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

+ RFA(OS)(COMM) 11/2018, CM APPL. 23943/2018

M/S BHASKAR CABLE NETWORK/B TV Appellant

Through: Mr. Sameer Abhyankar, Adv.

versus

SUPER CASSETTES INDUSTRIES Respondent

Through: Mr. K. K Khetan, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **12.09.2018**

The defendant's grievance is that the order of the learned Single Judge, which directed a decree of damages to the tune of ₹10 lakhs was without trial and in the circumstances, unwarranted.

The suit preferred by the plaintiff/copyright proprietor was with respect to infringement of its content, which was telecast by the defendant cable network. In the belated written statement filed, the defendant had claimed that the reliance placed upon the recording and the content by the plaintiff in the suit is not correct. The written statement filed belatedly *inter alia* averred as follows:

“7. That contents of Para 21- 24 are false, baseless and incorrect as stated hence denied. In the reply thereof it is submitted here that it is wholly wrong to say that the defendant had never transmitted the copy right work of the plaintiff or has never infringed the copyright of the plaintiff in the month of January 2017. The recording submitted by the plaintiff is nothing but a fabricated recording by the plaintiff. It is submitted that the defendant has been in business since the year 2013 and

has never faced any such claim of infringement from any other company. It is only the plaintiff who has brought such suit and has painted such picture of the defendant being the largest ground cable network in the area, which is absolutely wrong and denied. It is submitted that along with defendant there are various other cable operators in the said area.”

It appears that the suit has progressed to a certain extent and even admission/denial of the documents were conducted. In the circumstances, by orders dated 29.01.2018, 20.02.2018 and the impugned order of 13.03.2018, the learned Single Judge proceeded to pass a decree of permanent injunction and also directed recovery of damages to the tune of ₹10 lakhs.

The order dated 29.01.2018 to the relevant extent is as follows:

“2. The counsel for the defendant, on enquiry states that though the defendant is not infringing the copyright claimed by the plaintiff but is not agreeable to a decree for permanent injunction being passed because it is the plea of the defendant that the defendant never infringed the copyright of the plaintiff. It is contended that the defendant, in its written statement has controverted the pleas of the plaintiff in this regard.

3. I am of the view that once the stand of the defendant is so and the counsel for the defendant further states that the defendant does not intend to infringe the copyright claimed by the plaintiff in future also, the Court time should not be wasted in adjudication of the claim for infringement and the decree, insofar as for permanent injunction, should immediately be passed. Accordingly, a decree is passed in favour of the plaintiff and against the defendant in terms of prayer paragraph (i) of the plaint verified on 29th March, 2017.

4. Decree sheet be drawn up.”

On the next date of hearing i.e. 20.02.2018, the Court noted the absence of any representative on the part of the defendant and directed for payment of cost.

It is contended that given that the defendant had contested the merits of the suit and denied the contents attributed to it, by alleging that the Compact Disks (CDs) contain false information and could not qualify as evidence as there was no proper compliance with Section 65B of the Evidence Act, the course of action which the learned Single Judge adopted in decreeing permanent injunction and directing damages was not warranted.

Learned counsel for the respondent submits that the Court had initially protected and granted ad interim injunction. In the course of the proceeding on 29.01.2018, the defendant/appellant had urged that it was not infringing the plaintiff's copyright and that in these circumstances the decree for permanent injunction could not be given as a matter of course. It has also been pointed out that during the hearing, the defendant/appellant had initially alleged that fabrication of the CD could not be attributed to them but refused to agree to the testing of such evidence, by reference to the Central Forensic Science Laboratories (hereafter as the "CFSL").

This Court has considered the record. It is quite evident from the written statement that the defendant contested the suit - firstly by stating that it never infringed the copyright and secondly, that the infringement attributed to it is not correct. In these circumstances, there is definitely a lis which requires resolution. The mere fact that even if the Court did offer to refer the CD to the CFSL, the defendant's

denial of that suggestion could not have resulted in an assumption of its liability. The issue as to whether the contents of the CD, transmitted or broadcast by it were indeed infringing copyright, had to be established by the plaintiff upon whom that onus lies. Furthermore, to establish that the content was false, the defendant was under the converse duty to adduce evidence –including expert evidence which was not merely confined to the CFSL.

Given these circumstances, this Court is of the opinion that the decree for permanent injunction was not accruing. The judgment of this Court in *Hindustan Unilever Limited v. Reckitt Benckiser India Limited* 2014 SCC Online Del 490 is an authority for the proposition that damages – especially compensatory special damages and punitive damages cannot be granted as a matter of course especially when the claim for damages (in this case ₹1 crore) was never proved. In these circumstances, the impugned orders are hereby set aside. It is further clarified that the ad interim injunction made by the Court initially, shall bind the parties. The suit shall proceed in accordance with law at the stage when the impugned orders were made. The parties are directed to appear before the learned Single Judge on 30.09.2018.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 12, 2018/akv