

\$~3

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

+ **CS (COMM) 357/2018, CC 29/2015, I.As. 13279/2014, 12590/2017, 12591/2017, 6156/2018 & 6521/2018**

AJAY GANESH UBALE & ORS.

..... Plaintiffs

Through: None.

versus

BIG SYNERGY MEDIA LIMITED & ORS.

..... Defendants

Through: Mr. Abhishek Malhotra and Mr. Atmaja Tripathy, Advocates for D-1 to 3. (M:7768060955)

Mr. Manik Dogra, Mr. Palash Singhai, Mr. Joyshree Dugar, Ms. Sonali Jaitley and Mr. Jaiyesh Bakshi, Advocates for D-4. (M:9409559894)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

%

20.11.2018

1. The present suit for permanent injunction has been filed seeking an injunction in respect of Indian Patent No.193801. The patent is titled 'Apparatus for Playing a Quiz Game'. The patent was granted as of 9th October, 2000 and usually is valid for a period of 20 years till 8th October, 2020. The suit is filed against Defendant Nos.1 to 4. Defendant Nos.1 to 3 are related with each other and were broadcasting the television quiz show 'Kaun Banega Crorepati'. Defendant No.1 is the production company and Defendant Nos.2 and 3 are in charge of the television channel 'Sony Entertainment Television' which broadcasted the programme 'Kaun Banega Crorepati'.

2. Defendant No.4 is Idea Cellular Limited which is one of the sponsors

of the show. The suit was filed in January, 2014 in the District Court. Upon the Defendant moving a counter claim for revocation of the patent, in terms of Section 104 of the Patents Act, 1970, the suit and the counter claim were transferred to this Court. There has been no interim injunction in this matter. It is noticed that the Plaintiff, sometime after April, 2017, has been erratic in appearing in the matter. On the last two hearings, there has been no appearance for the Plaintiff.

3. The Joint Registrar has accordingly placed the matter before Court. Even today, there is no appearance on behalf of the Plaintiff.

4. A perusal of the patent specification reveals that the main claim in the patent is in respect of ‘Apparatus for Playing a Quiz Game’. The same reads as under: -

*“(1) Apparatus for playing a quiz game of skill playable by remotely located participants simultaneously logged in and competing against each other, said game including inserted advertising comprising; a network structure for allowing multiple players to engage in a quiz game using an electrical or electronic network for data exchange; and a control system for establishing a virtual universe for said quiz game that can be accessed by any of said multiple players via an electrical or electronic network, said control system being operative for providing quiz questions and inserted advertisement for each of said multiple players; said control system including:
text means for receiving a text input from each one of said multiple players, said text input being in response to the quiz question which is in the form of a multiple choice question.”*

5. It is the submission of Mr. Abhishek Malhotra, appearing for

Defendant Nos.1 to 3 that even if the Plaintiff does not appear, this Court ought to look into the merits of the counter claim inasmuch as the counter claim filed by the Defendants seeks revocation of the patent. The grounds taken in the counter claim are that the Defendants' programme originated as '*Who Wants to be a Millionaire*' in September, 1998 in the USA. Thereafter, the Indian version of the programme with the name '*Kaun Banega Crorepati*' was also telecast on 3rd July, 2000. Thus, it is his submission that considering that both dates are prior to the date of the filing of the patent, the patent was not liable to be granted as it was anticipated and a prior publish. The patent is also hit by Section 3(k) and 3(m) of the Patents Act, 1970.

6. On behalf of Defendant No.4, Mr. Manik Dogra, submits that the sponsor of the show is neither a proper nor a necessary party and is liable to be deleted from the suit. He presses application being I.A. 6521/2018 under Order I Rule 10 and I.A. 6156/2018 under Order VII Rule 11.

7. This Court has heard the counsels for the Defendants. A perusal of the patent granted to the Defendants at page 26 shows that it is dated 9th October, 2000. The counter claim of the Defendant Nos.1 to 3 makes a categorical assertion that the telecast of the Defendants' programmes were in September, 1998 internationally, and in July 2000 in India. Paragraphs 2(A) and 2(B) of the counter claim are set out herein below: -

"2.....

- (A) *The claims in the patent application contain subject matter which are prohibited from being patented under Section 3(k) and Section 3(m) of the Patents Act, 1970;*
- (B) *The subject matter of the Suit Patent is covered by prior publication and hence liable to be revoked, since it is not an invention and*

lack novelty. The ambit of prior publication includes but is not limited to the subject matter show, entitled “Kaun Banega Crorepati” (hereinafter referred to as the “Show”), which was broadcast in India on July 3, 2000 and the format on which it was based, i.e., “Who wants to be a Millionaire” was prior published by way of broadcast in September 1998. Both these dates were prior to the application filed by the Plaintiffs, i.e., October 2000.”

8. In the reply to the counter claim filed by the Plaintiff, the Plaintiff denies that the patented invention is disclosed due to the telecast of the two programmes of the Defendants. The Plaintiff in fact avers that prior to 2005, the format used by the Defendants was different. It is only post 2005 when the feature of ‘*Ghar Baithe Jeeto Jackpot*’ was introduced by the Defendants that the infringement began. Thus, the Plaintiff disputes the fact that there is prior publication.

9. A perusal of the pleadings and the patent specification clearly shows that the patent specification sought to obtain a patent in respect of a quiz game which is capable of being played by remotely located participants. The Plaintiff is claiming exclusivity on an ‘*Apparatus for Playing a Quiz Game*’. The conduct of quiz shows and participation by the public simultaneously pre-dates the Plaintiff’s patent and hence is clearly prior published. The Plaintiff has also not appeared or shown any interest in prosecuting the present suit or in defending the counter claim. The programme of the Defendants has been on air for almost 18 years in India. For all these reasons, the suit for infringement is dismissed. The counter claim for revocation of the patent is allowed. Patent no. 193801 is revoked.

It is held that the sponsor of the programme was not a necessary or proper party to the suit. Thus, the suit is dismissed against all the Defendants.

10. The decree sheet be drawn up accordingly. All I.As. are disposed of.

PRATHIBA M. SINGH, J.

NOVEMBER 20, 2018

Rekha