



WWW.LEGALERAONLINE.COM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (LODGING) NO. 10257 OF 2023
IN
COMMERCIAL IP SUIT (LODGING) NO. 10238 OF 2023

Applause Entertainment Private Limited ... Applicant/Plaintiff
vs.
Meta Platforms Inc. and others ... Respondents/Defendants

Mr. Hiren Kamod a/w. Mr. Rahul Dhote, Mrs. Narayani Prakash Choudhary,
Mr. Raj Shah and Mr. Prashant Pandharikar, i/by. ANM Global for
applicant/plaintiff.

CORAM : MANISH PITALE, J

DATE : 2nd MAY, 2023

P.C. :

1. Heard Mr. Kamod, learned counsel appearing for the applicant/plaintiff. The present proceedings have been initiated by the plaintiff, asserting copyright in a webseries titled "Scam 1992: The Harshad Mehta Story", which is said to be a cinematic adaptation and dramatization of the book titled "The Scam".

2. The plaintiff has pleaded in the plaint that the authors of the said book, published in the year 1992 and thereafter, republished in 2001-2002, executed an assignment agreement in favour of the plaintiff for valuable consideration, whereby they assigned all rights, title and interest in the said book, in favour of the plaintiff for adapting the book into a series or any audio-visual content. Copy of the assignment agreement is placed on record.

3. Thereafter, the plaintiff entered into Memorandum of Understanding dated 16th January, 2019, with Sony Pictures Network India Private Limited, whose studio acted as a line producer for producing the aforesaid webseries. The production agreement was executed in that regard, copy of which is also placed on record. It is emphasized that the credits show the plaintiff as the copyright owner of the said webseries.

4. Subsequently, by license agreement dated 20th May, 2020, the license was granted to the OTT platform of Sony i.e. SonyLIV for broadcasting the said webseries. It is further stated that the webseries consists of 10 episodes starring well-known actors and that the plaintiff entered into agreements with the actors, who were cast in the said webseries, whereby the plaintiff became the owner and proprietor of publicity and character rights pertaining to the said webseries and the members of the cast. Accordingly, the plaintiff exercised and exploited the said publicity and character rights by using images and photographs of the cast members from the webseries for various purposes, including promotion, marketing and merchandising activities. The said webseries was released the digital platform SonyLIV on 9th October, 2020. On this basis, the plaintiff claims exclusive rights in the said webseries.

5. According to the plaintiff, in December, 2022, it came across social media handles of defendant Nos.2 and 3 on defendant No.1's platform i.e. Instagram, whereby the said defendants were found to be using features available on Instagram to publish or communicate to the public, substantial parts of the said webseries. Certain clips from the webseries were found to be stored, broadcasted and communicated by defendant Nos.2 and 3 in the context of their business and to promote their activities for generating

revenues. In this backdrop, on 19th/20th December, 2022, advocates of the plaintiff filed complaint with defendant No.1, as per the mechanism of grievance redressal of the said defendant. The plaintiff specifically raised grievance against defendant Nos.2 and 3, which was acknowledged by defendant No.1, but according to the plaintiff, the defendant No.1 took no action against defendant Nos.2 and 3 in respect of the said activity. As a result, defendant Nos.2 and 3 have continued with their activities, amounting to infringing upon the proprietary rights of the plaintiff.

6. It is further pleaded that in March, 2023, the plaintiff discovered social media handles of defendant Nos.4 to 34 on Instagram platform. The said defendants were also found to be using clips, abridged versions, short versions, short snippets of audio-visual recordings, forming part of the said webseries. In this backdrop, the plaintiff again filed a complaint with defendant No.1, through the said grievance redressal mechanism, as regards infringing activities of defendant Nos.4 to 34. The plaintiff specifically provided relevant URLs of the social media handles of Instagram of defendant Nos.4 to 34.

7. On 14th March, 2023, defendant No.1 simply requested the plaintiff for additional proof to show that the plaintiff was indeed the owner of the aforesaid works in which, it was claiming copyright. The plaintiff responded to the said e-mail, providing copies of all the relevant documents on the basis of which, the plaintiff was claiming proprietary rights. Defendant No.1 responded by claiming that it was not clear as to whether the plaintiff was indeed the owner of the said copyright. In this backdrop, on 15th March, 2023, the plaintiff further wrote to defendant No.1 by e-mail, which was simply acknowledged and it was suggested that the e-mail, being sent on

behalf of defendant No.1, was only for the purpose of answering questions about the process for submitting user grievances, but defendant No.1 would not be able to respond to the grievances submitted to the said e-mail.

8. In this backdrop, the plaintiff was constrained to institute the present proceedings.

9. Learned counsel appearing for the plaintiff has invited attention of this Court to the screenshots of Instagram pages of defendant Nos.2 to 19 to show that the said defendants are using short clips from the aforesaid webseries on their Instagram pages, apart from using similar content pertaining to other audio-visual content.

10. Insofar as the defendant Nos.20 to 34 are concerned, the learned counsel for the plaintiff invited attention of this Court to the material placed on record, indicating that the said defendants are illegally using short audio-visual clippings from the aforesaid webseries of the plaintiff, thereby infringing upon the proprietary rights of the plaintiffs. It is submitted that the nature of illegal activities of defendant Nos.2 to 34 is such that, apart from claiming specific orders of urgently restraining the said defendants from continuing with the illegal activities, the plaintiff is further seeking reliefs, in the peculiar facts and circumstances of the present case, by showing defendant No.35 as Ashok Kumar, on the basis that there is every possibility of defendant Nos.2 to 34 using different identities or rogue handles on Instagram platform to continue to violate the proprietary rights of the plaintiff.

11. There are specific pleadings in paragraph No.27 of the plaint in this regard, claiming that in that sense, this is also a 'John Doe' action, being

undertaken by the plaintiff in order to protect its proprietary rights.

12. It is further contended that if this Court grants *ex-parte* ad-interim reliefs as prayed, it would be an order of the Court, as contemplated under Section 79 of the Information Technology Act, 2000, which defendant No.1, as an intermediary, would be bound to follow.

13. This Court has perused the material on record. There are sufficient documents placed on record to demonstrate that a strong *prima facie* case is made out by the plaintiff in its favour, as regards its copyright in the aforesaid webseries. The nature of documents placed on record do show that the said webseries can be watched only on the aforesaid OTT platform SonyLIV, as per the terms and conditions insisted upon by the said OTT platform. Any other form of communication or broadcast of the said webseries or any part thereof, would amount to violation of the copyright in the said webseries, which *prima facie* appears to be in favour of the plaintiff.

14. The material placed on record also indicates that defendant Nos.2 to 34 have used the Instagram platform to illegally use parts, snippets or short clips of the audio-visual content of the said webseries on their handles, in order to promote their own business activities. *Prima facie*, it appears that the said activity of defendant Nos.2 to 34 violates the proprietary rights of the plaintiffs.

15. The aforementioned pleadings placed on record in paragraph No.27 also indicate that the plaintiff apprehends such illegal activities by other such entities or possibility of defendant Nos.2 to 34 adopting different identities to perpetuate such illegal activities. Pleadings in paragraph No.34 onwards also indicate the reasons why the plaintiff is seeking an injunction, which

could be termed as a dynamic injunction. In the facts and circumstances of the present case and the manner in which defendant Nos.2 to 34 appear to be using Instagram platform, this Court is of the opinion that a strong *prima facie* case is indeed made out on behalf of the plaintiff for granting such *ex-parte* ad-interim relief, which may amount to a dynamic injunction.

16. The plaintiff has placed on record the steps taken in the matter for redressal of its grievance. The plaintiff has repeatedly approached defendant No.1 for redressal of its grievance. It seems that defendant No.1 has not been able to respond in a positive manner and as on date, it does not appear that defendant No.1 has shown any inclination to take appropriate action against the said activities of defendant Nos.2 to 34. This Court is convinced that a strong *prima facie* case is made out by the plaintiff for grant of such *ex-parte* ad-interim reliefs. This Court is also convinced that unless such interim reliefs are granted urgently in favour of the plaintiff, the plaintiff is likely to suffer grave and irreparable loss, thereby indicating that the balance of convenience also lies in favour of the plaintiff.

17. In view of the above, there shall be *ex-parte* ad-interim reliefs in terms of prayer clauses (a), (c), (f) and (g), which read as follows:

“(a) that pending the hearing and final disposal of the suit a temporary order and injunction be passed by this Hon'ble Court restraining Defendant Nos. 2 to 35, their proprietors, partners, employees, owners, associates, affiliates, entity and/or any other person claiming through them from infringing the Plaintiff's exclusive copyright subsisting in the said web-series by publishing the impugned posts as shown at Exhibit-I to the Plaint and/or publishing the Rogue Handles shown at Exhibit-J to the Plaint and/or by making copies of the said web series or clippings thereof, making copies of a photograph of any image forming part

of the said web series, storing copies or clippings of the said web series in any medium by electronic means or other means, communicating to the public, and / or broadcasting the said web-series, its clipping, images and/or substantial part thereof, and/ or in any other manner whatsoever,

- (c) that pending the hearing and final disposal of the suit a temporary order and injunction be passed by this Hon'ble Court directing the Defendant Nos. 2 to 35, their proprietors, partners, employees, owners, associates, affiliates, entity and/or any other person claiming through them to remove and/or delete the impugned posts as shown at Exhibit-I to the Plaintiff and/or Rogue Handles as shown at Exhibit-J to the Plaintiff from the Defendant No.1's platform and/or any other social media platform where they have published any media pertaining to Plaintiff's said web-series and further restraining them from misleading/misrepresenting to any person that they have any association with Plaintiff and/or its business activities in any manner whatsoever;
- (f) that pending the hearing and final disposal of the suit a temporary order and injunction be passed by this Hon'ble Court directing Defendant No. 1 by itself, its directors, employees, agents, officers, assigns, representatives and/or any other person claiming through it to:
 - (i) remove delete / take down/disable the impugned posts accessible from the links at Exhibit-I to the Plaintiff,
 - (ii) remove/delete / take down / disable / deactivate / suspend the Rogue Handles as shown at Exhibit-J to the Plaintiff, and
 - (iii) remove/delete / take down/disable the infringing URLs/posts shared by the Plaintiff with the Defendant No.1 hereafter.
- (g) that pending the hearing and final disposal of the suit a temporary order and injunction be passed by this Hon'ble Court directing Defendant No 1 by itself, its directors, employees, agents, officers, assigns, representatives and/or any other person claiming through it to disclose to the

Plaintiff and this Hon'ble Court all particulars available with the Defendant No.1 including but not limited to the contact details, mobile numbers, email addresses, IP addresses and physical locations / addresses of Defendant Nos. 2 to 34;”

18. Defendant No.1 is expected to disclose the details, as sought in prayer clause (g), before the next date of listing.
19. List the application for further consideration on 19th June, 2023.
20. *Ex-parte* ad-interim reliefs shall continue to operate till then.

Digitally
signed by
PRIYA
KAMBLI
Date:
2023.05.04
14:07:17
+0530



LEGALERA
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

(MANISH PITALE, J)

Priya Kambl