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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 1221/2016**
SUPER CASSETTES INDUSTRIES PVT LTD Plaintiff
Through: Mr. K.K. Khetan, Adv.

Versus

UCN CABLE NETWORK PVT. LTD. Defendant
Through: Ms. Nidhi Mohan Parashar and Mr.
Anurup Narula, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.02.2019

IAS No.10061/2018 & 10062/2018 (of defendant u/O IX R-7 CPC and for condonation of 61 days delay in applying therefor)

1. The counsel for the applicant/defendant undertakes that the costs imposed on 30th October, 2018 shall be paid to the counsel for the plaintiff during the course of the day.
 2. The counsel for the applicant/defendant draws attention to the reasons set out in the applications.
 3. The counsel for the plaintiff has opposed the applications.
 4. The applicant/defendant was proceeded against *ex-parte* on 27th April, 2018 and the suit adjourned for *ex-parte* evidence of the plaintiff to 5th July, 2018. On 5th July, 2018, the file of the suit was not available and thus the witnesses of the plaintiff, though present, could not be examined. The said witnesses were examined on 24th July, 2018 and the plaintiff closed its evidence and the suit adjourned to 31st July, 2018. However, on 31st July, 2018, the *ex-parte* arguments were not heard and hearing adjourned to 30th October, 2018. These applications were filed on 27th July and 28th July, 2018.
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2018 respectively but came up first before this Court only on 30th October, 2018.

5. The counsel for the plaintiff has argued that the reason given for non-appearance are without any particulars.

6. I may state that the reason given for condonation of delay is farfetched. It is stated, again without giving any names, that the authorised representative of the applicant/defendant left the company, again without giving any dates, and thus there was no one to sign the application. There is no explanation as to why the Board of Directors of the applicant/defendant which is stated to be a Private Limited Company, could not immediately on the earlier authorised representative leaving, not appoint another authorised representative. There is also no explanation as to why no Director of the applicant/defendant could sign the application. Considering the nature of the applications, the same along with affidavit of the Advocate also would have sufficed.

7. This is a case of clear negligence to appear on behalf of the applicant/defendant. Though the *ex-parte* proceedings are set aside but subject to the applicant/defendant paying costs of Rs.1 lakh to the counsel for the plaintiff. If the costs imposed on 30th October, 2018 and the costs imposed today are not paid within two weeks of today, consequences shall follow.

8. The applications are disposed of.

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9. The defendant, on 30th October, 2018 has already given an undertaking to this Court that it will not infringe the copyright of the *CS(COMM) 1221/2016*

plaintiff.

10. There is thus no impediment to a decree for permanent injunction, as claimed, being passed.

11. A decree is passed, in favour of the plaintiff and against the defendant, of permanent injunction in terms of prayer paragraph (i) of the plaint dated 1st September, 2016.

12. Decree sheet be drawn up.

13. The suit remains for the reliefs of rendition of accounts, mandatory injunction and recovery of damages.

14. The counsel for the defendant states that this Court does not have territorial jurisdiction. It is contended that invocation by the plaintiff of Section 62(2) of the Copyright Act, 1957 in para 40 of the plaint is of no avail, since it is the plea of the plaintiff that the defendant is operating in Maharashtra and Madhya Pradesh and the documents filed by the plaintiff show the plaintiff to be having an office at Bombay and in terms of the dicta of the Division Bench of this Court in ***Ultra Home Construction Pvt. Ltd. Vs. Purushottam Kumar Chaubey*** 227 (2016) DLT 320, the plaintiff cannot maintain the suit in Delhi.

15. The plaintiff, in para 36 of the plaint has pleaded the defendant to be a cable operator in Maharashtra including Nagpur and Chandrapur etc. and has not referred to Bombay.

16. I have enquired from the counsel for the defendant, whether the defendant is operating in Bombay also.

17. The counsel for the defendant states that she will have to obtain instructions.

18. *Ultra Home Construction Pvt. Ltd.* supra does not specify, whether on account of the plaintiff having an office in one of the cities in the State would also disentitle the plaintiff from invoking Section 62 of the Copyright Act, even if the cause of action has arisen in another city in the same State.
19. The counsel for the defendant seeks time to obtain instructions.
20. The pleadings are complete.
21. *On the pleadings of the parties*, the following issues are framed:
- (I) Whether this Court has territorial jurisdiction to entertain the suit? OPP
 - (II) Whether the defendant have infringed the copyright of the plaintiff? OPP
 - (III) If the above issues are answered in favour of the plaintiff, to what amount by way of damages and/or rendition of account, if any is the plaintiff entitled to from the defendant? OPP
 - (IV) Relief.
22. No other issue arises or is pressed.
23. The parties to file their list of witnesses within fifteen days.
24. The plaintiff to file the affidavits of its witnesses by way of examination-in-chief within six weeks.
25. Option given of having the evidence recorded before a Commissioner has been refused.
26. List before the Joint Registrar on 22nd April, 2019 for scheduling the dates of trial.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 11, 2019/‘bs’..
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