



2024:DHC:8684



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

+ CS(COMM) 880/2022, I.A. 21547/2022 & I.A. 43533/2024

Date of Decision: 04th November, 2024

ENTERTAINMENT NETWORK (INDIA) LIMITEDPlaintiff

Through: Mr. Abhishek Malhotra, Mr. Kartikay
Dutta, Ms. Raghavi Shukla and Ms.
Anukriti Trivedi, Advs. (Through
VC)

versus

HTTPS//TUNEINCOM/PODCASTS/ARTS—CULTURE
PODCASTS/ BANGLA-SUNDAY-SUSPENSE-P2082186 / AND
ORS.Defendants

Through: Ms. Mamta Jha, Mr. Rohan Ahuja,
Ms. Shruttima Ehersa and Ms. Diya
Viswanath, Advs. for D-26.
M: 9599510197
Mr. Devvrat Joshi, Adv. for
Defendant No. 27 (Through VC)
Ms. Riddima Sharma and Ms. Bhanu,
Advs. for D- 28 (Through VC)
Ms. Nidhi Raman, CGSC with Ms.
Rashi Kapoor, Adv. for D-63 & 64
M: 9555672532

**CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA**

MINI PUSHKARNA, J (ORAL)

1. The present suit has been filed seeking permanent injunction



restricting the defendants in reference to plaintiff's copyright in sound recordings and artistic works and registered trademark 'Sunday Suspense', 'Mirchi' and 'Radio Mirchi', as the defendants' activities, i.e., defendant nos. 1 to 25, are infringing upon the plaintiff's intellectual property rights.

2. Facts as canvassed on behalf of plaintiff, are as under:

2.1 The plaintiff is one of the largest and most reputed radio broadcasters in India. It is a subsidiary of the Bennett, Coleman & Co. Ltd., a flagship company of one of the largest Indian media conglomerates, Times of India Group. The plaintiff owns and operates private FM radio stations in various cities in India, as well as, internationally and produces and broadcasts audio content under the popular brand name and registered trademarks "Mirchi" and "Radio Mirchi".

2.2 The details of some of the trademarks registered by the plaintiff are reproduced as under:

Sl. No.	Trademark	Class	Registration Number	Date of Filing	Renewal
1.	Sunday Suspense	9	2985729	June 14, 2015	June 14, 2025
2.	Sunday Suspense	16	2985730	June 14, 2015	June 14, 2025



3.	Sunday Suspense	35	2985731	June 14, 2015	June 14, 2025
4.	Sunday Suspense	38	2985732	June 14, 2015	June 14, 2025
5.	Sunday Suspense	41	2985733	June 14, 2015	June 14, 2025
6.	Sunday Suspense	42	2985734	June 14, 2015	June 14, 2025
7.	Mirchi	9	1165273	January 9, 2003	January 9, 2023
8.	Mirchi	9	3282728	June 10, 2016	June 10, 2026
9.	Mirchi	9	1160102	Decem ber 19, 2002	Decemb er 19, 2022
10.	Mirchi	16	1165272	January 9, 2003	January 9, 2023
11.	Radio Mirchi	9	998074	March 20, 2001	March 20, 2031
12.	Radio Mirchi	9	1046431	Septembe r 20, 2001	September 20, 2031
13.	Radio Mirchi	9	1774804	January 16, 2009	January 16, 2029
14.	Radio Mirchi	9	1119415	July 17, 2002	July 17, 2032
15.	Radio Mirchi	16	998079	March 20, 2001	March 20, 2031



16.	Radio Mirchi	18	1140676	October 3, 2002	October 3, 2032
17.	Radio Mirchi	25	1140678	October 3, 2002	October 3, 2032
18.	Radio Mirchi	35	1242632	October 13, 2003	October 13, 2023
19.	Radio Mirchi	36	1242631	October 13, 2003	October 13, 2023
20.	Radio Mirchi	37	1242630	October 13, 2003	October 13, 2023
21.	Radio Mirchi	38	1242629	October 13, 2003	October 13, 2023
22.	Radio Mirchi	39	1242628	October 13, 2003	October 13, 2023
23.	Radio Mirchi	40	1242627	October 13, 2003	October 13, 2023
24.	Radio Mirchi	41	1242626	October 13, 2003	October 13, 2023
25.	Radio Mirchi	42	1242625	October 13, 2003	October 13, 2023

2.3 Since 2009, the plaintiff has been engaged in production, broadcast and transmission of the audio content under its registered trademarks "Sunday Suspense" and "Mirchi" / "Radio Mirchi". Due to the efforts and financial investments made by the plaintiff in the audio content, the same have achieved huge popularity both in India and across the world thereby attracting a huge number of listeners, which is indicative of the popularity of the audio content. Due to the popularity of the audio content, its internet streaming/transmission generates substantial revenue for the plaintiff.



2.4 The plaintiff is the exclusive and perpetual owner in the copyright over the audio content. The plaintiff is also the owner of copyright in the artistic works in the form promotional posters created for promotion of the audio content and the program.

2.5 Since a significant amount of revenue is dependent on the audio content, the plaintiff's Programming Team is constantly alert about protecting its intellectual property rights in respect of the audio content and, along with Central Digital Team, conducts frequent due diligence exercises to locate any infraction and infringement of the plaintiff's intellectual property rights.

2.6 The defendant nos. 1 to 25 are websites engaged in unauthorized, unlicensed and illegal broadcasting/transmitting/communicating to the public, unlicensed audio content owned by the plaintiff.

2.7 In 2021, in course of such due diligence, the plaintiff was shocked to discover several webpages/ weblinks and android Applications that were infringing the intellectual property rights of the plaintiff. Few instances of the manner and method of the infringements that the plaintiff came across, are summarized below:

- i. A webpage/ weblink with URL "https://www.amazon.com/Essential-SoftSundaySuspense/dp/B06WLJ39D 1" was infringing the plaintiff's mark "Sunday Suspense".
- ii. The webpage/ weblink having URL "https://www.headfone.co.in/channel/sunday-suspense/" was infringing the plaintiff's copyright in the audio content, as well as, the mark "Sunday Suspense".
- iii. An Application in Android Play Store by the name of "Original



Sunday Suspense/ Bengali Stories" had infringed the plaintiff's mark "Sunday Suspense".

- iv. An Application in Android Play Store by the name of "Sunday Suspense- Bhoot Stories-1000+ stories" was infringing the plaintiff's mark "Sunday Suspense".
- v. An Application in Android Play Store by the name of "Sunday Suspense Pocket Play" was infringing the plaintiff's mark "Sunday Suspense".
- vi. A Facebook Page and Twitter Profile both by the name of "Golpo Wala" were infringing the plaintiff's copyright in audio content and mark "Sunday Suspense".

2.8 The plaintiff promptly issued six Cease and Desist Notices to the defendant nos. 1 to 25 intimating them that their actions were in violation of the plaintiff's intellectual property rights and calling upon them to take down the infringing contents/ websites.

2.9 In view of such shocking infringements of the plaintiff's intellectual property rights, the plaintiff initiated further scrutiny and strict surveillance measures to identify existing websites/ Applications/ intermediary accounts, that were infringing the plaintiff's intellectual property rights.

2.10 The aforesaid activities including the broadcast/ transmission/ streaming of the audio content and usage of plaintiff's trademarks and artistic works are being perpetrated by the defendants without obtaining any valid permission or license from the plaintiff. Therefore, the defendants are in clear infringement of the plaintiff's intellectual property rights.

2.11 Hence, the present suit has been filed by the plaintiff.

3. This Court notes that, vide order dated 22nd December, 2022, interim



injunction was granted in favour of the plaintiff, whereby, defendant nos. 26 to 30 were directed to take down the infringing URLs. Further, defendant nos. 31 to 62, were also directed to disclose the details of the server being used by defendant nos. 1 to 25.

4. Learned counsel appearing for defendant nos. 26 to 28 submits that they are the intermediaries and pursuant to the order passed by this Court, they have already taken down the infringing URLs/ listings.

5. Perusal of the order sheets show that, at present only defendant nos. 26 to 28 are the contesting defendants. Further, the right of defendant nos. 1 to 25, and 29 to 63, to file their written statements, have already been closed on 04th August, 2023.

6. Accordingly, defendant nos. 1 to 25 and 29 to 62 are proceeded *ex-parte*.

7. Further, it is noted that defendant nos. 26 to 28, who are three contesting defendants, have already complied with the directions passed by this Court.

8. At this stage, learned counsel appearing for the plaintiff submits that in view of the submissions made by learned Senior Counsels appearing for defendant nos. 26 to 28, and in view of the fact that the rights of defendant nos. 1 to 25 and 29 to 63 already stands closed, the present suit can be closed. Thus, this Court proceeds under Order VIII Rule 10 of Code of Civil Procedure, 1908 (“CPC”).

9. Expounding upon the scope of Order VIII Rule 10, CPC, a Coordinate Bench of this Court in the case of ***Christian Broadcasting Network, INC Versus CBN News Private Limited, 2018 SCC OnLine Del 11666***, has held as follows:



“xxx xxx xxx

13. The scope of Order 8 Rule 10 CPC in commercial suits particularly under the New Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court Act, 2015 has been examined by this court in Nirog Pharma Pvt. Ltd. v. Umesh Gupta, (2016) 235 DLT 354. This court held as follows:

“11. Order VIII Rule 10 has been inserted by the legislature to expedite the process of justice. *The courts can invoke its provisions to curb dilatory tactic, often resorted to by defendants, by not filing the written statement by pronouncing judgment against it. At the same time, the courts must be cautious and judge the contents of the plaint and documents on record as being of an unimpeachable character, not requiring any evidence to be led to prove its contents.*

.....
*28. The present suit is also a commercial suit within the definition of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and it was the clear intention of the legislature that such cases should be decided expeditiously and should not be allowed to linger on. **Accordingly, if the defendant fails to pursue his case or does so in a lackadaisical manner by not filing his written statement, the courts should invoke the provisions of Order VIII Rule 10 to decree such cases.**”*

xxx xxx xxx”

(Emphasis Supplied)

10. Considering the facts and circumstances of the present case, it is manifest that the case as put forward by the plaintiff stands established and there is no fact which needs to be proved by way of adducing evidence by the plaintiff.
11. Accordingly, in exercise of the power of the Court under Order VIII Rule 10 CPC, the present suit is decreed in favour of the plaintiff and against the defendant nos. 1 to 25 in terms of paragraph 51 (I) to (IV) of the plaint.
12. Decree sheet be drawn up.
13. The present suit, along with the pending applications, stands disposed of.



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14. Next date of hearing before the Joint Registrar (Judicial), i.e., 13th January, 2025, stands cancelled.

MINI PUSHKARNA, J

NOVEMBER 4, 2024/kr