

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.2198 of 2016

Date of Decision:21.12.2016

Google Inc. and another
Versus

.....Petitioners

M/s Shree Krishna International and others**Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Neeti Gupta, Advocate
for the petitioners.

Mr. N.K. Bhardwaj, Advocate and
Mr. Bikash Ghorai, Advocate and
Mr. Manmeet Singh, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged order dated 05.03.2016 passed by Additional District Judge, Gurgaon vide which application filed by the respondents under Order 11 Rule 14 read with Section 151 CPC and read with Section 165 of the Evidence Act was partly allowed.

[2]. Petitioner No.1 is a Company and is governed by the laws of United States of America. Petitioner No.1 provides various services of the internet such as e-mail, social networking sites etc. Similarly, petitioner No.2 is also a Company under the laws of United States of America. Petitioner

No.2 is an online service provider and provides a platform for watching and sharing videos worldwide through the website www.youtube.com. Petitioner No.2 is a subsidiary of petitioner No.1-Company.

[3]. Plaintiffs filed a suit for permanent injunction, damages and rendition of accounts for infringement of copyright of the plaintiffs. Para No.9 of the plaint give details of films produced, directed and distributed by the plaintiffs and the plaintiffs were having copyrights of the same. Para No.9 of the plaint reads as under:-

9. The plaintiff has produced, directed, acquired and distributed several films till date and is presently holding copyrights in respect of numerous films including the following:-

- “(1) Ustad (1957) B/W,*
- (2) Naya Sansar (1959) B/W,*
- (3) Samson (1964),*
- (4) Yeh Raat Phir Na Ayegi (1966),*
- (5) Kahin Din Kahin Ratt (1968),*
- (6) Samadhi (1972),*
- (7) Intaqaam (Nov. 1988),*
- (8) Lootere (April, 1993),*
- (9) Ajay (December, 1996),*
- (10) Jaanwar (December, 1999),*
- (11) Ek Rishta the Bond of Love (May, 2001)*
- (12) Haan Maine Bhi Pyaar Kiya (Feb, 2002),*
- (13) Talaash (Jan, 2003),*

- (14) *Andaaz* (May, 2003),
- (15) *Barsaat* (Aug, 2005),
- (16) *Dosti* (Dec. 2005),
- (17) *Mere Jeevan Saathi* (Feb. 2006),
- (18) *Shaka Laka Boom Boom* (April 2007) and others”

[4]. Prayer clause of the suit reads as under:-

“(i) grant an order of permanent injunction restraining the defendants, their officers, employees, agents, servants and representatives and all others acting on their behalf and in active concert or participation with them or any of them from reproducing, adapting, distributing, communicating, transmitting, publicly performing, disseminating or displaying on their websites or otherwise infringing in any manner any Cinematograph Films, audio visual work(s) in which the plaintiff owns exclusive, valid and subsisting copyright (s);

(ii) grant an order of permanent injunction restraining the defendants, their officers, employees, agents, servants and representatives and all others acting on their behalf and in active concert or participation with them or any of them from causing, contributing to, inducing, enabling, facilitating or participating in the infringement of any Cinematograph Films, audio visual work(s) in which the plaintiff owns exclusive, valid and subsisting copyright(s) on their websites or

otherwise;

(iii) grant an order of rendition of accounts by the defendants to the plaintiff.

(iv) grant an order requiring the defendants jointly and severally to pay damages as stated hereinabove to the plaintiff;

(v) grant costs of the instant suit to the plaintiff; and

(vi) pass any other such order(s) in favour of the plaintiff and against the defendants as may be deemed fit and proper by this Hon'ble Court in the interest of justice and equity.”

[5]. Evidently prayer No.1 relates to the items given in para No.9 of the plaint. Prayer No.3 exclusively relates to rendition of accounts by the defendants to the plaintiff. Prayer No.4 relates to the damages against the defendants.

[6]. Both the parties went to trial on specific issues. During course of proceedings, Ms. Debra Tucker was examined as DW 2 by the defendants. In the cross examination of the witness on 05.01.2016, 07.01.2016 and 08.01.2016, certain admissions were noticed by the plaintiffs. On the basis of aforesaid admissions, an application was filed by the plaintiffs under Order 11 Rule 14 read with Section 151 CPC and read with Section 165 of the Evidence Act.

[7]. It was contended in the application that the witness had admitted that defendants were maintaining log sheets and were

in possession of the said logs pertaining to (a) removal of contents (b) revenue earned through advertisements (c) logs and data of Adsense (d) detail of URLs through which contents were uploaded till the date of removal. The witness stated on Oath in the following manner:-

“(3) i. “Our office has maintained the record of removal of contents, pertaining to the present suit. I have not brought the said records. I can produce the same.”

ii. “It is correct to suggest that defendant No.2 maintains logs/data of the revenue earned through advertisements. If need be YouTube can produce the said logs/data of the said revenue collection”

iii. “It is correct to suggest that the logs and data of Adsense are being maintained by defendant No.3. If need be, I can produce the same”

iv. In addition to above the witness has also admitted that if URL is given the log of the items mentioned at para 9 of the plaint could be traced from the time of uploading of the contents till its taking away by us on the complaint of plaintiff. The witness has further stated that “I can produce it if need be.”

v. The witness has stated that “it is correct to suggest that defendant No.2 earns money through advertisements displayed on the contents at the discretion of the uploader, who

chooses to monetize or by a content ID user who has set a monetization policy for any matches to their content.”

[8]. It was also submitted that all the aforesaid documents including the complete details of accounts, as admitted by the witness, were in power and possession of the defendant.

Following prayer was made in the application:-

“a) in the interest of justice, defendants No.2 and 3 may kindly be directed upon oath to produce the documents, as detailed in paragraph 3 of this application including the accounts of profits which admittedly are in possession of the defendants, before the Hon'ble Court as being related to the matter in question in the present suit.

b) any other or further order which this Hon'ble Court deems fit and proper in the facts and circumstances of the case be also passed.”

[9]. The aforesaid application was contested by defendants No.2 and 3 on the premise that the production of documents would lead to a roving inquiry against the defendants without establishing any claim by the plaintiffs. No document can be produced in the manner as claimed by the plaintiffs. It was contended that with regard to documents sought by the plaintiffs in para No.3(ii) of the application, the logs/data of revenue

earned through advertisement is of no consequence in the suit until the plaintiffs establishes the factum of infringement committed by the defendants. Plaintiffs have been seeking rendition of accounts without establishing and proving any infringement of their right at the hands of the defendants.

[10]. Trial Court passed the impugned order thereby allowing the application partly on the ground that when specific allegations have been made in respect of infringement of right at the hands of the defendants who are allegedly earning money through such infringement, then the Court would require the details of the amount earned through such acts. The Court also noticed that if finally allegations of infringement are proved, then the Court would be in a position to award damages or to order for rendition of accounts. On the basis of specific admission of defendant's witness No.2, the items from para No.9 of the plaint were taken items of admissions so made by the witness and it was observed that if infringement is affirmed, the Court would be in a position to calculate damages after knowing the amount earned by the defendants through such infringement.

[11]. Trial Court also observed that such direction would not cause any prejudice to the defendants as neither details of revenue collected are the privileged documents, nor the defendants are banking upon the revenue details to defend their

case. Trial Court further observed that for deciding the application under Order 11 Rule 14 CPC, the question of framing discoveries does not arise as provisions in terms of Order 11 Rule 20 CPC would not apply. Trial Court allowed the application partly to the extent of directing the defendants to produce the details of the revenue earned from the items mentioned in para No.9 of the plaint.

[12]. I have heard learned counsel for the parties.

[13]. Learned counsel for the petitioners has confined his arguments only on three points. Firstly, in view of Order 20 Rule 16 CPC, the impugned order is wholly unsustainable. Secondly, in terms of Order 11 Rule 20 CPC, no such direction as contained in the impugned order can be passed. Thirdly, without passing preliminary decree, issuance of directions are wholly premature. Passing of preliminary decree is *sine quo non* for such a direction.

[14]. Learned counsel for the petitioners contended that first of all, a preliminary decree has to be passed and there has to be a direction for violation of copyright after establishing the same on record with reference to evidence. URL has to be pointed out as the word “Ajay” or “Ustad” has many hits. Even otherwise, that would be a subsequent stage. There is no finding of record with regard to infringement of copyright that

which of the URL has been infringed. Providing account for all hits would be uncertain and without specifying URL, there would be a roving inquiry on a premature issue.

[15]. Learned counsel further contended that application itself is premature as preliminary decree has to be drawn first in respect of violation, if any. Until and unless, the issue is determined by the trial Court by way of recording findings, only then, the question of passing direction would come. The prayer clause of the plaint itself contained relief of rendition of accounts, therefore, no such contingent order can be passed by the trial Court.

[16]. Learned counsel for the petitioners by referring to para No.3 of the application submitted that para No.3 has not been allowed in the impugned order. Even prayer (a) has been partly allowed. Prayer was not allowed, only the amount of profits which admittedly is in possession of the defendants is allowed and for providing the same, there has to be a determination viz-a-viz time period showing when the same was removed. At least, findings of violation has to be recorded before subjecting the same to be produced. By referring to prayer clause in the application viz-a-viz the relief, learned counsel contended that para No.3 of the application was not allowed. Para No.4 of the application was allowed and therefore, even if the application

was partly allowed, the same requires framing of preliminary decree.

[17]. In order to substantiate his arguments, learned counsel referred to Order 20 Rule 16 CPC to contend that right to claim rendition of accounts is an unusual form of relief granted only in certain specific cases where there is no other mode of getting the relief. Order 20 Rule 16 CPC does not create any substantive right to seek rendition of accounts in a particular type of case. It is only a rule of procedure which would apply where there is existing right to seek rendition of accounts. Order 21 Rule 13 CPC provides that a preliminary decree has to be drawn before passing final decree declaring the proportionate shares or directing the accounts to be taken. Even in case of pecuniary transactions between the principal and agent and in any other suit, the Court shall before passing a final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit. Order 20 Rule 16 CPC does not create any substantive right to seek rendition of accounts in a particular case. It mainly refers to a rule of procedure.

[18]. By referring to **K.C. Skaria Vs. Govt. of State of Kerala and another, 2006(2) SCC 285**, learned counsel for the petitioners contended that a suit for rendition of accounts can be maintained only if a person has a right to receive an amount

from the defendant. Such a right can either be created or recognized under a statute. Such right should be based on fiduciary relationship between the parties and claimed in equity where relationship is such that rendition of accounts is the only relief which will enable the person seeking accounts to ascertain his legal right.

[19]. Learned counsel for the petitioners by relying upon Order 11 Rule 20 CPC further submitted that where party from whom discovery of any kind is sought, objects to such a course, then, Court has to be satisfied that the right of discovery or inspection depends on the determination of an issue or question.

[20]. The production of documents in terms of Order 11 Rule 14 CPC has to be ascertained only after satisfying itself about the relevancy, relativity or essentiality of production of such documents by the Court. By relying upon **The Tata Iron and Steel Co. Ltd. and others Vs. Prop. Ajit Cotton Ginning Pressing Dall and Steel Rolling Mills, 2013(1) RCR (Civil) 506**, learned counsel emphasized that the relevancy, relativity and essentiality of production of the documents cannot be ascertained without there being a determination of issue with reference to evidence. For such a course, drawing of preliminary decree is *sine quo non*.

[21]. The Court is required to apply its mind before making an order granting discovery and inspection in terms of Order 11 Rules 12 to 20 CPC. Learned counsel contended that the Court cannot adopt such a course in routine manner. The discretion must be exercised in a judicial manner. The relevancy of the document for determining the controversy cannot be lost sight of. To support his contentions, learned counsel relied upon **Ms. Monica Bibli Sood Vs. Dr. Karan J. Kumar and others, 2005 (2) RCR (Civil) 455.**

[22]. Learned counsel further argued that before giving direction to the party to make discovery of document, Court should satisfy itself that the document is relevant for proper adjudication of the matter. The expediency and relevancy of document have to be examined by the Court in a judicious manner before resorting to provision in terms of Order 11 Rule 14 CPC. No roving inquiry for fishing out the evidence can be resorted to by the Court.

[23]. On the other hand, learned counsel for the respondents submitted that the suit was filed on 13.09.2011 for the infringement of the copyright of several cinematograph films of which plaintiffs are the producer/owner of the copyright. Trial Court granted injunction, restraining the defendants from infringing the copyright of the plaintiffs on 17.10.2011.

Defendants filed a FAO No.5015 of 2012 in this Court. The order of injunction was set aside by this Court on 12.03.2014 and the trial Court was directed to hear the injunction application afresh. On 06.12.2011, the plaintiffs filed an application under Order 39 Rules 2A CPC for contempt committed in respect of order dated 17.10.2011 by the defendants. On 26.10.2013, examination-in-chief and cross examination of the plaintiff was concluded. Plaintiffs ultimately, withdrew the application for injunction on 09.05.2014 and requested the Court to proceed with the trial. The examination-in-chief and cross examination of the plaintiffs were concluded on 19.09.2014. On 14.10.2015, plaintiffs after completion of evidence sold their right to Shemaroo Limited, Mumbai for a limited period to avoid incurring of further financial losses on account of continued infringement by the defendants. The evidence of the defendants was concluded on 08.01.2016.

[24]. In view of admissions made by Ms. Debra Tucker (DW 2), the plaintiff filed an application for production of documents under Order 11 Rule 14 CPC. The application under Order 6 Rule 17 CPC filed by defendants No.2 and 3 was also pending before the trial Court for consideration at the relevant time.

[25]. Learned counsel for the respondents further submitted that plaintiff-respondent is a renowned Producer, Director and

Distributor of Cinematograph Films under his banner “Shree Krishna International” and has produced several films as shown in para No.9 of the plaint. Plaintiff generating substantial revenue from the sale, exhibition, distribution of the films. The defendants have infringed the copyright of the plaintiffs by allowing the upload of infringing contents of the plaintiff, displaying the name of websites of the infringing videos of the plaintiff and directing the users to open the said website including YouTube (defendant No.2) to view the infringing contents/videos of the plaintiff. Defendants also used to display advertisements of various products and earned amount which are shared with uploaders of the infringing videos of the plaintiff. Learned counsel also submitted that provisions in terms of Order 11 Rule 20 CPC relates to discovery or inspection and do not relate to production of documents.

[26]. The application in question was filed under Order 11 Rule 14 CPC and therefore, the application was beyond the ambit of provisions of Order 11 Rule 20 CPC. Under Order 20 Rule 16 CPC, a preliminary decree has to be passed before drawing final decree. The aforesaid provision was not related to the controversy in question as the provision in terms of Order 11 Rule 14 CPC is independent of Order 11 Rule 20 CPC as well as Order 20 Rule 16 CPC. The production of documents in

terms of Order 11 Rule 14 CPC can be resorted to at any time during pendency of the suit when it is found that the document is in possession or power of the person. The Court after recording its satisfaction and in order to deal with such document may require production of the same. The requirements for applying the aforesaid provision are twofold. Firstly, an order can be passed under this provision at any time during pendency of the suit. Secondly, the production can be ordered by any party to the suit upon oath of such documents in his possession or power i.e. the document ordered should be in possession of the party.

[27]. Learned counsel by relying upon the aforesaid ingredients, referred to cross examination of DW 2 Ms. Debra Tucker who had admitted certain events on oath. The production of admitted documents were sought to be made by way of resorting to Order 11 Rule 14 CPC. By referring to admissions made by DW 2 Ms. Debra Tucker in her cross examination, learned counsel emphasized that the admissions were to the effect that:-

“Our office has maintained the records of the removal of the contents, pertaining to the present suit. I have not brought the said record. I can produce the same.”

“It is correct to suggest that the content owner and the

You Tube share monetary benefits through advertisements. Volunteered I am not in possession of the details of the same. If need be I can produce the same.”

“It is correct to suggest that defendant No.2 maintains logs/data of the revenue earned through advertisement. If need be YouTube can produce the said logs/date of the revenue collection.”

“It is correct to suggest that logs and data of AdSense are being maintained by defendant No.3. If need be I can produce the same.”

“We cannot produce logs related to the title listed in para No.9 of the plaint generally but can produce them if we are given specific URLs. If URLs is given the log of the items mentioned in para No.9 of the plaint, could be traced from the time of uploading of the contents till its taking away by us on the complaint of the plaintiff. In addition thereto even if some other URLs are brought to our knowledge, the same could be traced through the record. I can produce it if need be.”

[28]. By referring to aforesaid admissions, learned counsel for the respondents contended that in view of statement on oath, requirement of Order 11 Rule 14 CPC is fully complied

with. The admitted documents which are in possession and power of the defendants can be ordered to be produced under the same provision. Learned counsel referred to **CR No.2057 of 2002** titled as **Sharvan Kumar Vs. Sumeet Kumar Garg** decided on 12.07.2002 by this Court to contend that the nature of provision is such which deals with production of documents and there is hardly any room to refuse such a request. The only exception that could be made is with regard to privilege documents under Sections 122, 123 and 124 of the Evidence Act, 1872. However, the rule is confined to production of only those documents which relate to any fact in issue or relevant fact. This rule is entirely different to Rule 12 of Order 11 CPC which is confined to discovery of documents. In the present rule i.e Rule 14 of Order 11 CPC, all the documents are required to be produced as long as they are found to be relevant.

[29]. Learned counsel for the respondents also relied upon **CR No.3310 of 2013** titled as **Onkar Singh Vs. Ravindra Malhotra** decided on 03.12.2013 and contended that under Order 11 Rule 14 CPC, there is no scope to dismiss the application except where the case falls under the exception of privilege documents under Sections 122, 123 and 124 of the Evidence Act. Order 11 Rule 14 CPC is confined to production of only those documents which relate to any fact in issue or

relevant fact.

[30]. I have considered the arguments raised by learned counsel for the parties.

[31]. Apparently, Order 20 Rule 16 CPC and Order 11 Rule 20 CPC operate in different field for which framing of preliminary decree is a *sine quo non* for establishing fact in issue. In the instant case, the cross examination of DW 2 as extracted above has to be considered for production of documents in the light of Order 11 Rule 14 CPC. Order 11 Rule 14 CPC cannot be brushed aside on any other ground except where the case falls under the exception of privilege category in terms of Sections 122, 123 and 124 of the Evidence Act. Even otherwise, the provision is confined to production of documents which relate to any fact in issue or relevant fact. Fact in issue is with regard to infringement for which there was an admission made by DW 2 Ms. Debra Tucker in her cross examination. The requirement of rule is that it shall be lawful for the Court at any time during pendency of the suit to order production by any party thereto upon oath of such document in his possession or power, relate to any matter in question in such suit as the Court shall think right and the Court may deal with such document when produced in such manner as shall appear just.

[32]. The statement has been made on oath by DW 2 Ms.

Debra Tucker and certain documents have emerged on record. To every extract of an admission, the admission is attached that the witness can produce the same, if need be. It means that the documents are available with the defendants and defendants can produce the same, if need be. In view of aforesaid position, there cannot be any such mechanism through which existence of document will be ascertained first before its production. In view of admission on record, the documents are in existence, the production of the same can be resorted to by means of Order 11 Rule 14 CPC.

[33]. In view of aforesaid, I do not find any substance in this revision petition. Trial Court already allowed the prayer partly in view of facts and circumstances of the case, therefore, there is no error of jurisdiction in the impugned order dated 05.03.2016 passed by Additional District Judge, Gurgaon. This revision petition is accordingly dismissed.

21.12.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No