

Legal Issues Seminar in ‘Copyright & Procedural Law’

Issue: Can a Single Copyright Infringement Suit be Filed by Multiple Plaintiffs Against the Same Defendant(s)?

Introduction

❖ ‘Single Infringement Suit’ –

- A joint suit filed by multiple plaintiffs against the same set of defendants for infringement of their severally-vested IP rights.
- Joinder of parties: The union of multiple parties who have the same rights or against whom rights are claimed as co-plaintiffs or co-defendants, in a single lawsuit.

❖ ‘Severally-Vested Copyrights’ –

- Rights in copyrightable subject matter which have been vested/ are owned by different entities independently of each other.
- Independent ownership as opposed to joint ownership.
- Example- copyrights held by different production houses in the respective movies produced by them.

Relevant Legal Provisions

❖ Order I, Rule 1, Code of Civil Procedure, 1908 –

“All persons may be joined in one suit as plaintiffs where –

*(a) any right to relief in respect of, or arising out of, **the same act or transaction** or series of acts or transactions is alleged to exist in such persons, **whether jointly, severally or in the alternative; and***

*(b) if such persons brought separate suits, any **common question of law or fact** would arise.”*
[Emphasis supplied]

❖ Order I, Rule 9, Code of Civil Procedure, 1908 –

3

“Misjoinder and Nonjoinder – No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it: ...”

Relevant Legal Provisions (Contd.)

❖ Order I, Rule 2, Code of Civil Procedure, 1908 –

*“Power of Court to Order separate trial. – Where it appears to the Court that any joinder of plaintiffs may **embarrass or delay** the trial of the suit, the Court may put the plaintiffs to their election or Order separate trials or make such other Order as may be expedient.” [Emphasis supplied]*

❖ Section 151, Code of Civil Procedure, 1908 –

“Saving of inherent powers of Court. – Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

4

|

Relevant Judicial Decisions

❖ *Universal City Studios LLC & Ors. v. 123 Moviesthub.tc & Ors.* [CS (COMM) 116/2022, Delhi High Court, February 21, 2022]

- Facts: Six plaintiffs came together and filed a case against forty-five defendants, forty-three out of which were anonymous rogue websites. They came together on the ground that they have been affected by these rogue websites on account of the unlawful streaming of their works.

5 “The plaintiffs are different corporate entities. They may have a common grievance against the defendants for uploading and streaming their copyrighted work without authority or license, but **the similarity in reliefs claimed against the defendants would not suffice for the plaintiffs to join hands in a single action.** Though in para 58 it is claimed by all the plaintiffs that the “cause of action has arisen from making available identical content on the defendant Websites and thus, the Plaintiffs have joined all the defendant Websites in the present suit”, this is *ex-facie* incorrect, as **the creative content of each plaintiff is not identical to that of the other.**”

“What is identical is the allegation that copyright has been infringed. **There is no identity of copyright, the work, the infringement of each work of the plaintiffs by each one of the defendants.** Thus, the requirements of Order I Rule 1(a) & (b) CPC are not met in the present suit and all of the plaintiffs could not join in one suit, even against a similar set of defendants.” [Emphasis Supplied]

Relevant Judicial Decisions (Contd.)

- ❖ *Universal City Studios LLC & Ors. v. 123 Movieshub.tc & Ors.* [CS (COMM) 116/2022, Delhi High Court, February 21, 2022] [Contd.]

“Even though it is clear that the suit does not fall within the prescription of Order Rule 1(a) or/and (b) CPC, there is no doubt that the court cannot reject the suit on the ground of this “procedural objection”. It is also evident from Order I Rule 2 that where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the court may put the plaintiffs to their election to or order separate trials or “make such other order as may be expedient”

- 6 *“...in the present set of matters, if the court were to direct the plaintiffs to file separate complaints in view of the observations hereinabove, since the reliefs claimed are against the same set of defendants, namely, of injunction against them, restraining them from violating the copyrights of each of the plaintiffs, in their various creative works and if some commonality of evidence is disclosed, this Court would not be powerless to direct consolidation of the suits for trial and disposal at a subsequent stage... **But it is not a practice that can be encouraged.**” [Emphasis Supplied]*

Relevant Judicial Decisions (Contd.)

❖ ***Microsoft Corporation & Anr. v. Sujan Kumar & Ors. [226 (2016) DLT 349]***

*“The cause of action in a suit alleging violation of the copyright in a software necessarily begins with the ownership of copyrighted software by the plaintiff and ends with the factum of its violation by a particular defendant. So far as such defendant which is alleged to be violating the copyright software of the plaintiff is concerned, cause of action qua that defendant is complete at that stage when facts are complete showing rights of plaintiff and violation by defendant, for plaintiff to claim the reliefs whether of damages or for injunction etc etc. **Each defendant who violates the copyrighted software of the plaintiff results in the position that violation by such defendant gives an independent cause of action to the plaintiff to sue such defendant and violation of copyright by one defendant of a software owned by the plaintiff gives no common questions of law and fact on account of violation of copyright software of the plaintiff by any other defendant-company.**” [Emphasis Supplied]*

7

Relevant Judicial Decisions (Contd.)

- ❖ **Interim and permanent reliefs have been granted by the courts in such single copyright infringement suits:**
 - *Disney Enterprises Inc. & Ors. v. Kimcartoon.to & Ors.* [Order dated July 27, 2020 in CS (COMM) 275/2020]
 - *Universal City Studios LLC and Ors. v. Myfliker.to and Ors.* [Order dated August 31, 2021 in CS (COMM) 401/2021]
 - *Universal City Studios LLC and Ors. v. Dramacool.news and Ors.* [Order dated November 26, 2021 in CS (COMM) 605/2021]
 - *Disney Enterprises Inc. & Ors. v. Rlsbb.unblocked.ltda & Ors.* [Judgement dated March 12, 2020 in CS(COMM) 594/2019].

8

Relevant Judicial Decisions (Contd.)

❖ ***Annam Adinarayana & Anr. v. State of Andhra Pradesh & Anr.* [AIR 1958 AP 16].**

“The result is that where there are two or more plaintiffs and two or more causes of action, they may be joined in one suit if the right to the relief and the causes of action arise from the same act or transaction and that there is a common question of law or fact though they may not all be jointly interested in all the causes of action.

But if the right to the relief claimed does not arise from the same act or transaction or if there is no common question of law or fact, the plaintiffs cannot all join in one suit unless they are jointly interested in the causes of action as provided by this rule.”

9 *“Ordinarily, two or more persons cannot join in a single petition to enforce separate claims. But where the right to relief arises from the same act or transaction and there is a common question of law or fact or where, though the right to relief claimed does not arise from the same act or transaction, the petitioners are jointly interested in the causes of causes of action, one petition is maintainable at their instance.”* [Emphasis supplied]

Relevant Judicial Decisions (Contd.)

❖ ***Ramchand Nihalchand Advani v. Anandlal Bapalal Kothari & Anr.*** [AIR 1962 Guj 21]

“The preliminary question that arises in this petition is only whether in a case where several rights are vested in several plaintiffs whether they can join in one petition on the alleged ground that these rights arise out of the same transaction or series of acts or transactions as contemplated under O. 1, R. 1 of C. P. Code...”

*For if the right or claim arose out of the same act or transaction or series of acts or transactions and if separate actions were brought by them and if in such a case common questions of law or fact would arise, then the joinder of the plaintiffs would be in order under O. 1, R. 1, C.P. Code **notwithstanding the fact that the claim or the right in question was severally vested in such of them or in other words distinctly and individually vested in each of the joining plaintiffs.**”* [Emphasis supplied]

10

Conclusion

- ❖ Inconsistency between judicial pronouncements has created confusion with respect to copyright infringement matters.
- ❖ Whether a single infringement suit would be maintainable or not is at the discretion of the court.
- ❖ Even if such a suit is held to be not maintainable, the court can utilise its inherent powers to grant relief. Exercise of such powers, too, is discretionary in nature.
- ❖ Nevertheless, the court cannot deny granting relief based on the ground that the joinder of plaintiffs in the suit is not proper – it can only order separate trials.

THANK YOU!

Questions?

Gazal Sancheti, Trainee Associate

12

© ALG India Law Offices LLP, 2022.

Disclaimer: Views, opinions, and interpretations are solely those of the presenters, not of the firm (ALG India Law Offices LLP) nor reflective thereof.

This presentation hosted at: <https://www.algindia.com/wp-content/uploads/2022/06/LIS-Gazal.pdf>