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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 2315 OF 2016

IN
SUIT NO. 751 OF 2016

Eros International Media Limited & Anr. ...Plaintiffs

Versus

Bharat Sanchar Nigam Limited & 49 others ...Defendants

Mr. N. Rodrigues, i/b R.M. Partners for the Plaintiffs.

Mr. Viraag Tulzapurkar, Senior Advocate, i/b Trilegal for the Defendant No.11.

CORAM: G.S. PATEL, J
DATED: 12th August 2016

PC:-

1. This is a renewed application by the 11th Defendant in a *John Doe* action regarding the film *Dishoom*. That film has already been released. By an order dated 26th July 2016, one that was fashioned after previous applications, and with, I readily grant and acknowledge, quite extraordinary cooperation from the Plaintiffs and their Advocates, I permitted the blocking of a limited number of verified URLs that potentially allowed illicit downloads of the film. At that time, I directed that an error message be displayed with information about the provisions of the Copyright Act (especially

penalties, etc) and, perhaps most importantly, details of the order that permitted the blocking as also a statement that any person aggrieved could directly approach the Court after 48 hours' notice to the Plaintiffs' Advocates for a variation or a modification. That directive was intended to protect the rights of adversely-affected third parties, i.e., someone not a defendant to the Suit, but whose legitimate rights were compromised by the Court's order. These directions are in paragraph 25 of the 26th July 2016 order.

2. On 9th August 2016, the 11th Defendant, Tata Communications Ltd, the only one of the very many Internet Service Providers arrayed as Defendants to the suit, sought to have this directive modified saying that it was 'technically not feasible' to implement it. I rejected the application and stood it over to today for compliance.

3. Mr. Tulzapurkar for the 11th Defendant renews the application. He insists, at first, that what I directed is technically impossible. That is incorrect. He then submits that there is a logistical issue, in the sense that the error page would have to be customized on a per-order or case-to-case basis, with different error pages for each order and for each URL. I really do not see the 'technical difficulty' involved, and I note that it is only TCL that seems to face this problem. These error pages can be dynamically generated; some of the content I directed be published is stock or standard, e.g., the material about the provisions of the Copyright Act. Paragraphs (b) and (c) of paragraph 25 of the 26th July 2016 order are, however, case-specific. The case number, order date, and the names of the plaintiffs and their advocates will all vary from case

to case. I should imagine there is no problem at all in invoking or 'calling' a particular script or module whether in any web page rendering technology, and that module containing case-specific information and data.

4. I will, however, make a slight allowance on Mr. Tulzapurkar's application for leave to publish a more generic error page, subject to certain conditions. Mr. Tulzapurkar suggests a format that allows an affected party to contact a designated officer of the 11th Defendant. That officer will then provide the necessary information. Mr. Tulzapurkar tenders a draft of the proposed error message. This is taken on record and marked "X" for identification with today's date. I will accept this temporarily with some modifications.

5. For the time being, and for TCL alone, the text of the error page will now contain the following:

"This URL has been blocked under the instructions of the Competent Government Authority or in compliance with the orders of a Court of competent jurisdiction. Viewing, downloading, exhibiting or duplicating an illicit copy of the contents under this URL is punishable as an offence under the laws of India, including but not limited to under Sections 63, 63-A, 65 and 65-A of the Copyright Act, 1957 which prescribe imprisonment for 3 years and also fine of upto Rs. 3,00,000/-.

Any person aggrieved by any such blocking of this URL may contact [*] at [**] (*nodal officer detail*) who will, within 48 hours, provide you the details of relevant proceedings under which you can approach the

relevant High Court or Authority for redressal of your grievance.”

6. I do not claim to be entirely satisfied with this. It is by no means optimal. However, if it allows for greater efficiency and speed in implementation, I am willing to consider it, given that such matters are extremely time-sensitive, and speed of deployment is of the essence. As long as the contact email address of a Nodal Officer is provided and there is an assurance of a response from that Nodal Officer within a reasonable time, taken as an undertaking to this Court (with all that this implies), then it might be worth attempting.

7. I will therefore accept, for the present, the submission from the 11th Defendant, and take this as an undertaking to the Court that details will be provided to any affected party within 48 hours of an email request being received. The Nodal Officer will, of course, also forward a copy of the complaint to the Advocates for the Plaintiffs in the case in question. I have no reason to believe that the 11th Defendant and its Officers will not comply with this. Should there any issue, this order can always be revisited at any time.

8. At the moment, I do not propose this to be used as the standardized notice. When that happens, undoubtedly a direction will be required to the effect that it will be the responsibility of the advocates for the plaintiff in each case to inform the Nodal Officer of each of the named Internet Service Providers of such order of this Court being passed blocking particular URLs. I note that the advocates for the plaintiffs, as a general rule, do circulate copies of court orders to various ISPs (that is only logical).

9. To the extent indicate earlier, the earlier directions stand modified, limited to the 11th Defendant. This order will operate till 19th September 2016, by which time I propose to revisit the issue.

10. I said earlier that the proposal is sub-optimal, and I confess to unease about the efficiency and effectiveness of its implementation. If the Nodal Officer simply does not respond, the affected third party will never know where to go. That is of the essence, and far too much depends, I think, on the proposed compliance by these Nodal Officers, all unmonitored, unsupervised and with no oversight whatever.

11. I must refer here to a quite excellent article by Mr. Kian Ganz that appeared on 2nd August 2016 in *The Mint* newspaper.¹ Extremely well-researched, thoughtful and incisive, the article covers a range of issues related to online piracy. It mentions the recent *John Doe* orders in the *Great Grand Masti* and *Dishoom* cases, and the number of websites blocked, which Mr. Ganz describes as potentially huge. A startling statistic follows: that between January and December 2014, as many as 2162 URLs were blocked *under Court orders*, several times more than those ordered by the Government. This underscores the sweeping nature of this jurisprudence. The article then references one of my recent orders, but that is immaterial to this discussion. What is of greater interest is what follows, for, in a section entitled 'Remedial Measures', Mr. Ganz suggests what I believe is a reform that merits urgent

1. "*The messy battle against online piracy*", by Kian Ganz, 2nd August 2016; available online at:

<http://www.livemint.com/Consumer/YtbRN9fv6ZgZCZOexcswMI/The-messy-battle-against-online-piracy.html>.

consideration by the ISPs coming together in association. Mr. Ganz quotes Prof Shamnad Basheer, arguably the country's foremost academic authority on matters pertaining to intellectual property and information technology, as recommending a neutral 'ombudsman of sorts', a third-party body. While the suggestion in the article to pull cases out of the Courts is one of which I confess I am not entirely convinced, the idea of an ombudsman to serve not only as a watchdog but as some sort of a non-adjudicatory, self-regulatory body is indeed appealing. It is certainly an idea worth exploring and developing further. Undoubtedly, the concept will need a defined structure, a frame or terms of reference, guidelines, and so forth; but the merits of the suggestion are many. In my view, it is a seminal recommendation and one that should be acted on sooner rather than later. It is entirely possible that a body of this sort can prove to be of assistance to Courts as well. I will leave it at this, and leave it to the ISPs, to whom I request the Plaintiffs' Advocates to circulate a copy of this order, to carry this further.

12. List the matter for further directions on 19th September 2016.

(G. S. PATEL, J.)