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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of reserve: 4th July, 2023**Date of decision: 11th July, 2023*

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CS(COMM) 712/2019 & I.A. 11848/2023**STAR INDIA PVT LTD & ANR.**

..... Plaintiffs

Through: Mr. Vivek Ayyagari, Advocate. (M:
8017571175)

versus

MOVIESJOY.IN & ORS.

..... Defendants

Through: Mr. Harish V. Shankar, CGSC, Mr.
Srish Kumar Mishra, Mr. Sagar
Mehlawat & Mr. Alexandar Mathai
Paikaday, Advocates.
(M:9810788606)**CORAM:****JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J .****I.A. 11848/2023 (u/O. XIII-A CPC) in CS(COMM) 712/2019**

1. This pronouncement has been done through hybrid mode.
2. This is an application filed by the Plaintiff- Star India Pvt. Ltd. seeking a summary judgment under Order XIII-A of the Code of Civil Procedure ('CPC'), read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022 ('IPD Rules') decreeing the suit in favour of the Plaintiff.
3. The present suit has been filed by Plaintiff against various rogue websites arrayed as Defendant Nos.1 to 36 (*hereinafter, 'Defendants'*) in the plaint. In the suit, the Plaintiff seeks a permanent injunction restraining the said websites from retransmitting, broadcasting, streaming or in any manner



communicating to the public the cinematograph film 'Chhapaak'.

4. The Plaintiff and its division Fox Star Studios are producers and owners of various television channels. The case of the Plaintiff is that they are a leading production house and own exclusive copyrights in respect of a large number of cinematograph films as also other copyrighted content. The present suit relates to a cinematograph film titled 'Chhapaak' which was set for release in January 2020. The film draws inspiration from the life journey of activist Laxmi Agarwal, who endured an acid attack in New Delhi in 2005. She has since evolved into a proponent for the prohibition of acid sales in India.

5. The Plaintiff had apprehensions, owing to various facts pleaded in the plaint, that the Defendants/rogue websites were likely to indulge in unlawful streaming of pirated copies of the said film which would have had adverse monetary impact. Accordingly, the Plaintiff filed the present suit seeking the following reliefs against rogue websites and the Domain Name Registrars (*hereinafter* 'DNRs') of some of the domain names, ISPs and DoT & MeitY in paragraph 59 of the Plaint, which reads as:

“(i) Pass an order and decree of permanent injunction restraining the Defendants No. 1 to 36 (and such other websites/entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiffs exclusive rights and Copyrights), their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, from in any manner communicating, hosting, streaming, and/or making available for viewing and downloading, without authorization, on their websites or other platforms, through the internet



in any manner whatsoever, the Film and content related thereto,so as to infringe the Plaintiffs exclusive rights and Copyrights;

ii. Pass an order and decree directing the Defendant No. 39, its directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on its behalf, or anyone claiming through, by or under it, to suspend the domain name registration of domain names of Defendants No. 1 to 3 by Defendant No. 39 (GoDaddy) as already identified by the Plaintiff in the instant suit in Memo of Parties or such other domain names that may subsequently be notified by the Plaintiff to be of Rogue Websites which infringe its exclusive rights;

iii. Pass an order and decree directing the Defendant Nos. 40 to 48, their directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, to block access to the various websites identified by the Plaintiff in the instant suit at S. No. 2 of the Documents or such other websites that may subsequently be notified by the Plaintiff to be infringing of its exclusive rights;

iv. Pass an order and decree directing the Defendant Nos. 49 and 50 to issue a notification calling upon the various internet and telecom service providers registered under it to block access to the various websites identified by the Plaintiff in the instant suit at S. No. 2 of the Documents or such other websites that may subsequently be notified by the Plaintiff to be infringing of its exclusive rights;

v. An order for damages of Rs. 2,00,01,000/- to be paid by the Defendant Nos. 1 to 36 and such other websites / entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiffs exclusive rights, to the Plaintiff on account of



their illegal and infringing activities and a decree for the said amount be passed in favour of the Plaintiff (the Plaintiff reserves its right to claim additional damages and amend the pleadings accordingly once the magnitude of the Defendants' illegal / infringing activities and the revenues earned by the Defendants' in pursuance to such illegal / infringing activities is ascertained upon discovery in the instant action); and vi. An order for costs in the present proceedings in favour of the Plaintiff."

6. Vide order dated 20th December 2019, the Court had considered the matter and had issued an *ad-interim ex-parte* order in favour of the Plaintiff. The said order reads as:

"I.A. 18149/2019 (u/O XXXIX Rules 1 & 2 CPC)

8. Issue notice to the defendants through e-mail, returnable on April 29, 2020.

9. The case of the Plaintiff - Star India Pvt. Ltd, through its division Fox Star Studios, is that it is a leading film production and distribution company in India which has produced and acquired rights to various films which are detailed in the plaint. The present suit relates to the cinematograph film 'CHHAPAAK' which is scheduled to release on January 10, 2020. The claim of the Plaintiff is that there are a large number of 'rogue websites' which may broadcast, stream or telecast the Plaintiffs film by unauthorized broadcasting of illegal recordings of the same. It is thus prayed that in order to secure the capital and investment that has gone into the making of the film, the websites which are likely to stream the Plaintiffs cinematograph film may be enjoined from doing so and the Internet Service Providers (hereinafter, 'ISP's) concerned may be directed to block access to these rogue websites.

10. It is submitted by Mr. Siddharth Chopra, learned counsel appearing for the Plaintiff that the film is a co-



production of the Plaintiff, KA PRODUCTIONS LLP and MRIGA FILMS LLP which is arrayed as Defendant Nos. 37 and 38. He relies upon the letters dated December 17, 2019 and December 12, 2019 by which the said Defendant Nos. 37 and 38 have permitted the Plaintiff to take action against any anti-piracy measures to protect the rights in the film 'CHHAPAAK'.

*11. The apprehension expressed by the Plaintiff is justified considering the fact that **piracy on the internet has become quite rampant and therefore, if adequate orders are not passed to protect the rights of the Plaintiff, the Plaintiff would suffer enormous losses.** Accordingly, it is directed that there shall be an **injunction restraining Defendant Nos. 1 to 36 from in any manner unauthorizedly streaming, communicating, downloading or distributing the cinematograph film 'CHHAPAAK', including any extracts/clippings thereof.** Defendant No. 39 is directed to **suspend the domain names of Defendant Nos. 1 to 3.** In so far as the ISPs identified as **Defendant Nos. 40 to 48 are concerned, the said ISPs shall ensure that access to the websites of Defendant Nos. 1 to 36 are blocked.** Defendant Nos. 49 and 50, i.e. the Department of Telecommunications and the Ministry of Electronics and Information Technology are also directed to issue, as expeditiously as possible, a notification calling upon internet and telecom service providers to block access to the rogue websites and any other website(s) which the Plaintiff notifies as illegally transmitting or broadcasting the cinematograph film 'CHHAPPAK' in any manner. ”*

7. As per the above order, summons were issued to the Defendants through all modes including by e-mail, returnable by 29th April 2020.
8. Vide order dated 21st November 2022, this Court observed that all the contesting Defendants were served. However, the contesting Defendants



neither preferred to contest the present suit, nor have they filed written statements. Further, this Court confirmed the injunction order dated 20th December 2019.

9. Pursuant to the above orders, Defendant No.49 - Department of Telecommunications, Ministry of Communications and IT (‘DoT’) are stated to have blocked all the infringing websites upon being intimated about the same by the Plaintiff. The ISPs are also stated to have given effect to the said orders. According to the compliance affidavit dated 19th November 2022 filed by Defendant No. 49, it is stated as follows:

*“That Respondent No. 49 have complied with the Orders of the Hon'ble Court dated 20.12.2019 to the extent related to Department of Telecommunications. **The Respondent No. 49 have issued letter dated 27.12.2019 to Internet Service Licensees for compliance with the Order dated 20.12.2019 along with the list of the websites/Urls which were required to be blocked.** The letter dated 27.12.2019 is annexed herewith and marked as **DOCUMENT CA-2.***

*6. That the petitioner vide emails dated 13.01.2020, 17.01.2020, 03.02.2020 and 04.02.2020 provided other websites/Urls to the notice of the Department of Telecommunications for blocking. **That in compliance to the court order dated 20.12.2019 Respondent No. 49 Department of Telecommunications issued letters dated 24.01.2020, 30.01.2020, 11.02.2020 and 24.04.2020 respectively to Internet Services Licensees for blocking of these websites/Urls.** The Orders/letters dated 24.01.2020, 30.01.2020, 11.02.2020 and 24.04.2020 along with the list of the websites/Urls blocked are annexed herewith and marked as **DOCUMENT CA-3 (COLLY).**”*

10. As a result, vide communication dated 27th December 2019, the DoT directed the Internet Service Providers (ISPs) to deny access to 43 websites.



Furthermore, in a subsequent communication dated 24th January 2020, access to an additional 31 websites was blocked.

11. Today, Id. Counsel for the Plaintiff submits that the cinematograph film subject of the present suit has already been released on various online platforms and OTT platforms.

12. Despite being served, none of the rogue websites have entered appearance.

13. Heard.

14. The application **I.A. 11848/2023** under Order XIII-A of the CPC seeks summary judgment. In so far as the prayer for summary judgment is concerned, as per the Commercial Courts Act, 2015 read with the Delhi High Court (Original Side) Rules, 2018 (hereinafter ‘*Original Side Rules*’) and Rule 27 of the IPD Rules, summary judgment can be passed under Order XIII A of the CPC, if the Defendant has no real prospect of succeeding in the matter. Rule 27 of the IPD Rules read as under:

“27. Summary Adjudication

In cases before the IPD, the Court may pass summary judgment, without the requirement of filing a specific application seeking summary judgment on principles akin to those contained in Order XIII A, Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015.”

15. Practice Direction 9(h) of the Original Side Rules, pursuant to Section 18 of the Commercial Courts Act, reads as under:

“9. In the case of commercial disputes, the Court may, inter-alia, pass orders as it may think fit for the speedy disposal of the suit or narrowing the



controversy between the parties, including:-

...

h) conduct a Case Management hearing under Order XV-A of the Code and as part of the said case management hearing –

...ii. explore the possibility of deciding the dispute by a summary judgment, without a specific application for the said purpose, on the basis of pleadings dispensing with the trial of the suit on the questions of law or of facts on which the parties are not at issue;”

16. The Id. Division Bench of this Court in ***Bright Enterprises Pvt. Ltd. v. MJ Bizcraft LLP (2017:DHC:67-DB)*** laid down principles for granting summary judgments under Order XIII-A of the CPC. The observations of the Id. Division Bench are as follows:

*“20. Apart from this, we are of the view that the learned Single Judge has gone wrong in invoking the provisions of Order XIII A CPC for rendering a summary judgment. It is true that Rule 3 of Order XIII A CPC empowers the Court to give a summary judgment against a plaintiff or defendant on a claim if it considers that – (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence. **But, in our view, this power can only be exercised upon an application at any date only after summons have been served on the defendant and not after the Court has framed issues in the suit. In other words, Order XIII A Rule 2 makes a clear stipulation with regard to the stage for application for summary judgment. The window for summary judgment is after the service of summons on the defendant and prior to the Court framing issues in the suit.**”*



17. In the present suit, all the Defendants/rogue websites have been served or are aware of the orders passed by this Court. However, none of the Defendant-domain names or further domain names which have been added have appeared before the Court.

18. Vide order dated 18th October 2022, ld. Joint Registrar closed the right of the Defendants/rogue websites to file written statement. Further, vide order dated 21st November 2022, this Court has confirmed the injunction order dated 20th December 2019. The said order reads as follows:

“7. The rights of the defendant nos.1 to 36 and 37 to 50 to file the reply to the application, being I.A. 18149/2019, was closed by the learned Joint Registrar (Judicial) vide order dated 18.10.2022.

8. The learned counsel for the plaintiff submits that the statutory period for filing of the written statement by the said defendants already stand expired.

9. None is appearing on behalf of the said defendants. Accordingly, the defendant nos.1 to 35 are proceeded ex-parte

10. The learned counsel for the plaintiff submits that he shall be filing an application for passing of a Summary Judgment in the suit. He shall always be at liberty to do so in accordance with the law.

11. List on 21st December, 2022.

I.A.18149/2019

12. The ad-interim order dated 20.12.2019 shall stand confirmed and operate during the pendency of the present Suit.

13. The application is disposed of with the above direction.”

19. The movie has already been released on various platforms including



the OTT platforms and other online platforms. In view thereof, since the rights of the Plaintiff are not in question, and the Defendants have not entered appearance neither written submissions have been filed, a permanent injunction is liable to be granted in terms of paragraph 59(i) of the Plaint against all the rogue websites i.e., Defendant Nos. 1 to 36.

20. Insofar as the other Defendants who are Domain Name Registrars are concerned, they shall ensure that the impugned domain names are suspended, locked and *status quo* is maintained in respect of the same. The same shall not be permitted to be transferred to any third party. The orders of blocking shall also stand confirmed permanently in respect of all the impugned domain names / websites.

21. In view of the above, the Plaintiff do not press for any further reliefs of damages or rendition of accounts.

22. The suit is decreed in the above terms. Decree sheet be drawn accordingly.

23. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 11 , 2023

dj/dn