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

+ CS(COMM) 703/2024

GRASS VALLEY K K

.....Plaintiff

Through: Mr. Nirupam Lodha, Mr. Kshitij
Parashar, Ms. Vanshika Thapliyal
and Mr. Gautam Wadhwa,
Advocates

Versus

ASHOK KUMAR(S) & ORS.

.....Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% **21.08.2024**

I.A. 36894/2024-Exp

1. Exemption allowed, subject to all just exceptions.
2. The applications stand disposed of.

I.A. 36890/2024-Addl.doc.

3. By way of the present application under Order XI Rule 1(4) of the Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015, the plaintiff is seeking to place on record additional documents within thirty days.
4. The plaintiff will be at liberty to file additional documents within thirty days, *albeit*, strictly as per the provisions of the Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018..
5. Accordingly, the present application is disposed of.

I.A. 36891/2024-Exp from advance service to defendants

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6. By way of the present application, the plaintiff seeks exemption from advance service on the defendants.

7. Learned counsel for the plaintiff submits that considering the position involved, there is a likelihood that the apprehensions of the plaintiffs will become a reality in case advance service is affected and therefore, an exemption from effecting advance service is necessary.

8. Therefore, for the reasons stated in the application as also taking into account the aforesaid factors and in the interest of justice, the plaintiff is granted exemption from effecting advance service upon the defendants.

9. Accordingly, the present application is allowed and disposed of.

I.A. 36892/2024-Exp from serving advance notice to Govt. of India

10. By way of the present application under Section 80 read with Section 151 of the CPC, the plaintiff seeks exemption from serving two months notice on the Government of India through BSNL and Railtel Corporation of India Limited i.e. defendant no.5 and defendant no.7, respectively.

11. Accordingly, for the reasons stated in the application, in view of the provisions under Section 80(2) of the CPC, the present application is allowed and disposed of.

I.A. 36893/2024-Exp from pre institution mediation.

12. By way of the present application, the plaintiff is seeking exemption from instituting pre-litigation mediation.

13. Considering the averments made in the present application wherein the plaintiffs seek urgent ad-interim relief and in view of *Yamini Manohar vs. T.K.D. Krithi* 2023 SCC OnLine 1382 and *Chandra Kishore Chaurasia vs. R. A. Perfumery Works Private Limited*. 2022:DHC:4454-



DB, the plaintiff is exempted from instituting pre-litigation mediation.

14. Accordingly, the present application is allowed and disposed of.

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13. Let the plaint be registered as a suit.

14. Upon filing of the process fee, issue summons of the suit to the defendants through all permissible modes returnable before the Joint Registrar on 18.11.2024.

15. The summons shall state that the written statement(s) be filed by the defendants within a period of *thirty days* from the date of the receipt of the summons. Written statement(s) be filed by the defendants along with affidavit(s) of admission/ denial of documents of the plaintiffs, without which the written statement(s) shall not be taken on record.

16. Replication(s) thereto, if any, be filed by the plaintiffs within a period of *fifteen days* from the date of receipt of written statement(s). The said replication, if any, shall be accompanied by with affidavit(s) of admission/ denial of documents filed by the defendants, without which the replication(s) shall not be taken on record within the aforesaid period of *fifteen days*.

17. If any of the parties wish to seek inspection of any document(s), the same shall be sought and given within the requisite timelines.

18. List before the Joint Registrar for completion of pleadings on 18.11.2024. It is made clear that if any party unjustifiably denies any document(s), then it would be liable to be burdened with costs.

19. List before the Court on 15.01.2025.

I.A. 36889/2024-Stay-u/Order XXXIX Rules 1 and 2 CPC

20. By way of the present application, the plaintiff is seeking an *ex-*



parte ad interim and *interim* injunction restraining the unknown defendants, Ashok Kumar(s)/ defendant No.1, and anyone acting on their behalf, from directly or indirectly infringing the plaintiff's copyright in the **EDIUS** software ("the software"), including by using, reproducing, issuing copies, offering for sale and selling any unlicensed/ pirated/ cracked version of the software.

21. The plaintiff is the developer and exclusive owner of the software and all copyright relating thereto. The software was created by employees of the plaintiff during the course of their employment with the plaintiff. It is also pertinent to note that, copyright in works of countries mentioned in Part-I of the International Copyright Order, 1999 ("Copyright Order") are protected in India, as if such works are of Indian origin.

22. One Magic Multi Media GmbH ("Magic Multi Media"/ "Distributor"), based in Grunwald, Germany is the worldwide distributor of the software, except for the territories of China and Japan. The Distributor operates EDIUS.NET web portal under the domain 'www.edius.net' and has appointed various resellers of the software in India.

23. As per learned counsel for plaintiff, the website of the plaintiff for the software hosted at the domain name "www.EDIUS.net" is said to be extremely popular in India. In the last one year (i.e. from 19th July, 2023 to 18th July, 2024), India has accounted for almost 36.61% of the total traction on the said website, thus generating the highest number of visitors/ traffic. Witnessing the growing demand for the software in the Indian market, especially in the booming wedding filmmaking industry, in 2021, a special version, namely, 'EDIUS Pro Personal' was created by the



plaintiff for the Indian market. The said version was created to make the software accessible to more users by making it available at a cheaper retail price of USD 179 in 2023, distribution of 'EDIUS Pro Personal' was extended to other countries in the South-Asian region, including Bangladesh, Nepal and Pakistan.

24. Learned counsel submits that a majority of the users of the software of the plaintiff in India make use of the unlicensed/ pirated/ cracked version of the software, instead of purchasing a legal license to use the software (which is available for a nominal sum of USD 179 only). In the Indian market, unlicensed/ pirated/ cracked versions of both 'EDIUS Pro' and 'EDIUS Workgroup' are made available, among others, such as EDIUS 8, 9, X (10) and even the latest version i.e. EDIUS 11. While 'EDIUS Pro' is used by small filmmaking companies, independent film makers/ content creators etc., 'EDIUS Workgroup' is targeted at and used by professional filmmakers and large corporations or conglomerates.

25. Learned counsel further submits that though the plaintiff and its distributors have been making considerable efforts to identify such infringers and also to prevent such piracy, however, owing to the anonymous nature of these activities which take place completely in the online world and the difficulty in identifying the users of the unlicensed/ pirated/ cracked versions of EDIUS, the plaintiff is currently unable to identify the specific individuals/ parties who are responsible for the recurring instances of copyright infringement of EDIUS. Be that as it may, after considerable efforts, the plaintiff has been able to identify the IP addresses and ISP details of such users of the unlicensed/ pirated/ cracked versions of the software.



26. As per learned counsel, such use of pirated versions of EDIUS is both illegal and unethical and constitutes a direct infringement of the plaintiff's copyright in the said software, since it is unauthorized. As the number of crack users keeps on changing on a daily basis, only a sample data of a particular date to show the massive number of crack users in India in comparison with other countries has been filed.

27. Learned counsel further submits that the plaintiff has ascertained the IP address of the infringing users using the unlicensed/ pirated/ cracked versions of the software and the name of the ISPs providing the internet connection to the respective users, however, it has no means to gather name and other details of such infringing users.

28. Learned counsel then submits that it is for the above reason that the defendant no.1 is/are unknown persons i.e., Ashok Kumar(s), who are allegedly engaged in widespread piracy of the software in India, have been arrayed as such. This is since their whereabouts are not available to the plaintiff at present owing to the clandestine nature of their activities. The plaintiff receives the Internet Protocol address ("IP address") of the crack user and the specific time stamp together with the EDIUS crack users' data such as the incorrect serial number which is easily detectable as an unlicensed/ pirated/ cracked version. For the sake of the present proceedings, the plaintiff is said to have collated the crack users' data, based on the invalid/ incorrect requests it has received from India and has independently verified that each of these are instances of use of unlicensed/ pirated/ cracked versions of the software.

29. This Court has heard the learned counsel for the plaintiff and perused the averments made as also gone through the documents filed



alongwith.

30. The aforesaid reveals that each licence granted for the software has a unique serial number associated with each license granted for the software has a unique serial number associated with it. The same involves a step wise procedure. For example, after the software is installed for the first time on a device, the validity of the software license is checked by the license server. The license is linked to an e-mail address which is specified by the software user - referred to as the “EDIUS id” or “eID”. The EDIUS user is required to create a password for the said EDIUS id. Thereafter, every 7 (seven) days, the software will re-check the validity of the license. If the license is not verified for a period of 30 (thirty) days, then in that case the software will not start on the particular device. In the end, if everything appears to be in order, the EDIUS license server returns an "OK" message to the software thereby allowing EDIUS to run on a particular device.

31. To circumvent the above verification process, the pirated users of the software attempt to prevent communication which takes place between EDIUS software and EDIUS license server pirated. The said invalid/ incorrect data, i.e. fake or misused serial numbers and EDIUS id is then communicated to the EDIUS license server and saved in the EDIUS license server log. With each such request by a pirated user, the plaintiff thus receives the Internet Protocol address (“IP address”) of the crack user and the specific time stamp together with the EDIUS crack users' data such as the incorrect serial number which is easily detectable as an unlicensed/ pirated/ cracked version.

32. Since, as per the records maintained by the plaintiff, India currently,



as of May, 2024 has 184,515 (*One Lakh Eighty Four Thousand Five Hundred and Fifteen*) registered eIDs, against which there are only 6,168 (*Six Thousand One Hundred and Sixty Eight*) registered eID users with legitimate EDIUS license in India, i.e. only 3.34% of users having an eID, the same creates a suspicion and raises a doubt in the mind of this Court. Seemingly, there are large number of entities like the defendant no.1/ Ashok Kumar(s) who are dealing with the pirated software EDIUS of the plaintiff in India. That the defendant no.1 is doing so and being in the same business as that of the plaintiff, clearly reflects that defendant no.1 was always aware of the plaintiff and its software EDIUS. Despite thereto, the defendant no.1 chose to wrongly adopt and use the software EDIUS of the plaintiff without any basis and/ or reason, much less seeking any prior permission/ authority from it. Doing so, such adoption and use by the defendant no.1 are unwarranted. Such offering and selling the pirated software EDIUS of the plaintiff by the defendant no.1 is illegal and unethical.

33. All the above are likely to cause immense confusion and deception amongst general public at large, especially the set of customers to whom defendant no.1/Ashok Kumar(s) would be offering the pirated EDIUS software of the plaintiff in India. Therefore, the sole intention of the defendant no.1 is to deprive the plaintiff reaping the fruits of its hard work and labour and make the utmost benefit therefrom by making negligible investment(s) from its side.

34. In view of the aforesaid, the plaintiff has been able to make out a *prima facie* case for the grant of an *ex parte ad interim* injunction in its favour and against the defendants. Under the existing facts, since the



balance of convenience lies in favour of the plaintiff and against the defendant no.1/Ashok Kumar(s) as also the defendant nos.2 to 7 who are ISPs having the details of the subscribers/ users for the specific IP addresses involved. In case, the said defendants are not restrained by an *ex parte ad interim* and the defendants allowed to continue as it is, there is a likelihood of the said plaintiff suffering *irreparable harm, loss and injury*.

35. Accordingly, till the next date of hearing, defendant no.1/ Ashok Kumar(s) and anyone acting on their behalf, is/are restrained from directly or indirectly infringing the plaintiff's copyright in the software, including by using, reproducing, issuing copies, offering for sale and selling any unlicensed/ pirated/ cracked version of the software.

36. The defendant nos.2 to 7 are directed to share information of the infringers as and when called for by the plaintiff, within a period of four weeks thereof.

37. Upon filing of process fee, issue notice to the defendants by all permissible modes returnable before the Joint Registrar on 18.11.2024.

38. Reply, if any, be filed within a period of *thirty days* from the date of service. Rejoinder thereto, if any, be filed within a period of *fifteen days* thereafter.

39. The provisions of Order XXXIX Rule 3 CPC be complied within a period of one week from today.

40. List before the Court on 15.01.2025.

SAURABH BANERJEE, J

AUGUST 21, 2024/akr