

(2012) 10 MAD CK 0247

Madras High Court

Case No: Application No's. 2155, 2159, 2388, 2417, 2418, 2419 and 2980 of 2012 and O.A. No. 230 of 2012 in C.S. No. 208 of 2012 and Application No's. 2424, 2425, 2426, 2427, 2452, 2453 and 2979 of 2012 and O.A. No. 358 of 2012 in C.S. No. 294 of 2012

Vodafone India Limited.

APPELLANT

Vs

M/s. R.K. Productions Pvt. Ltd.
15/5 Rajamannar ST T Nagar
Chennai and Others

RESPONDENT

Date of Decision: Oct. 30, 2012

Acts Referred:

- Copyright Act, 1957 - Section 14(d), 2(ff), 2(m), 51(a)(ii), 62
- Information Technology Act, 2000 - Section 51(a)(ii), 55, 62, 79, 81
- Trade Marks Act, 1999 - Section 134(2)

Citation: (2013) 54 PTC 149

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

K. Chandru

1. C.S. No. 208 of 2012 was filed by M/s. R.K. Productions Private Limited. C.S. No. 294 of 2012 was filed by Creative Commercials Media and Entertainment Ltd. Both suits were filed as John Doe suits. But the label "John Doe" was replaced by Ashok Kumar, an unknown person of India. The first suit relates to a Tamil Film named as "3". It is for a permanent injunction restraining the defendants and other unknown persons infringing the plaintiff's copyright in the cinematograph film "3" by copying, recording, reproducing or allowing, camcording or communicating or allowing others to communicate or making available or distributing or duplicating or displaying or releasing or showing or uploading or downloading or exhibiting or playing and in any manner communicating the plaintiff's movie "3" without a proper

license from the plaintiff or in any other manner which would violate or infringe the plaintiff's copyright in the said cinematograph film "3" through different mediums including CD, DVD, Blu-ray, VCD, Cable TV, direct to home services, internet services, multimedia messaging services, pen drives, hard drives, tapes, conditional access systems or in any other like manner whatsoever and also for a direction to the defendants, allowing appropriate authorities, to block all unauthorised websites /web pages including the schedule mentioned websites, web pages by way of data source network (DSN) blocking and/ or data packet interruption (DPI) based Universal Resource Locator (URL) blocking and /or internet protocol (IP) address blocking through routers thereby blocking all or any of the contents that relate to plaintiff's copyright protected cinematographic film /motion picture "3" unauthorisedly copied, communicated or made available or displayed or released or showed or uploaded or downloaded or exhibited or played and /or in any manner communicated in and through their respective websites and web pages of the defendants.

2. The second suit in C.S. No. 294 of 2012 was filed by Creative Commercials Media & Entertainment Limited in respect of the very same relief in respect of the movie "Dhammu".

3. The suits were admitted. Pending the suit in C.S. No. 208 of 2012, this court had granted an interim injunction vide order dated 29.03.2012 holding that if an injunction is not granted, the plaintiff's right in relation to the motion picture "3" will be affected. Similarly, in the second suit in C.S. No. 294 of 2012, by an order dated 25. 4.2012, an interim injunction was granted in respect of the film "Dhammu".

4. However, by a common order dated 22.6.2012, this court had clarified the interim injunction in the following terms:

The order of interim injunction, dated 29.3.2012 and 25. 4.2012 passed in O.A. No. 230 of 2012 in C.S. No. 208 of 2012 and O.A. No. 358 of 2012 in C.S. No. 294 of 2012 respectively are hereby clarified that the interim injunction is granted only in respect of a particular URL where the infringing movie is kept and not in respect of the entire website. Further, the applicant is directed to inform the respondents/ defendants about the particulars of URL where the infringing movie is kept and on such receipt of particulars of URL from the plaintiff/applicant, the defendants shall take necessary steps to block such URLs within 48 hours.

(Emphasis added)

5. Notwithstanding the clarification, some of the respondents /defendants filed vacate injunction applications to vacate the order dated 29.03.2012 in O.A. No. 230 of 2012 vide application Nos. 2155, 2159, 2388, 2418 and 2419 of 2012 in respect of the first suit. In respect of the second suit, the order dated 25. 04.2012 in O.A. No. 358 of 2012 is sought to be vacated vide application Nos. 2424, 2426, 2452 and 2453 of 2012. The interim order originally granted which was subsequently modified on

22.6.2012 is not the subject matter of any application. Therefore, it has to be seen whether in the light of the amended relief granted, the respondents /defendants can have still grievance. On the other hand, the respondents themselves have come up with an application under Order 7 Rule 11 CPC in C.S. No. 208 of 2012 vide application Nos. 2417 and 2980 of 2012. Similar applications were filed in C.S. No. 294 of 2012 vide application Nos. 2425, 2427 and 2979 of 2012.

6. Heard the arguments of both sides. Since the claim made in both suits by the plaintiffs are identical, the averments made in O.A. No. 230 of 2012 alone is set out hereunder. The applicant had stated that they are a reputed production house involved in the business of production, promotion, marketing and distribution of various cinematographic films and motion pictures. It is run by one Kasthuri Raja, a well known Director. Their latest production venture was a cinematographic film titled "3". That film was directed by Mrs. Aishwarya R. Dhanush having Dhanush and Shruthi Hassan as lead actors. The budget of the film was about Rs. 22 crores and was simultaneously produced in three languages, Tamil, Telugu and Hindi. The trailers and promotion of the film were released more than six months ago and had created phenomenal expectation. The film is also well known for its promotional song "Why This Kolaveri Di", which has already become an international sensation.

7. The applicant being the producer and the first owner of the cinematographic film is entitled to all rights vested in it vide the Copy Right Act. The video piracy and unauthorised downloads always play havoc for the production company. Various websites and web pages hosted by various persons across the world involve in activities of recording, camcording and reproducing the cinematographic films that are screened in theatres and then copying, reproducing them through various mediums including CDs, DVDs, VCDs, Blu-ray Discs, computer hard drives, pen drives and distributing the same for selling at a meagre sum to the general public. In respect of one film which was illegally recorded and communicated through the internet medium, an average of more than 3500 links are created which is disbursed across the world. Such links garner approximately 2,40,000 views per month as well as 45,000 downloads per day. Each hit causes an average loss of Rs. 20/- and by one month, the total loss to the producer comes to Rs. 3.88 Crores. Such illegal and unauthorised communication of a cinematographic film or motion picture results in enormous loss to the tune of hundreds of crores of rupees to the production companies. The applicant company itself has been a victim of such illegal and unauthorised piracy. An inclusive list of the websites which provide for illegal and unauthorised communication of motion pictures is set out in Schedule "A". The web pages and websites which provide such links are also multifarious and are disbursed all over the World. As the applicant did not know the exact composition of unknown persons, the unknown persons are represented under the name Ashok Kumar. The respondents are responsible for the contents provided in the websites and webpages and have administrative control over the said websites and web pages of such unknown persons. However the Internet Service Providers (ISPs) such as the

respondents and the unknown persons who maintain the websites and webpages have continually turned a deaf ear over the pleas of the production houses. The application has no other option to file a suit against the respondents.

8. Under the provisions of the Copy Rights Act, 1957, no person other than the applicant can deal with various rights in relation to the motion picture 3 without the express authority of the applicant. The respondents did not have any right over the copyright protected property of the applicant. Therefore, reproducing, copying, distributing, displaying through cable or online medium of the applicant's copyright protected film 3 either by the respondents or any person accessing the websites hosted or allowed by the respondents in the territory of India would be in clear violation of the statutory and common law rights. It was therefore imperative before the said motion picture is released, the respondents should be restrained from in any manner infringing the applicant's copyright protected cinematographic work through a suitable injunction. The suit was filed by them as a quia timet action on account of reasonable apprehension on the act of infringement.

9. Similar allegations were made in O.A. No. 358 of 2012 which was filed by an another production company. It is based upon these allegations and averments, an interim order was granted as noted above. In the last interim order dated 22.6.2012, the relief was only restrained to the effect that the applicant if inform about the particulars of URL where the infringing movie is kept and on such receipt of particulars of URL from the applicant, the defendants should take necessary steps to block such URLs within 48 hours.

10. In the counter affidavit filed by the BSNL, the first defendant in both suits, it was stated that the first defendant is the State owned organization licensed by TRAI to provide services in Telecom such as Basic telephony, mobile services and broad band network in all over India. The applicant has given a list of web sites in Schedule "A, who he claims that they have committed copyright infringement and are potential infringers. But they have not been made as parties to the suit or to the applications. Hence the suit is liable to be dismissed for non joinder of parties. The first respondent is a telecom operator and an internet service providers (ISP) and that he has to provide a medium to access World Wide Web (www) and telecommunication services through wired and wireless telephony to his customers. The suit has been filed against them as ISP in India. An ISP only offers a medium for the users to get access to the WWW and exchange or retrieve information. Section 79 of the Information Technology Act specifically absolves the ISPs from any liability under any law including under the Copy Right Act in respect of their activities and that the present suit is liable to be rejected in limine.

11. The first respondent is a Public Sector Undertaking under the Ministry of Communication and Information Technology and works under the directions and orders issued by the Department of Telecommunications and Telecom Regulatory Authority of India. It gives as an ISP the medium through which the users access

internet as stipulated by DOT and TRAI guidelines. One of the conditions of the ISP licence is that the service provided shall be unrestricted and shall not invade the privacy of the contents /usage by the consumers unless and until directed by CERT-In, DIT, DOT and TRAI. No ISP in the country is authorised or licensed to track or note or monitor the data usage of its customers without the direction of these authorities. It abides by the Ministerial order dated 7.7.2003 issued by the Department of Information Technology. It gives procedure for monitoring and blocking of the web sites and web links. The respondent is following the guidelines issued by those authorities and has no control or powers of supervision over the contents on WWW and has no power to block the websites and web links on its own. It complies as and when the CERT-In issues an order in blocking web sites and web links. The applicant had not approached the proper forum. The applicant has made false allegations against the respondents. The service provided by the ISP does not in any manner include any processing of data or reproduction of data and does not involve any of the acts alleged to be an infringement of copyright under the Act. The respondents have no control or knowledge about the information which the consumers retrieve or share on the WWW. The applicant has not disclosed any specific act of violation committed by the respondents.

12. The third respondent Bharti Airtel Limited has filed a counter affidavit in support of their application stating that one of the conditions of the ISP licence is that the service provided shall be unrestricted and shall not invade the privacy of the contents /usage by the consumers unless and until directed by the TRAI. Hence the ISP is not authorised or licensed to track or note or monitor the data usage of its customers. For issuance of John Doe order under the Indian law, there should be an actionable wrong already committed or done and only the identity of the wrong doer would be undetermined. Under the provisions of the CPC, the suit can be instituted against the identified and named defendants and that the present suit is ex-facie not maintainable. Every website is known by a domain name and has an IP address, i.e., Internet Protocol address, which is a numeric address. Since the consumers cannot remember numerical address of domain names /websites, the DNS servers are used to decode the IP address. The function of the ISP is to provide access to the customers to every website which the customer wishes to browse or visit. The respondents cannot have any manner of control or exercise due diligence on the content of any of these websites.

13. For every website, there is a specific link to each of the content in the websites and these can be located through Unique Resource Locators or URLs. Every website could consist of millions of URLs. Such URLs can contain large amount of data and content which may or may not be objectionable. It is not the function of the ISP to check each and every URL being accessed by every customer and each and every website is accessed by every customer. The function of the ISP does not include the exercise of any editorial control over any of the websites. The ISP has no concern or control with the content of any website. In the array of parties as defendants, not

even one person, who is actually infringed the plaintiff's copyright, has been made as party. The general allegation of video piracy cannot be used as a grant to file the present suit. Even in the notice issued to the respondents, they have only mentioned to block the access to URLs. There are no allegations against any of the ISPs which were infringed the copyright of the applicant. The suit for copyright infringement is a civil suit which has to comply with pre-requisites of CPC. Under the garb of playing illegal content, it cannot be said that the ISPs are under the obligation to block all websites, which violates the constitutional right of ISPs whose obligation arise only under the Information Technology Act, 2000. Though the plaintiff impleaded 38 ISPs, they have not impleaded a single website which has infringed their copyright.

14. The 7th respondent has filed an application in A. No. 2426 of 2012 with very same contentions. Likewise, the 6th respondent /6th defendant has filed an application in A. No. 2452 of 2012 with similar allegations.

15. The very same defendants have also filed applications under Order 7 Rule 11 CPC to reject the plaint. In the affidavits filed in support of those applications, it was stated that the suit is barred by law. Section 79 of the IT Act specifically absolves an ISP from any liability under any law under the Copy Right Act in respect of any of their activities and that the suit is liable to be rejected in view of the immunity afforded by the IT Act. Though the respondents were not residing within the jurisdiction of this court, the suit has been filed against them. No leave has been obtained under Clause 12 of the Letters Patent. There was no cause of action against the defendants in filing the suit. There was no specific overt act has been attributed to the respondents. The suit is also liable to be rejected for non joinder of parties since none of the persons who have allegedly infringed the rights of the plaintiffs have been made as parties. u/s 14(d) of the Copyright Act, the copyright infringement in respect of a cinematographic film, the person who has actually infringed and communicated the film to the public has to be made as a defendant and such communication should be of the entire film or part of the film. The defendants have not communicated any film to the public in any manner whatsoever. If the communication of the pirated content is done by the website owner, which is providing the pirated content and not the respondents. The respondents merely allows the consumers to access the internet and that the internet may consist of millions or billions of websites which may have a large amount of illegal content as well. The respondents were not relating to any pirated content of any film and in such case, the liability is of the website owner and no one else.

16. u/s 2(ff), the communication to the public means making any work available for being seen or heard. Such act of making available is not being performed by the ISPs, but the owners of the various websites. The constitutional right of ISPs cannot be violated and their obligation arise only under the IT Act, 2000. u/s 79, if an ISP is specifically informed of the link within a website which is violative of the plaintiff's

copyright, then the said ISP, as per the policy, is obliged to block the access to the specific URL. This obligation do not mean that the ISPs can be made as defendants in a suit for infringement and can be burdened with the obligation of defending the civil litigation of this nature. The ISPs did not have any connection in terms of revenues which are earned by the website owners as well as by providing downloads. Inasmuch as the plaint does not disclose any cause of action, the plaint is liable to be rejected.

17. In the counter affidavit filed by the plaintiff it was stated that the instant action was taken prior to the release of the cinematographic film. The actual persons who might be involved in acts of piracy cannot be ascertained at this juncture. It is for this reason, an unknown person was included under the name of Ashok Kumar, which has been widely accepted by the Courts in India. The ISPs, who are defendants, have in the past allowed access to various websites and web pages to illegally copy, upload and download cinematographic films. The ISPs are functioning as vessels for others to use their services to infringe third party works. Hence the ISPs were arraigned as parties. The ISPs contribute for the infringement to take place through their services and also gain monetarily through such actions. Therefore the liability of ISPs are identical to the actual persons involved in the acts of infringement. The Gazette notification, dated 27.10.2009 passed by the Central Government under the Information Technology (Procedure and Safeguards for blocking for access of information by public) Rules, 2009 explains about blocking of access to web pages and websites containing illegal information. The practice and procedures related to the report of such illegal information, which has already been generated, transmitted, received, stored or hosted in any computer resource. But in the instant case, it is a preventive relief against the defendants. Since the civil court is the competent authority to grant the preventive injunctive relief against unknown persons, the applicants /plaintiffs are entitled to maintain the suit.

18. In some cases, though vacate injunction applications were not filed, counter affidavits were filed by 1st, 4th and 9th defendants.

19. Heard the arguments of Mr. Arun C.Mohan, learned counsel appearing for the applicants /plaintiffs, Mr. A.L. Somayaji, learned Senior Counsel, Mr. M. Ravindran, learned Senior Counsel, Mr. R. Yashod Vardhan, learned Senior counsel, Mr. C.Mohan, learned counsel for M/s. King & Patridge, Mr. J. Ravikumar, Mrs. Narmada Sampath, Mr. Y.N. Venkat Raj, Mr. Shivakumar and Ms. K. Parameswari (for BSNL).

20. Mr. Arun C.Mohan, after making oral submissions also filed a written submissions after orders were reserved. According to him, Section 14(d) of the Copyright Act confers upon the copyright owner an exclusive right to communicate the film to the public. Section 2(m) defines infringing copy in relation to a cinematographic film as a copy of film made on any medium by any means. Section 51(a)(ii) defines that copyright is infringed if any person permits for profit any place to be used for the communication of the work to the public where such

communication constitutes an infringement of the copyright in the work. Section 62 of the Act provides that a suit for infringement of copyright can be filed where the plaintiff resides or carries on business. Section 55 provides for the grant of an injunction whenever copyright infringement takes place in addition to damages and accounts. The term "quia timet action" has been defined as an action instituted by a party who seeks the aid of the Court in fear of some future probable injury to his rights or interest, which is an action brought to prevent a wrong that is apprehended. The unnamed defendants are persons who are apprehended by the plaintiff to involve in uploading, downloading or in any way communicating the plaintiff's feature film. It is valid and maintainable under the principles laid down by this court in [Tube Investments of India Ltd. Vs. BSA-Regal Group Ltd.](#),

21. The quia timet action is an equitable relief sought under dire circumstances with a view to prevent any infringement from taking place, lest the owner of the copyright be left with no relief upon such infringement. The apprehension of the plaintiffs form a cause of action. Upon a successful demonstration of the apprehension, an injunction should be granted as set out by the judgment of the division bench of Calcutta High Court in [Radio Today Broadcasting Ltd. Vs. Indian Performing Rights Society Ltd. and Others](#),

22. The ISPs allow subscribers to access to the internet. The ISPs bridge the end users to the persons uploading the illegal pirated contents through various web links. Without the ISPs, no person would be in a position to access the pirated contents nor would the unknown persons be in a position to upload the pirated version of the film. Therefore, the ISPs are necessary parties to the suit. The ISPs are not handicapped in the system of blocking such specific content, web links, URLs, since the IT Act has given power to ISPs to block any given content from the internet and that they should ensure that there are no illegal or immoral contents made available for access to general public. The only remedy available is to have access to such websites blocked by the ISPs. Since floods cannot be controlled, they are attempting to seek control over the flood gates.

23. A reference was also made to a judgment of the Delhi High Court in Super Cassettes Industries Ltd. Vs. Myspace Inc. and another reported in 2011 (47) PTC 49 (Del.) and also a judgment of the Delhi High Court in Indian Performing Right Society Ltd. Vs. Badal Dhar Chowdhry and others reported in 2012 (50) PTC 376 (Del.)(DB). It is stated that Section 51(a)(ii) of the Copyright Act would include the place at the web space, internet. Therefore, the ISPs, by providing service for access of various unknown persons to commit acts of infringement of copyright, are liable for infringement under the said Act. The ISPs are not only necessary party, but also proper parties.

24. Section 79 of the IT Act is not applicable in the instant case in view of Section 81 of the IT Act. The Delhi High Court in Super Cassette Industries Ltd's case (cited supra) has held that Section 81 overrides the provision of Section 79 of the IT Act.

The IT Act does not oust the inherent power of this court while directing blocking of any content by the ISPs. The ISPs are business driven by volume of customers and downloading. Therefore, they are gaining when multiple persons are illegally downloading such materials. The CPC provides that under Order 7 Rule 1, the plaint shall contain the name, description and place of residence of the defendants so far as they can be ascertained. In this case, the violators are many in number, the plaintiffs could not identify each and every one. Therefore, the Ashok Kumar suit is maintainable.

25. The Delhi High Court vide its judgment in [ESPN Software India Private Ltd. Vs. Tudu Enterprise and Others](#) has held that the Indian courts have jurisdiction to pass an order against unknown persons arrayed as Ashok Kumars. The present case is not merely a suit against unknown persons as the ISPs are functioning as vessels for others to use their services to infringe third party works. The suit is filed u/s 62 of the Copyright Act as the suit can be filed where the plaintiff has its office and carries on business. There is no necessity to get leave under Clause 12 of the Letters Patent. The cause of action had taken place within the jurisdiction of this court. A reference was made to a judgment of a division bench of this court in [Wipro Limited, Thiru Vi Ka Industrial Estate and Wipro Chandrika Limited Vs. Oushadha Chandrika Ayurvedic India \(P\) Limited, Oushadha Chandrika Research Centre and Narayana Stores](#). Therefore, they prayed for the dismissal of the vacate injunction applications as well as the dismissal of Order 7 Rule 11 applications.

26. Per contra, Mr. R. Yashod Vardhan, learned Senior Counsel referred to a judgment of the Superior Court of New Jersey, Appellate Division in Dendrite International, Inc., a New Jersey Corporation Vs. John Doe, No. 3 reported in 775 A. 2d 756 (2001) 342 N.J. Super. 134, wherein the U.S. Court held that for entertaining the John Doe suit, the plaintiff should identify the missing party with sufficient specificity such that the court can determine that the defendant is a real person or entity who could be sued in federal court.

27. He also referred to a judgment of the Delhi High Court in [ESPN Software India Private Ltd. Vs. Tudu Enterprise and Others](#) Though in that case the maintainability of John Doe suit was upheld, but it was based upon peculiar facts of the case where the ICC World Cup 2011 to be held in India, Srilanka and Bangladesh was to last till April, 2011 only and therefore, the events would be over if injunction is not granted and the plaintiff would be severely impacted. But, in the present case, the question of such issue did not arise.

28. The learned Senior counsel also referred to a judgment of the Supreme Court in [Kuldip Singh Vs. Subhash Chander Jain and Others](#), wherein the Supreme Court dealt with the scope of "quia timet action" and in paragraphs 6 to 8, it was observed as follows :

6. A quia timet action is a bill in equity. It is an action preventive in nature and a specie of precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action the court, if convinced, may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process. In *Fletcher v. Bealey* 1, Mr Justice Pearson explained the law as to actions quia timet as follows:

There are at least two necessary ingredients for a quia timet action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage will be suffered, I think it must be shown that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a quia timet action.

7. Kerr on Injunctions (6th Edn., 1999) states the law on threatened injury as under:

The court will not in general interfere until an actual nuisance has been committed; but it may, by virtue of its jurisdiction to restrain acts which, when completed, will result in a ground of action, interfere before any actual nuisance has been committed, where it is satisfied that the act complained of will inevitably result in a nuisance. The plaintiff, however, must show a strong case of probability that the apprehended mischief will in fact arise in order to induce the court to interfere. If there is no reason for supposing that there is any danger of mischief of a serious character being done before the interference of the court can be invoked, an injunction will not be granted.

8. In our opinion a nuisance actually in existence stands on a different footing than a possibility of nuisance or a future nuisance. An actually-existing nuisance is capable of being assessed in terms of its quantum and the relief which will protect or compensate the plaintiff consistently with the injury caused to his rights is also capable of being formulated. In case of a future nuisance, a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat be so certain or imminent that an injury actionable in law will arise unless prevented by an injunction. The court may not require proof of absolute certainty or a proof beyond reasonable doubt before it may interfere; but a strong case of probability that the apprehended mischief will in fact arise must be shown by the plaintiff. In other words, a future nuisance to be actionable must be either imminent or likely to cause such damage as would be irreparable once it is allowed to occur. There may be yet another category of actionable future nuisance when the likely act of the defendant is inherently dangerous or injurious such as digging a ditch across a highway or in the vicinity of a children's school or opening a shop dealing with highly inflammable

products in the midst of a residential locality. Hence, he prayed for vacating the interim order and also for the dismissal of the suits as they did not disclose any cause of action.

29. In the light of the rival contentions, it has to be seen whether the complaints are liable for rejection as sought for in various applications?

30. The first contention that the suit is barred by law cannot be accepted in terms of Section 79 of the IT Act. In this context, it is necessary to refer to the following passages found in paragraphs 68 and 69 of the Delhi High Court's judgment in *Super Cassette Industries Ltd.*'s case (cited *supra*), which reads as follows :

68. Firstly it is well settled canon of construction that the court should adopt the mode of construction which upholds the provisions of the Act and make them workable and the interpretation which makes any provision of the Act otiose must be eschewed. 68.1. In *High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others*, the Supreme Court held as under :

35. The Court while interpreting the provision of a statute, although, is not entitled to rewrite the statute itself, is not debarred from "ironing out the creases". The court should always make an attempt to uphold the rules and interpret the same in such a manner which would make it workable.

36. It is also a well-settled principle of law that an attempt should be made to give effect to each and every word employed in a statute and such interpretation which would render a particular provision redundant or otiose should be avoided.

68.2 If Section 79 of the IT Act is allowed to operate as an embargo or restriction upon the exercise of the right of right holder by IA Nos. 15781/2008 & 3085/2009 in CS (OS) No. 2682/2008 Page No. 97 of 132 saving the liability of the copyright infringement, the said interpretation will render proviso to Section 81 of the IT Act otiose or unworkable. The said interpretation thus leads the purpose of the proviso as redundant. On the contrary, if the gamut of the Section 79 is allowed to remain confined and subject to the proviso of Section 81 which is intended to be so by the legislature, both the provisions can stand and work in their respective fields.

68.3 Section 79 is, thus, meant for all other internet wrongs wherein intermediaries may be involved including auctioning, networking servicing, news dissemination, uploading of pornographic content but not certainly relating to the copyright infringement or patent infringement which has been specifically excluded by way of proviso to Section 81. This can be only possible harmonious construction between the two Acts which makes both the Acts workable.

68.4 Secondly, besides making proviso to Section 81 otiose, the interpretation canvassed by the defendants lead to conflict between two acts and also leads to absurd results. This is due to the reason that the Copyright Act, 1957 itself provides for an infringement as well as the exceptions of the infringement. Once the

infringement is established, the remedies to the same are prescribed by Section 55. In that situation and given the fact that there is an express proviso excluding the copyright infringement from the purview of IT Act if not applied leads to IA Nos. 15781/2008 & 3085/2009 in CS (OS) No. 2682/2008 Page No. 98 of 132 unnecessary adding further restrictions on the copyright infringements which is impermissible and therefore leads to absurd results negating the statutorily prescribed remedies for copyright infringement.

68.5 Further the provisions of authorization or permitting the place for profit requires knowledge or reasonable belief and other common law requirements for establishing the infringement as discussed above. Thus, the said act of authorization and/or permitting the place for profit itself requires knowledge and reasonable belief of infringement which are inbuilt exception to the infringement, The operation of Section 79 to exempt the liability of the intermediary except in cases of knowledge is rather repetition of the same provision and if the same is allowed to operate in the way of infringement which itself requires knowledge and reasonable belief or countenance or approval in respective cases would lead to anomalous situations and would lead to absurd results.

68.6 Thirdly, there is no legislative disharmony by operation of the proviso to Section 81 and rather adding of proviso to Section 81 by way of amendment put the unrest into an end. If Section 79 would have application to the copyright infringement which saves absolutely the liability of the intermediary without insertion of the proviso by the legislature u/s 81, then there would have been apparent conflict between the acts of infringement by way of permitting the place for profit provided u/s 51(a)(ii) and Section 79 which saves IA Nos. 15781/2008 & 3085/2009 in CS (OS) No. 2682/2008 Page No. 99 of 132 the liability of the intermediary. Thus, without insertion of the proviso to Section 81, there would have been two laws, one, providing the acts of intermediary or facilitator as infringement and another saving the liability.

68.7. In [Dwarka Prasad Vs. Dwarka Das Saraf](#), Hon"ble Krishan Iyer, J. speaking for the Court observed thus: There is some validity in this submission but if, on a fair construction, the principal provision is clear, a proviso cannot expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges. Here, such is the case....

68.8 The adding of proviso is rather not only exclusionary but also clarificatory in nature which clarifies that the provisions of IT Act may not restrict the rights under Copyright Act or Patent Act as its tries to create and confer harmony between two laws and enactments so that they can operate in their respective fields. Thus, there is harmony by adopting the proviso rather than negating it.

69. In view of the above discussion, I find that there is no impact of provisions of Section 79 of IT Act (as amended on 2009) on the copyright infringements relating to internet wrongs where intermediaries are involved and the said provision cannot curtail the rights of the copyright owner by operation of proviso of Section 81 which carves out an exception cases relating to copyright or patent infringement.

31. The second contention that no leave has been obtained by the plaintiffs under Clause 12 is concerned, this issue has been squarely answered by the division bench of this court in a judgment in Wipro Limited case (cited supra) and in paragraph 15, it was held as follows :

15....A plain reading of Clause-12 of the Letters Patent would show that it is only in cases where a part of the cause of action has arisen within the jurisdiction of this Court that Clause-12 requires a leave to be obtained. The present case is not covered by Clause-12 of the Letters Patent, but a case covered by Section 62(2) of the Copyright Act and Section 134(2) of the Trade Marks Act. Therefore, the suit is maintainable in this Court.

32. With reference to the contention that no cause of action has been pleaded or arisen in this case and it is pre-mature and that the plaintiffs did not disclose any cause of action is concerned, once again in the judgment of the Delhi High Court Super Cassette Industries Ltd.'s case (cited supra) in paragraphs 93.1, 93.2, 93.3 and 93.6, it was observed as follows :

93.1 Firstly, the defendants' concern that the plaintiff has not substantiated the cause of action by certainly providing the infringements against which it requires prohibitory relief. The said submission of the defendants do not aid their case as indeed the plaintiff has been able to procure the sample infringements which are entailed in the plaint out of the mass infringements which are occurring over the internet on day to day basis. It is the case of the plaintiff's that it is the owner of repertoire of the musical works and sound recordings. Out of this repertoire, if the plaintiff is able to show some sets of infringements and is also able to show that the defendant's acts are such which amounts to permitting the IA Nos. 15781/2008 & 3085/2009 in CS (OS) No. 2682/2008 Page No. 119 of 132 place for profit for infringement purposes and there is a complete certainty of future infringements. There is no reason why this court should continue to allow the defendants to use that place for profit of the defendants against the infringement of the plaintiff works which includes current works and future works of the plaintiff.

93.2 It would be wrong understanding of the law to state that the infringements can be prohibited only when the torts are perfected. The principle of quia timet is not only confined to the trade mark infringements as propounded by the learned counsel for the defendants. The said submission is also misplaced and rejected as meritless.

93.3 The principle of quia timet is applicable to any tortious liability wherever there is an apprehension of infringement likely to happen. This can be seen even in the cases of trespass where the injunctions are sought even when there is threat of invasion in the property of someone. The principle of quia timet has been explained by John George Woodroffe in his book "The Law Relating to Injunctions" in the following words :

9. Relief. Whether it be given by the issue of an Injunction or the appointment of a Receiver, is granted general upon the principle quia timet; that is, the Court assists the party who seeks its aid, because he fears (quia timet) some future probable injury to his rights or interests, and not because an injury has already occurred, which requires any compensation or other relief. So the remedy by temporary Injunction being preventive IA Nos. 15781/2008 & 3085/2009 in CS (OS) No. 2682/2008 Page No. 120 of 132 in its nature, it is not necessary that a wrong should have been actually committed before the Court will interfere, since if this were required it would in most cases defeat the very purpose for which the relief is sought by allowing the commission of the act which the complainant seeks to restrain. And satisfactory proof that the defendants threaten the commission of a wrong (which is within their power) is sufficient ground to justify the relief.

93.6 Thus, the submission that this court cannot prevent future wrongs on the basis of quia timet injunction is also not correct as it is equally applicable to infringement of copyright like in any other tortious act. Accordingly, the plaintiff is entitled to relief on the basis of quia timet action as the defendant's nature of activities is such where the plaintiff's works is liable to infringe and more so when the defendants are notified about the plaintiff's several works. The said danger of infringement is imminent risk of substantial damages with certainty as the defendants have already done several infringements and will continue to do so in the light of the continuous acts of the defendants. The plaintiff's interest is also to be protected against such infractions which are possible by way of injunction and any court jurisdictionally competent can grant the relief prayed for quia timet action.

33. The other contention that the suit is barred for non joinder of parties is concerned, once again the same judgment in Super Cassette Industries Ltd.'s case (cited supra) answered the said point and in paragraphs 93.8, 93.9 and 93.11, it has been stated as follows :

93.8 It is only the apprehension of the defendants that they could not trace out the ownership of the plaintiff in each and every work. However, if one sees carefully the application of the notice and turn down facility provided by the defendants wherein the owners are chasing the infringers for turning their infringements down from the website as against the infringers chasing the owners, the problem of infringement can be resolved by applying the same conversely wherein infringers must legitimize the acts with the owners prior to committing any such infringements. This can be done only by the order of the court of prohibitory nature wherein the prior notice to

the owners and steps to find ownership can be taken by the defendants by taking preventive actions prior to infringements.

93.9 These apprehensions of the defendants about inability of enforce or implement the order of this court are unfounded. Further, the concern of the defendants that their website hosts the acts which are infringing as well as non infringing and it is difficult to segregate all this IA Nos. 15781/2008 & 3085/2009 in CS (OS) No. 2682/2008 Page No. 123 of 132 and rather impossible is also unmeritorious. Such concerns are taken care by the courts while granting injunctions in copyright infringements.

93.11 Similarly in the cases involving mass infringements like the cases instituted by Performing Rights Society, Phonographic Societies which not only espouse the cause of one copyright owner but is a collective action, the mere fact of non crystallization of all the infringements does not preclude the courts from granting the injunctions basing on the prima facie ownership of the plaintiff's works and sample infringements. All these injunctions are being granted by this court from time to time. Thus, this concern of the defendants has no meaning and the injunction of the nature asked by the plaintiff cannot be faulted with considering the acts of the defendants which are infringing in nature and the equal level of certainty with which the future infringement may arise.

34. The maintainability of John Doe suit (Ashok Kumar suit) is concerned, it was rightly upheld by the Delhi High Court in ESPN Software India Private Ltd.'s case (cites supra). In view of the above, there is no necessity to entertain the applications to reject the complaints even before a trial. Hence the applications filed under Order 7 Rule 11, i.e., in A. Nos. 2417 and 2980 of 2012 in C.S. No. 208 of 2012 and A. Nos. 2425, 2427 and 2979 of 2012 in C.S. No. 294 of 2012 will stand dismissed.

35. With reference to injunction and vacate injunction applications are concerned, it must be noted that at the ex-parte stage, this court had granted omnibus injunction order, thereby blocking the entire websites of individual concerned. Subsequently, on the matter being pointed out by the respondents, this court made a correction order on 22.06.2012 as extracted above. Therefore, it is open to the applicants/ plaintiffs to give the particulars of URL, where the infringing movie is kept and on such receipt of particulars of URL from the plaintiffs /applicants, the respondents /defendants will have to take necessary steps to block such URLs. This amended order is not under challenge and that the said order is making a workable solution without hurting the stand of both sides. The respondents/defendants are undoubtedly internet service providers (ISPs) and therefore, they have an obligation not to allow such infringement to take place by using their services.

36. Though the charges levelled by the applicants/ plaintiffs on the respondents /defendants ISPs that they are making money out of utilizing the space and that they are in connivance for such infringement is uncharitable, yet the obligation to

remove such URLs where the infringement has been pointed out, cannot devalue the order made by this court on 22.06.2012 and that order will be made absolute. Therefore, all injunction applications, i.e., O.A. No. 230 of 2012 in C.S. No. 208 of 2012 and O.A. No. 358 of 2012 in C.S. No. 294 of 2012 are disposed of in terms of the interim orders granted already. The applications in A. Nos. 2155, 2159, 2388, 2418 and 2419 of 2012 in C.S. No. 208 of 2012 and A. Nos. 2424, 2426, 2452 and 2453 of 2012 in C.S. No. 294 of 2012 for vacating the interim injunction will stand dismissed. No costs.