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

+ **CS(COMM) 1643/2016 & IA No.15801/2016 (u/O 39 R-1&2 CPC)**

ZEE ENTERTAINMENT ENTERPRISES LTD Plaintiff

Through: Ms. Prathiba M. Singh, Sr. Adv. with
Mr. Sudeep Chatterjee, Ms. Jaya
Mandelia, Ms. Kangan Roda and Ms.
Meetali Agarwal, Advs.

Versus

RON DSOUZA AND ORS Defendants

Through: Mr. Ajit Kumar Singh, Adv. for D-89.
Mr. Prashant Singh, Adv. for D-93.
Ms. Aanchal Athwani, Adv. for D-99.
Mr. M.B. Elakkamanan, Adv. for D-
100.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.01.2017

1. This order is in continuation of the earlier order dated 20th December, 2016.
2. The plaintiff is stated to have paid / deposited the requisite court fees.
3. Though as per the Court Master's report, the report of service of defendants No.84 to 90, 92 to 94, 96 to 100, 102 to 104 and 107 is awaited and the defendants No.91, 101, 105 and 106 only have been served and the summons sent to defendant No.95 have been returned unserved with the report "shifted" but the plaintiff is found to have filed an affidavit of service and the senior counsel for the plaintiff, on enquiry, states that the said affidavit is of service of all the defendants.

4. Only the counsels for the defendant No.89 Aircel Cellular Limited, defendant No.93 Hathway Cable & Datacom Pvt. Ltd., defendant No.99 Tata Communications Internet Services Ltd. and defendant No.100 Tata Teleservices Ltd. appear.

5. The appearing counsels, save for the counsel for the defendant No.93, state that they have complied with the order dated 20th December, 2016 and are not contesting parties to the suit. Though the counsel for the defendant No.93 also states that the defendant No.93 has complied with the order but seeks time to file reply; finding that defendant No.93 is also an Internet Service Provider, it has been enquired from the counsel for the defendant No.93, as to what is the need to file a reply.

6. No answer is forthcoming.

7. I am of the view that there is no need to give an opportunity to the defendant No.93 to file reply as the defendant No.93 also has been impleaded merely to ensure compliance of the order sought against defendants No.1 to 83.

8. There is no reason to disbelieve the affidavit of service of the plaintiff.

9. The other defendants are proceeded against *ex-parte*.

10. Considering the nature of the claim in the suit and following the dicta of this Court in ***Satya Infrastructures Ltd. Vs. Satya Infra & Estates Pvt. Ltd.*** 2013 (54) PTC 419 (Del) I am of the view that there is no need to direct the plaintiff to lead *ex-parte* evidence against the defendants who have been proceeded against *ex-parte*. The defendants No.1 to 83, inspite of having been injuncted vide order dated 20th December, 2016, have chosen not to

contest the suit and the same fortifies that they are indulging in activities complained of by the plaintiff in the plaint.

11. The plaintiff has thus become entitled to the reliefs as sought in prayer paragraph 47 (i), (ii) & (iii) of the plaint.

12. The senior counsel for the plaintiff states that the plaintiff would not press the prayer paragraph 47 (v), (vii) & (viii) of the plaint for disclosure of registrants of defendants No.1 to 83 website and for damages and rendition of accounts.

13. The senior counsel for the plaintiff however seeks a direction in terms of prayer paragraph 47 (vi) of the plaint to the defendants No.105 & 106 Secretary, Department of Telecommunications and The Group Coordinator, Director General (DIT) Cyber Laws & e-Security, Department of Electronics & Information Technology (wrongly mentioned in prayer paragraph 47(vi) of the plaint as defendants No.107 & 108) to direct all the Internet Service Providers to block any website containing the word “songspk” either as a suffix or as a prefix. It is further stated that the defendants No.7, 52, 56 & 82, though their websites have been blocked in terms of order dated 20th December, 2016, have changed their server and those accessing their websites are being re-directed to other websites of which particulars are handed over in the Court and are taken on record. The senior counsel for the plaintiff states that a direction be also issued to the defendants No.105 & 106 to, on receipt of information from and on asking of the plaintiff, block any other website which may be found by the plaintiff to be indulging in the same activity as the defendants No.1 to 83 in this suit were/are indulging.

14. I have enquired from the senior counsel for the plaintiff as to how such a wide order directing blocking of all websites containing the word “songspk” either as suffix or prefix can be granted. Though some of the defendants No.1 to 83 are found to be using the said word in their domain name, to attract surfers looking for free download of music, but it is well-nigh possible that others may also in their domain name include the word “songspk” as a suffix or prefix and the wide direction as sought, to the prejudice of such others not indulging in such activities, cannot be given. Similarly, it is felt that to issue a direction to the defendants No.105 & 106 to, on the asking of the plaintiff, block any other website would tantamount to this Court delegating its power to another.

15. The senior counsel for the plaintiff, on enquiry as to who in defendants No.105 & 106 takes a decision of website blocking, has drawn attention to Rule 3 of the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 for appointment of a Designated Officer to exercise powers under Section 69A(2) of the Information Technology Act, 2000.

16. Section 69A(1) of the Act empowers the Central Government to, upon being “satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above”, direct any agency of the Government or intermediary to block for access by public any information generated, transmitted, received, stored or hosted in any computer resource.

17. It is felt that if inspite of the plaintiff approaching the designated authority, such authority does not comply with the request of the plaintiff, the plaintiff will have no option but to approach the Court for a direction and which the Court will issue only upon being satisfied and no general order directing defendants No.105 & 106, as sought, can be issued.

18. As far as the grievance of the plaintiff of re-direction is concerned, again all that can be observed is that the plaintiff can approach the concerned authority with the grievance of re-direction and if satisfies the said authority that the purpose of such re-direction is to defeat the orders in this suit, such authority will act thereon.

19. Since the suit is being disposed of, prayer para 47(iv) has become infructuous.

20. Accordingly, a decree is passed in favour of the plaintiff and against the defendants No.1 to 83 in terms of prayer paragraph 47(i) of the plaint and against the defendants No.89 to 104 in terms of prayer paragraph 47(ii) of the plaint but subject to the above and against the defendants No.105 & 106 in terms of prayer paragraph 47(iii) of the plaint, again subject to the above.

21. Since it appears that the costs cannot be recovered from any of the defendants No.1 to 83, no order as to costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 04, 2017

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