that a term sheet was prepared between Mr. Bedi and the defendant on one hand and other potential investors of the plaintiff Company on the other hand. The term sheet prescribed the broad framework of the paid up capital share of investments for the plaintiff's incorporation. Further, the Shareholders Agreement signed between Mr. Bedi and the defendant (Promoters) and other potential investors gave another opportunity to the defendant to invest and raise capital of the plaintiff Company. It is alleged that the term sheet signed by the defendant clearly stated *inter alia* that the defendant was to develop the website at his own cost and transfer it upon completion to the plaintiff Company.

11. It is alleged that upon agreeing each other's spheres of responsibilities, the defendant failed to discharge his responsibility of developing and maintaining the website. The defendant's negligible contribution was limited to suggestion of names such as T2O (for

“Talent to Opportunity”) and “eatsleepdrinkbollywood” which were found unsuitable and therefore the concepts didn’t proceed beyond an incipient stage. After a long period of inactivity, the defendant in May 2009 suggested a design for the proposed website. However, the design developed by the defendant was a blatant imitation of the design of the popular American website www.hulu.com.

12. Due to the defendant’s lack of initiative and discharge of responsibilities, Mr. Bedi took upon himself the responsibility of developing the website. Mr. Bedi approached M/s Bounce Design (hereinafter referred to as Bounce) for the development of the website. The designs developed by Bounce were forwarded to the defendant by Mr. Bedi via E-mail dated May 22, 2008. Mr. Bedi, in order to further the development of the website, employed the services of Hungry and Foolish for developing the complete templates for every page of the website. The process required Mr. Bedi to arrange meetings with Hungry and Foolish in addition to making a payment of INR 13 Lakh paid by the plaintiff Company. Further, the task of further development of the website was assigned to Rage Com. based on its proposal in June, 2009. Subsequently, Mr. Bedi, with the full knowledge of the defendant had also registered other domain names for the website.

13. It is stated that the website is still under development though in its final stages and not accessible on the internet without the password whereas the defendant clearly admitted to Mr. Bedi the fact that he was unable to access the website (which was password protected) and had gained access to it during a small window of time where the proposed website was accessible over the internet. It also

came to the knowledge of the plaintiff that the defendant was misrepresenting himself as the originator of the idea behind the website to potential investors and tried to obtain their collaboration and investment in such website.

14. It is alleged that the defendant was bound to pay his share in the plaintiff Company by virtue of the commitments made in the Shareholders Agreement. Mr. Bedi also shared a number of e-mails with the defendant which clearly reflects the defendant's prevarications on his commitment to pay the required sum of money. Further, the emails from the defendant confirmed that the defendant had "*lost interest*" in the venture and made more false statements regarding wire of the requisite amount of money and the transmission of payment via Cheque, which hasn't reached the plaintiff Company till date.

15. It is further alleged that in addition to forfeiting defendant's responsibility to develop the website and make the requisite investment in the plaintiff Company, the defendant further attempted to stall and delay the development and launch of the website.

16. Thereafter, the defendant subsequently started sending incoherent and inconsistent demands and threats to Mr. Bedi which varied from demanding INR 75 Lakh for the development of the website to marketing the website to third parties. The defendant also increased his demand for payment to INR 1.2 crore and yet again threatened to market the website to two potential buyers in addition to threatening to initiate legal actions against the plaintiff Company.

17. Aggrieved of the infringement of plaintiff's copyright, valuable trade secrets as vested in the design and structure of the website by the defendant, the plaintiff has filed the present suit.

18. The suit along with said interim application was listed before court on 23rd December, 2009. After hearing, detailed ex-parte order was passed against the defendant restraining their employees, servants, agents and all other acting for and on behalf of the defendant from reproducing, distributing, selling or offering for sale prints in any form whatsoever any reproduction of the plaintiff's copyright works referred to in the plaint.

19. On 31st January, 2011 summons were duly served to the defendant through e-mail. Despite service, no one appeared on behalf of the defendant and consequently, the defendant was proceeded *ex-parte* vide order dated 19th July, 2011.

20. In ex-parte evidence, the plaintiff filed affidavit dated 7th December, 2013 of Mr. Preet Kanwar Singh Bedi as PW1 working as the Managing Director and the Chief Executive Officer of the plaintiff Company reiterated the contents of the plaint and also exhibited certain documents exhibited as Ex.PW1/1 to Ex. PW1/28 in support of its case. The documents exhibited are as follows:

- The original extract of the Board Resolution passed on 15th December, 2009 exhibited as Ex. PW-1/1
- The Certificate of Incorporation exhibited as Ex. PW-1/2
- Copy of Memorandum and Articles of Association of the plaintiff's company exhibited as Ex. PW-1/3

- Original Assignment Deed dated 30th September, 2009 with M/s Hungry and Foolish Creative Products India (P) Ltd. exhibited as Ex. PW-1/4
- Original Assignment Deed dated 15th December, 2009 with M/s Rage Communications (P) Ltd. exhibited as Ex. PW-1/5 (colly)
- Printouts showing the layout and design of the plaintiff's website exhibited as Ex. PW-1/6
- Copy of the e-mail dated 28th November, 2008 from the defendant showing the T20 concept of the defendant exhibited as Ex. PW-1/7
- Copy of the three e-mails forwarded to the defendant on 22nd May, 2008 exhibited as Ex.PW-1/8 (colly), Ex.PW-1/9(colly), Ex.PW-1/10 (colly)
- Copy of the e-mails to show the defendant's limited interest and involvement in the website exhibited as Ex. PW-1/11(colly)
- Copy of chain of e-mails sent to the defendant on 14th July, 2008 exhibited as Ex. PW-1/12(colly)
- Copy of e-mail dated 28th November, 2008 exhibited as Ex. PW-1/13(colly)
- Copy of list of domain names exhibited as Ex. PW-1/13 A
- Copy of the e-mail correspondence and the template for all the web pages of the website exhibited as Ex. PW-1/14(colly)
- Copy of the flight details exhibited as Ex. PW-1/15(colly)

- Copy of the e-mail dated 10th February, 2009 along with attached term sheet exhibited as Ex. PW-1/16(colly)
- Copy of e-mails exchanged between the 21st March, 2009 and 21st December, 2009 exhibited as Ex. PW-1/17(colly)
- Copy of shareholder agreement exhibited as Ex. PW-1/17A (colly)
- Printouts of www.hulu.com and the defendant's design exhibited as Ex. PW-1/18(colly)
- Copy of exchange of e-mails on 24th and 25th May, 2009 showing that the defendant was merely making excuses and delayed in making his payment exhibited as Ex. PW-1/19(colly)
- Copies of the e-mails sent from 4th June, 2009 and the replies up to 7th June, 2009 exhibited as Ex. PW-1/20(colly)
- Copy of the chain of e-mails on 12th June, 2009 exhibited as Ex. PW-1/21(colly)
- Copy of chain of e-mails from 9th June, 2009 to 14th June, 2009 exhibited as Ex. PW-1/22(colly)
- Copy of chain of e-mails regarding the cancelled trip to Boston and the defendant's demand for payment of Rs.75 lakhs and his intention to market the website to any other buyers exhibited as Ex. PW-1/23(colly)
- Copy of e-mails exchanged from 16th June, 2009 to 22nd June, 2009 exhibited as Ex. PW-1/24(colly)

- Copy of the e-mail dated 24th June, 2009 exhibited as Ex. PW-1/25(colly)
- Copy of the e-mail dated 4th November, 2009 exhibited as Ex. PW-1/26
- Copy of the e-mail dated 28th November, 2009 and the proceeding e-mails exhibited as Ex. PW-1/27(colly)
- Affidavit under Section 65 B of the Indian Evidence Act, 1872 exhibited as Ex. PW-1/28

21. The evidence filed by the plaintiff has gone unrebutted as no cross-examination of the plaintiff's witness was carried out, therefore, the statements made by the plaintiff are accepted as correct deposition.

22. Under these facts and circumstances, the plaintiff is entitled for a decree of permanent injunction in terms of prayer in para 40 (a), (b), (c), (d) of the plaint. Rest of the prayers are rejected as those are not proved.

23. The decree be drawn accordingly. The suit is disposed of accordingly.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 24, 2014