

(2014) 04 CAL CK 0126

Calcutta High Court

Case No: G.A. Nos. 660, 1195, 1360 of 2012 and C.S. No. 85 of 2012

Saregama India Ltd.

APPELLANT

Vs

Dishnet Wireless Ltd.

RESPONDENT

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**Date of Decision:** April 7, 2014**Acts Referred:**

- Information Technology Act, 2000 - Section 67, 88

**Citation:** (2014) 2 CALLT 556 : (2014) 4 CHN 253 : (2014) 3 WBLR 653**Hon'ble Judges:** I.P. Mukerji, J**Bench:** Single Bench

**Advocate:** A. Mitra, P. Chatterjee, Sr. Advocates, J. Chowdhury, S. Mukherjee, S. Bhattacharyya, S. Ghosh and A.K. Roy, Advocate for the Appellant; R. Bachawat, A. Ghosh, J. Basu, P.P. Sinha, A. Chandra, R. Medora and S. Dutta, Advocate for the Respondent

**Final Decision:** Disposed Off

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### Judgement

I.P. Mukerji, J.

The application [G.A. No. 1360 of 2012] is disposed of. Hence, let it be deleted from the list. One is an application for interim reliefs. The other is an application by the seventh defendant for dismissal of the suit and for vacation of the interim order.

2. The case before the court today is very short. Mr. Bachawat, learned counsel appearing for the seventh defendant has convinced me that his client is a mere transmitter of electronic signals. They have no control over the material being transmitted, in any real sense. They do not have any hand in the preparation of materials, which are posted on the website or their posting on the website. This is done by the owner of the website. There is a very complex network through which an individual computer with internet service, can access a website. The said defendant is only a transmitter of signals for a particular part of the network.

3. The case of the plaintiffs is that without any licence, their songs are posted and played on the websites described in Annexure-F to the interim application. These are

described as "infringing materials".

4. Mr. Bachawat seems to be right when he submits that his client is in no position to do policing activity of screening materials being broadcast through myriad websites. He also points out that blocking a website could also tantamount to blocking access to other materials, which are not infringing and yet part of a website.

5. In obedience to the interim order passed by this Court, Mr. Bachawat's client has already blocked access to the websites described in Annexure-F. He submits that he has also received letters from website owners threatening legal action for blocking materials which are not infringing on the website.

6. I was shown by Mr. Chatterjee, learned senior counsel for the plaintiffs an order dated 1st October, 2013 passed by Patherya, J. in G.A. No. 3009 of 2013 with C.S. No. 347 of 2013 Saregama India Ltd. & Ors. v. Alkesh Gupta & Ors. where her ladyship has, inter alia, ordered as follows:

"The order in terms of prayer (b) of the notice of motion be read in the context stated above. For such purposes, let particulars of the sound recordings or URL including the link, if any, be given by the petitioner to the ISPs which will enable the ISPs to block the said infringing materials."

7. However, the application is pending.

8. Mr. Chatterjee, learned senior advocate submits that this order would not serve the purpose in this case because an offending website continuously changes the URL so as to defeat the purpose of court orders restraining publication of certain materials.

9. My attention was also drawn on behalf of the seventh defendant to IT Act Notification No. 181 dated 27th February, 2003 published in exercise of powers under sections 67 and 88 of the Information Technology Act, 2000, by the Central Government.

10. By this notification, inter alia, Computer Emergency Response Team of India [CERT IND] was constituted as the single authority to issue instructions for blocking of websites.

11. I believe that this question of blocking of, websites is a highly technical matter. When a Court finds that an infringing material is being posted on the website, it has the power to stop its publication. But stoppage of its publication, in these days of information technology, is not as easy as stopping publication of a book or publication of gramophone records. Technical expertise is required for the purpose.

12. There is already an order passed by me restraining publication of songs of Saragarha on the above websites. The first defendant has implemented that order while blocking the websites. But it was contended by Mr. Bachawat that by such

blocking of websites certain non-infringing materials may have also been blocked and that the service provider was to do policing work, which was not their function. Mr. Bachawat argues for vacation of this order.

13. Considering the technical competence of CERT IND in this field, I direct them to implement the existing interim order of this Court by issuing such directions and taking such measures as they deem fit and proper to; [a] stop posting and playing of the songs described in Annexure-F above on the websites. All details of the song including URL numbers will be provided by the advocate on record for the plaintiffs to CERT IND within three weeks from date; [b] if stopping the songs entails blocking the entire website CERT IND will direct and ensure accordingly; [c] this body may also direct partial blocking of a website or blocking particular songs on the website, without blocking the entirety of it, if the website contains other materials, which are not infringing; [d] CERT IND will submit a full compliance report in this Court by 30th June, 2014 and circulate the same to the advocates on record for the plaintiffs and defendant No. 7; [e] this order will be served upon CERT IND by the plaintiffs' advocate on record with notice to the defendant No. 7 by 21st April, 2014; [f] if the details of the songs are not furnished within the time in terms of [a] above, the interim order will be vacated upon the defendant No. 7 applying.

14. The interim order will continue till full compliance is effected by CERT IND in terms of this order; by filing of the report, as stated above.

15. I also observe that any threat issued to the defendant No. 7, for complying with the existing order of this Court should be treated as non est in the eye of law. The above applications are disposed of by this order with liberty to apply on the basis of the report of CERT IND, if any person is aggrieved by it.

Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.