

HIGH COURT FOR THE STATE OF TELANGANA
THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY
C.M.A.No.1074 of 2019
22.11.2019

Between:

M/s. Zee Entertainment Enterprises Ltd.

... Appellant

and

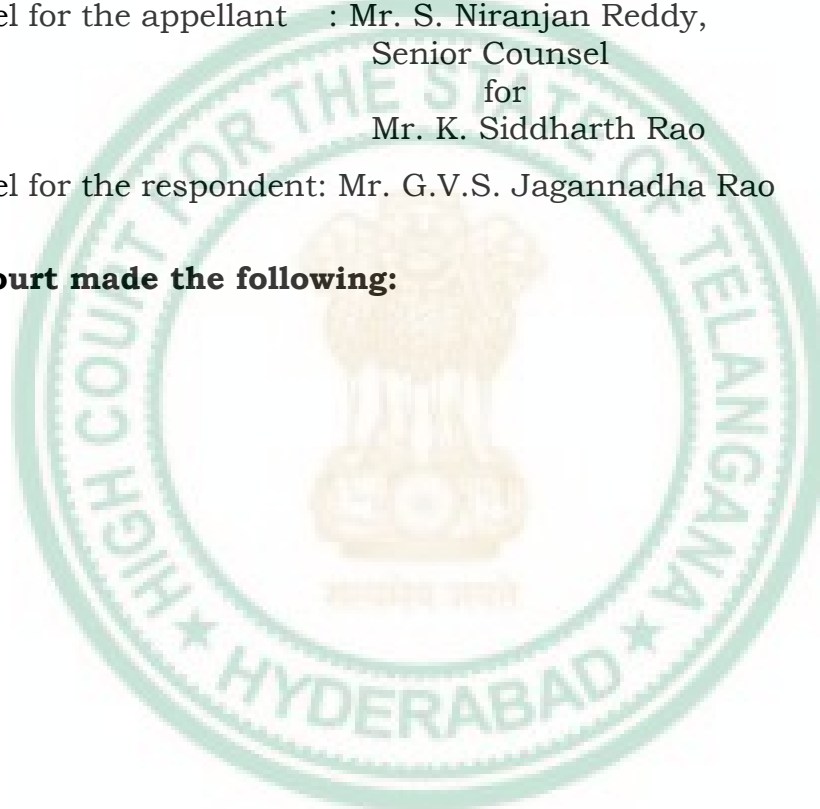
Eenadu Television Pvt. Ltd

...Respondent

Counsel for the appellant : Mr. S. Niranjan Reddy,
Senior Counsel
for
Mr. K. Siddharth Rao

Counsel for the respondent: Mr. G.V.S. Jagannadha Rao

The Court made the following:



JUDGMENT: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

The appellant has challenged the legality of the order dated 14.11.2019 passed by the learned XIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, whereby the learned Judge has injuncted the appellant-defendant *“from broadcasting any show being made as per the power point presentation and the promos either under the title “GANG STARS” or any other title, copying the unique, original, novel, distinctive features and elements/formats of programs broadcast by petitioner till 26.11.2019”*.

Mr. S. Niranjana Reddy, the learned Senior Counsel appearing on behalf of the appellant, submits that according to the respondent-plaintiff, they have produced programs like “PATAS, DHEE, CASH, ANUBHAVINCHU RAJA, NAA SHOW NAA ISHTAM” which were part of their creative design in production. On the other hand, the appellant-defendant has produced a programme under the title “GANG STARS” which is not similar to the said shows and they have come up with an original, novel, distinctive show.

Secondly, while passing the impugned order, the learned trial Court has not discussed the existence of a strong *prima facie* case in favour of the respondent-plaintiff. Instead, relying on the case of **Midas Hygiene Industries Private Limited vs. Sudhir Bhatia**¹, the learned trial Court has granted the temporary injunction in favour of the respondent-plaintiff, by merely stating that in case of infringement of trade mark or copy right, an injunction must follow. However, in the said case, the Hon'ble

¹ 2004 (73) DRJ 647

Supreme Court, in fact, had seen the existence of a *prima facie* case. But, without appreciating either the existence or lack of *prima facie* case in favour of the respondent-plaintiff, the impugned order has been passed in a mechanical manner. Therefore, the impugned order deserves to be set aside by this Court.

On the other hand, Mr. G.V.S. Jagannadha Rao, the learned counsel for the respondent, submits that even prior to filing of the civil suit, the respondent-plaintiff had sent a notice to the appellant-defendant requesting that they be shown the preview of the “GANG STARS” show, so that the respondent-plaintiff would be in a position to realise whether its intellectual property rights were being violated by the appellant-defendant or not? Despite the issuance of the said notice, it is the appellant-defendant who maintained a studied silence over the entire issue. Taking note of the said conspicuous silence on the part of the appellant-defendant, the learned trial Court was justified in passing the temporary injunction order in favour of the respondent-plaintiff. Therefore, the learned counsel has supported the impugned order.

Heard the learned counsel for the parties and perused the impugned order.

It is, indeed, trite to state that before a temporary injunction order can be passed in favour of a party, the learned trial Court is required to consider three elements, namely existence of a strong *prima facie* case in favour of the party, the balance of convenience, and that an irreparable loss would be caused to the party, in case the temporary injunction order is not passed in its favour.

A bare perusal of the impugned order clearly reveals that the learned trial Court has not discussed the existence of a strong

prima facie case in favour of the respondent-plaintiff. The learned trial Court has merely noticed the fact that a legal notice has been issued by the respondent-plaintiff to the appellant-defendant. Moreover, the learned trial Court has merely relied on the case of **Midas Hygiene Industries Private Limited** (supra) and has proceeded to pass the injunction order.

A bare perusal of the case of **Midas Hygiene Industries Private Limited** (supra) clearly reveals that the Hon'ble Supreme Court, while making its observation that in cases of infringement either of trade mark or of copyright, normally an injunction must follow, has also opined that "*the grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest*". While the learned trial Court has been swayed by the first part of the observation made by the Apex Court, it has ignored the second part of the observation, namely "*if it prima facie appears*". Therefore, the learned trial Court is required to consider the evidence from both sides to see if the plaintiff has made out a strong *prima facie* case, in its favour, that in fact its intellectual property right is being infringed by the defendant. However, such an exercise has not been carried out by the learned trial Court. Therefore, this Court sets aside the impugned order dated 14.11.2019.

Mr. S. Niranjan Reddy, the learned Senior Counsel, gives an undertaking, upon instructions, on behalf of the appellant, that they shall not broadcast the show called "GANG STARS". Moreover, they shall not broadcast any show, which is similar to the contents of the show "GANG STARS", under any other title, till

the temporary injunction application is decided by the learned trial Court.

However, considering the fact that the commercial interests of both the parties have to be safeguarded by the learned trial Court, the learned trial Court is directed to decide the temporary injunction application within a period of two weeks from the date of receipt of a copy of this order after taking into consideration the different shows produced by the plaintiff and the defendants, and a strong *prima facie* case is made out by the plaintiff to the effect that the shows sought to be aired by the defendant is similar to the five shows of the plaintiff.

With the above directions, this Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

22nd November, 2019

Note: Issue C.C today

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