

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

% *Judgment Reserved on : July 22, 2016*
Judgment Delivered on : July 29, 2016

+ **R.P.131/2016 in FAO (OS) 57/2015**

DEPARTMENT OF ELECTRONICS
AND INFORMATION TECHNOLOGY Appellant

Represented by: Mr.Sanjay Jain, ASG instructed by
Mr.Sanjiv Narula, Mr.Sunil Dalal,
Mr.Ajay Kalra, Ms.Shreya Sinha and
Ms.Aastha Jain, Advocates

versus

STAR INDIA PVT. LTD. Respondent

Represented by: Ms.Pratibha M.Singh, Sr.Advocate
instructed by Mr.Saikrishna Rajgopal,
Mr.Siddharth Chopra, Ms.Sneha Jain,
Ms.Sauni Dutt and Mr.Yatiender Garg,
Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE A.K.PATHAK

PRADEEP NANDRAJOG, J.

R.P.No.131/2016

1. The ex-parte ad-interim injunction order dated December 02, 2014 passed by the learned Single Judge was challenged by the appellant on the plea that while restraining defendants No.1 to 73, the learned Single Judge erred in issuing directions to the Department of Telecommunications as also the Department of Electronics and Information Technology, Government of India, to ensure compliance with the injunction order issued against

defendants No.1 to 73. An alternative submission made is that the sweep of the injunction order is too wide.

2. As per the suit instituted by the respondent in the appeal, it is a leading sports broadcaster in India and has exclusive licence of media rights in various sporting events. It has internet and mobile presence through its websites which are dedicated digital sports entertainment service sites. They offer to the viewers, sports content on-live, delayed-live, video on demand and pay per view basis. It is pleaded that defendants No.1 to 73 are rogue websites and the only activity they perform is that of infringing content rights. Through their websites defendants No.1 to 73 are engaged in the illegal business of hosting, streaming, broadcasting, retransmitting, communicating content to the public. The content offered by the said defendant websites is pirated and illegal. It is pleaded that these defendants are located across the world. Most of them hide behind domain privacy services, making it extremely difficult, and almost impossible to locate the owners of these websites. It is pleaded that the rogue sites use the technique of URL redirection/domain redirection to avoid detection and also to circumvent any order passed directing the blocking of the URL. Referring to past instances of infringement, injunction was claimed against defendants No.1 to 73 from indulging in the offending activity and further direction was sought to block these rogue websites. Against the internet service providers the order sought for is that they should block the websites of defendants No.1 to 73. The injunction prayed for has been granted with a direction to the appellant to ensure compliance with the injunction order.

3. To put it in simple language, defendants No.74 to 91 are internet service providers (ISPs). The respondent No.1 prayed for what is conventionally

known as website blocking orders against the internet sites hosted by defendants No.1 to 73.

4. The ISPs and the appellant do not dispute that the rogue websites, impleaded as defendants No.1 to 73, are indulging in piracy.

5. Learned Additional Solicitor General Sh.Sanjay Jain did not dispute that the offending activities indulged in by defendants No.1 to 73 have to be curbed. The argument was that a takedown direction against ISPs had to be restricted to the URLs of the rogue websites, and in any case no direction could be issued to the appellant to ensure compliance with the ex-parte order granted by the learned Single Judge.

6. We had disposed of the appeal vide order dated March 10, 2016 by restricting the span of the impugned order, directing that the specified URLs identified by the aggrieved persons would be blocked and not the entire website.

7. The reason for restricting the sweep of the ex-parte ad-interim injunction obviously was that an order limiting the right of a person to carry on trade and business had to be justified and such restriction as was reasonable could be imposed by a Court. To wit : 'A' is carrying on three businesses, one of which is illegal. The restraint would obviously be qua the illegal business and not to restrain 'A' from carrying on any business.

8. Seeking review, it is urged by the respondent that the URLs of the defendants No.1 to 73 vary between 2 to 2026 and that the restrictive injunction granted would render the injunction granted infructuous because it is very easy to change a URL, but relatively difficult to change a domain name.

9. To understand the argument in the review it needs to be appreciated that the domain name of an internet service provider would be the alphanumeric address of the website, for example www.google.com. The landing page would be the main web page of a website. A website consists of multiple different pages which are opened when one clicks on a particular link. Each page is known as a web page. The source code would be the set of computer instructions written in human readable language. A website is designed using a source code. The source code of the whole website contains instructions for each action that a viewer can perform on a website. The URL is the Uniform Resource Locator and it refers to a particular location on the internet. A domain name generally refers to the location of an entire website on which content or access to content is provided.

10. Now, as is known to a person with elementary knowledge of the world of the internet, to create a website one has to choose a domain name and purchase the same and a server space to host the website. Thereafter, the relevant files are uploaded onto the hosting server. The source code for all the functions that one desires to be performed by the website are written. The source code will contain instructions to the computer so that a user gets connected to the relevant page on the hosting server in which the files are saved. For every web page created in the website, the source code contains corresponding URLs which contain the base domain name and other characters.

11. The steps to change a URL would require, to firstly access the source code of the infringing website and then change the alpha-numeric character string of the URL. This could be as easy as changing the password of one's e-mail I.D. This would mean that if the URL of a rogue website is blocked,

the operator can simply log into the website source code and change the URL akin to a person changing one's password. To give an example, a rogue website www.abc.com whose URL is www.abc.com/india-v-pakistan, can simply log into the website source code and insert the letter 's' after the letter 'v' and change the URL to www.abc.com/india-vs-pakistan. Thus, if the URL www.abc.com/india-v-pakistan is blocked, the infringer can start operating on the URL www.abc.com/india-vs-pakistan within a few seconds. But, if a domain name itself is blocked, to continue with the infringing activity becomes a cumbersome, time consuming and money spending exercise. A new domain name has to be created and purchased apart from purchase of a fresh hosting server space. The entire exercise of creating a website has to be undertaken.

12. Suffice it to state that where infringement on the internet is not in dispute, a judicial response must factor in the comparative importance of the rights that are engaged because the very act of infringement is the justification for interfering with those rights. Therefore, the availability of alternative measures which are less onerous need to be considered. The cost associated with the measures which would include the cost of implementing the measures, also has to be taken into account. The efficacy of the measures which are ordered to be adopted by the ISPs have also to be kept in mind.

13. Now, an ISP could argue that the lesser measure to block the URL would suffice. This argument stands to logic and reason, but would have no content where the offending activity by the rogue website is to carrying on hardly any lawful business and in its entirety or to a large extent, piracy is being resorted to.

14. The respondent has placed enough material in the suit to show that the rogue websites are indulging in rank piracy and thus prima-facie the stringent measure to block the website as a whole is justified because blocking a URL may not suffice due to the ease with which a URL can be changed, and as noted above, the number of URLs of the rogue websites range between 2 to 2026 and cumulatively would be approximately 20,000. It would be a gargantuan task for the respondent to keep on identifying each offending URL and especially keeping in view that as and when the respondent identifies the URL and it is blocked by the ISP, the rogue website, within seconds can change the URL thereby frustrating the very act of blocking the URL.

15. On the issue of whether the appellant could be directed to ensure compliance with the blocking order directed against the service providers, suffice it to state that it is the duty of the Government, its instrumentalities and agencies to assist in the enforcement of orders passed by the Courts. Afraid of a breach of contract and legal proceedings initiated by the owner of a website hosted on the platform of the service provider, our attention has been drawn to a letter addressed to the respondent by Bharti Airtel Ltd. which expresses helplessness to block the website unless a direction is obtained from the Central Government.

16. We conclude by noting that the appellant has complied with the direction issued by the learned Single Judge. The direction issued by the learned Single Judge causes no injury to the appellant. The concern of the appellant, a wing of the Government of India is with the issue of freedom of trade on the internet. The concern may be well founded but on the facts of the instant case, is misplaced.

17. We accordingly allow the review petition and recall our order dated March 10, 2016 which restricted the span of the ex-parte ad-interim injunction by directing that the specific URL should be blocked. We restore the ex-parte order granted by the learned Single Judge that the entire website of defendants No.1 to 73 be blocked.

18. Our view is based on a prima-facie appraisal of the material placed by the respondent in the suit. Should any of the defendant show that its dominant activity is lawful and makes out a case for vacating the ex-parte ad-interim injunction, the learned Trial Judge would consider modification thereof to block a URL.

19. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(A.K.PATHAK)
JUDGE

JULY 29, 2016

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