

Taj Television Ltd. & Anr. vs. Rajan Mandal & Ors.

High Court of Delhi

June 14, 2002

[2003] F.S.R. 22

Dalveer Bhandari J.:

1. The first plaintiff recently launched a new 24 hour exclusive sports channel "Ten Sports". Owing to its exclusive sports content broadcast in a very entertaining manner, Ten Sports has become a much sought after channel within just a few months of its coming into operation. The channel has bagged rights to some of the major sporting events.

2. The launch of Ten Sports was announced at a press conference on March 25, 2002 in Mumbai and the channel began telecasting in India from April 1, 2002. Initially it was intended that this channel would be telecasted in India, Pakistan, Nepal, Bangladesh, Sri Lanka and Maldives. The popular Sharjah Cricket Tournament which began in April this year was the first event telecasted through this channel. This telecast was hugely successful and made the channel very popular among Indian viewers.

3. Currently the excitement about the plaintiffs' channel stems from the fact that it has been granted the exclusive rights to broadcast the World Cup Football 2002, which commenced on May 31, 2002 in Japan-Korea, a sporting event, that perhaps has the highest viewership in the world.

4. In order to provide a world class channel and distribution network, the plaintiffs incorporated a new office in Dubai Media City, where 55,000 square feet state-of-the-art facility has been built. The majority stake in the plaintiff

company is owned by Bukhatir Investments Ltd, one of the most successful business conglomerates in the UAE. The plaintiffs broadcast production facility in Dubai Media City is one of the most advanced in the industry. It is purpose-built for television production, with a logical flow between studio, production control, editing and voice over areas. Cabling has therefore been minimised enabling a faster and more efficient transfer of video and audio across the facility.

5. The plaintiff in order to market its channel in India entered into distribution arrangement with the second plaintiff. The second plaintiff in turn through its division Cable Division Network ("CDN") enters into agreements with cable operators in India. By virtue of this agreement, cable operators are granted a licence to transmit the Ten Sports channel to a specified number of subscribers within a specified area. In fact, the payments that have to be made by the cable operators to the plaintiffs would depend upon the number of subscribers as declared by such cable operators. The second plaintiff, under the distribution agreement with the first plaintiff guarantees a certain minimum payment to it, on the basis of estimated viewership in India. The second plaintiff is therefore, under tremendous pressure to try and sign up with as many cable operators as possible. The excitement generated by this channel thus far has helped the second plaintiff to sign up agreements with a number of operators. There are 1377 cable operators/parties who have taken licences from the plaintiffs. At the same time a very large number of operators, some of them being very prominent cable companies, have not signed up as yet. The plaintiff channel ("Ten Sports") carries a variety of programmes including cricket highlights, WWF matches, interviews with sports celebrities, etc. The plaintiff is the sole and exclusive owner of the "broadcast" reproduction rights with respect to these programmes in India. Further, under an agreement with FIFA and

Kirch Sport, Ten Sports has exclusive broadcast rights to telecast the World Cup Football matches in India. The first plaintiff is, therefore, the owner of the broadcast reproduction right as provided under s.37 of the Copyright Act 1957 . The World Cup Football matches have begun on May 31, 2002 and the fact that some of the defendants are already unauthorizedly transmitting the Ten Sports channel in India, the plaintiffs are extremely concerned about the potential losses that may accrue to them as a result of these unauthorised transmissions. The apprehension is all the more acute, since the matches will soon be entering the quarter final, semi final and final phases. These phases may command the highest audience amongst sports lovers.

6. Mr Pravin Anand, learned counsel for the plaintiffs, submitted that the plaintiffs have begun to identify a variety of cable operators/parties/networks who are unauthorizedly transmitting their Ten Sports channel and reaping huge dividends. This has not only caused the plaintiffs loss of revenues in terms of licence fees, but has also impacted their relationship with existing licensees who now do not see the need for paying license fees when they could very well unauthorizedly transmit the signal.

7. Mr Anand also submitted that owing to the unique nature of cable piracy and the unstructured nature of the cable industry, enforcement of rights against cable operators is a virtual nightmare. It hardly takes a few minutes for cable operators who unauthorisedly transmit signals to destroy evidence of such unauthorised transmission. The final phase of the World Cup which ends on June 30, 2002 is perhaps the most critical as it is the stage that would command the highest viewership and consequently the highest risk of rampant infringement by all parties who have not till date obtained licenses

from the plaintiffs. The plaintiffs apprehend that if they were to wait and identify specific parties and collect evidence of infringement by such specific parties, they would lose a great amount of time and the world cup matches may come to an end. This loss of time in enforcing their rights would lead to immediate and irreparable injury/loss/damage.

8. Mr Anand also submitted that it is an accepted practice that many cable channels choose to supply/communicate to the paying subscribers the best television channels without the appropriate authorisations/licences from the owners/rights holders of copyright in the channels. This unauthorised and illegal practice has continued to cost the television industry in terms of millions of rupees in loss of revenue in terms of the initial and eventual exploitation of the channel.

9. Mr Anand submitted that the plaintiffs are apprehensive that unauthorised cable transmission of the plaintiff channel will cause huge revenue losses. He further submitted that the unauthorised transmission will prompt other cable operators, including the ones who have currently signed up under a valid license to steal the cable signal and unauthorizedly transmit without making the necessary payments. The illegal distribution may result in poor programme quality, thereby impacting on the plaintiffs' reputation.

10. Mr Anand further submitted that the first to sixth defendants are cable operators operating their cable networks in specific cities/regions of India. The constitution and length of these defendants actual reach in terms of cable transmission is not known to the plaintiffs, pending discovery in action. Mr Anand also submitted that the seventh to twentieth defendants are unknown entities who being unlicensed are likely to unauthorizedly transmit the plaintiff television channel via their networks without a licence. Mr Anand

submitted that looking to the peculiar facts and circumstances of the case, the plaintiffs invoke the inherent powers of this court under s.151 CPC to evolve a fair and reasonable procedure to meet the exigencies of the present situation which is consistent with the international "John Doe" practice as also India's TRIPS obligation to effectively enforce all sorts of IPRs, including rights, such as the present one, which have a practical life span of now less than two weeks.

11. Mr Anand submitted that conduct of various unscrupulous cable channel companies/distributors such as the defendants is well known. The aspect of channels being illegally aired on the local cable networks has almost taken on a regular feature. He prayed that in the facts and circumstances apart from giving necessary directions regarding the first to sixth defendants, directions be also given for seventh to twentieth defendants, in other words, the court may pass "John Doe" orders.

12. Mr Anand placed reliance on Trade Marks Law of Canada in which it is mentioned that "John Doe" orders enabling the order to be served upon persons whose identity is unknown to the plaintiff at the time the action was commenced, but whose activity falls within the scope of the action. This form of naming a party is considered a mere "misnomer", and as long as the "litigating finger" is pointed at such person then the misnomer is not fatal. This proposition has been taken from Jackson v Bubela (1972), 28 D.L.R. (3d) 500, BCCA and Dukoff v Toronto General Hospital (1986), 54 O.R. (2d) 58, HC.

13. Mr Anand submitted that "John Doe" orders are passed by American, English, Canadian and Australian courts frequently. He further submitted that this court also possesses enormous inherent powers to formulate the orders

which are necessary to meet the peculiar facts and peculiar situations. In the first US Federal "John Doe" order, *Shaw v Various John Does* No.80 Civ. 722 (S.D.N.Y. February 6, 1980) the court held that a court of equity was always free to fashion a decree in keeping with the needs of the litigants. Similarly, in *Billy Joel v Various John Does*, 1980 U.S. Dist. LEXIS 12841 the Court held: "Were the injunction to be denied, plaintiffs would be without any legal means to prevent what is clearly a blatant infringement of their valid property rights. While the proposed remedy is novel, that in itself should not weigh against its adoption by this court. A court of equity is free to fashion whatever remedies will adequately protect the rights of the parties before it."

14. Mr Anand placed reliance on the judgment of the Supreme Court in *Manohar Lal Chopra v Rai Bahadur Rao Raja Seth Hiralal*, AIR 1962 SC 527 . The court held that the inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore, it must be held that the court is free to exercise them for the purposes mentioned in s.151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature.

15. Mr Anand placed reliance on *EMI Records Ltd v Kudhail*, [1985] F.S.R. 36; [1983] Com. L.R. 280.

16. Mr Anand, learned counsel for the plaintiffs, has made references to a large number of Canadian, Australian, English and American cases but I would not like to burden this order with all the judgments on which reliance has been placed at this stage. Since "John Doe" orders are passed in the

court of Canada, America, England, Australia and in some other countries. The judicial systems of all these countries have basic similarity with our judicial system. Therefore, looking to the extra ordinary facts and circumstances of the case, in the interest of justice the courts in India would also be justified in passing "John Doe" orders.

17. I have carefully considered the relevant documents, averments of the application and judgments of various courts. Undoubtedly the cable operators in India have a long history of violating copyrights. A very large number of court orders are testimony to this. The cable operators are encouraged owing to the unique nature of cable piracy and the unstructured nature of the cable industry, the speed with which any trace of infringement can be erased by the cable operators, enforcement of rights in conservative nature is unlikely to effectively redress the plaintiffs' grievance. At the same time, I am of the opinion that though the court is not powerless to pass John Doe orders in India but in the facts and circumstances of this case the directions given in succeeding paragraphs may protect the interests of the plaintiffs and meet the ends of justice.

18. On consideration of the totality of facts and circumstances it has become imperative to appoint a Court Commissioner to carry out directions of this case. I accordingly appoint Shri R.S.Chhabra, a former Joint Registrar of this court, 38-B, Pocket-IV, Mayur Vihar Phase-I, New Delhi, Tel.3386912(O), 2716028(R), as a Court Commissioner. He is authorised to search the premises of the first to sixth defendants and make an inventory and take into custody all such equipment/wires which is or could be used for the broadcast of the plaintiffs channel. The Court Commissioner may take assistance of technical experts and police officials in carrying out the orders of this court. The SHO of the concerned police stations are directed to render

necessary police help to the Court Commissioner in carrying out the courts orders.

19. The Court Commissioner must ensure compliance of the court orders not only by the first to sixth defendants but by all others. He is further authorised to enter the premises of other cable operators and collect necessary evidence by taking photographs and video films who are responsible for broadcasting of the plaintiffs' channel in a clandestine manner and submit a report to this court within three weeks. The court on the basis of the report of the Court Commissioner would consider issuing notices to all alleged violators of the orders of the court. The court after hearing may consider taking appropriate actions both "civil and criminal" against them in accordance with law.

20. The Court Commissioner would be at liberty to issue necessary warning based on court's order to the prospective violators of court's order.

21. It is difficult to evaluate the exact quantum of work which would be required to be carried out by the Court Commissioner. Therefore, I direct the plaintiffs to pay reasonable fee to the Court Commissioner for carrying out the directions of the court.

22. Compliance of the Ord.39 r.3 be done within one week.

23. A copy of the order be given to the plaintiffs and the Court Commissioner today itself.