

GIB/MH/ Kross Television /23-03-2017/HC-40

High Court Category : Others

State : Maharashtra

Order No.: GIB/MH/ Kross Television /23-03-2017/HC-40

Name of Entry :

Kross Television India Pvt Ltd Vs Vikhyat Chitra Production

Date : 23-03-2017

Breif Issue :

Facts & Issue of the case

The Suit seeks an injunction in respect of the Kannada film Pushpaka Vimana, one that has already been released. The case of the Plaintiff is that the Kannada film is a plagiarised copy of the Korean film called Miracle In Cell No. 7 released on 23rd January 2013 first in Korean and then in English on YouTube in 2014. The 2nd Plaintiff approached the original producers of Korean film for rights to a Hindi remake, and obtained an assignment on 10th June 2016. The 2nd Plaintiff obtained an exclusive license on 1st December 2016 to produce a theatrical motion picture. The 2nd Plaintiff then assigned its rights to the 1st Plaintiff. The 1st Plaintiff started researching the remake. In February 2017, the 1st Plaintiff found the infringing Kannada film. On checking with their assignors, the Plaintiffs learnt that the original producers had not assigned or transferred any rights to the Defendants. The Plaintiffs submits that all further exhibition, distribution and telecasts must be prevented as a prima facie case has been made out. He submits that the balance of convenience is with the Plaintiffs and that if an injunction as sought is not granted the Plaintiffs will suffer irreparable injury. It is in these circumstances that various injunctive orders are sought.

In the case, the Plaintiffs obtained addresses of the Defendant from the Central Board of Film Certification ("CBFC"). The Plaintiffs then attempted to serve the Defendants at those addresses by courier and hand delivery. The courier was told that the address of the Defendant was changed solely with an intention to evade or avoid service. The Plaintiffs' Advocates attempted to contact the 1st Defendant, AR Vikhyat, on his mobile number. Copies of the plaint, Notice of Motion and the order of 17th March 2017 were served on Defendant No.1, Vikhyat, and Defendant No. 5, Deepak Krishna, by WhatsApp, which was received by the defendant. Then the Plaintiff's Advocates tried to contact Krishna, Defendant No. 5 on E-Mail and attached the same as proof before court.

Decision of Advance Ruling Authority :

Decision –

The court agreed with the submissions made by Plaintiffs. The Defendants were informed by email

and message that the matter would be listed in the Court on the mentioned date. The message was delivered. Court further mentioned “I do not see what more can be done for the purposes of this Motion. It cannot be that our rules and procedure are either so ancient or so rigid (or both) that without some antiquated formal service mode through a bailiff or even by beat of drum or pattaki, a party cannot be said to have been ‘properly’ served. The purpose of service is put the other party to notice and to give him a copy of the papers. The mode is surely irrelevant. We have not formally approved of email and other modes as acceptable simply because there are inherent limitation to proving service. Where an alternative mode is used, however, and service is shown to be effected, and is acknowledged, then surely it cannot be suggested that the Defendants had ‘no notice’. To say that is untrue; they may not have had service by registered post or through the bailiff, but they most certainly had notice. They had copies of the papers. They were told of the next date. A copy of the previous order was sent to them. Defendants who avoid and evade service by regular modes cannot be permitted to take advantage of that evasion.”

Court mentioned that “There is no reply to the Notice of Motion. There is no appearance either. The Defendants must now face the consequences.” The Hon’ble Bombay HC passed an ad-interim order in terms of prayer clause a(i), (ii), (iii) and (iv) and prayer clause b(i),(ii) and (iii) and listed the Notice of Motion for hearing and final disposal on 12th April 2017.