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

+ CS(COMM) 625/2021

DB CORP LTD

..... Plaintiff

Through: Mr. Shivek Trehan, Ms. Fareha
Ahmad Khan and Ms. Shagun
Chopra, Advocates.

versus

WHATSAPP LLC & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

OR D E R

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24.12.2021

[VIA HYBRID MODE]

I.A. 16081/2021 (seeking exemption from margins and filing original/certified/ dim/ legible/ translated copies of annexures)

1. Exemption is granted, subject to all just exceptions.
2. The Plaintiff shall file better copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. Accordingly, the application stands disposed of.

I.A. 16082/2021 (seeking exemption from supplying an advance notice to Defendant No.2)

4. Issue notice to Defendant No. 2 *i.e.*, the Department of Telecommunications, upon filing of process fee, by all permissible modes, returnable on 2nd May, 2022.

5. Accordingly, the application stands disposed of.

I.A. 16080/2021 (seeking exemption from complying with Section 12A of the Commercial Courts Act, 2015)

6. Having regard to the facts of the present case, exemption from attempting pre-institution mediation is allowed.

7. Accordingly, the application stands disposed of.

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8. Let the plaint be registered as a suit.

9. Upon filing of process fee, issue summons to the Defendants by all permissible modes. Summons shall state that the written statement shall be filed by the Defendants within 30 days from the date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/ denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

10. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

11. List before the Joint Registrar for marking of exhibits on 4th March, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

12. List before the Roster Bench on 2nd May, 2022 for framing of issues

thereafter.

I.A. 16079/2021 (under Section 151 of the Code of Civil Procedure, 1908 to permit the Plaintiff to serve Defendants No. 3-88 through WhatsApp)

13. Counsel for the Plaintiff states that in so far as Defendants No. 3 to 88 are concerned, he does not have any other details of such Defendants, and the service may be permitted to be affected through WhatsApp as well.

14. The application is allowed, and Defendants Nos. 3 to 88 be served through WhatsApp.

15. Accordingly, the application stands disposed of.

I.A. 16078/2021 (under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 seeking an ad interim ex parte injunction)

16. Plaintiff has filed the above captioned suit seeking *ex-parte* injunction restraining Defendants from infringing and/ or enabling the infringement of copyrights and trademarks of the Plaintiff.

17. Plaintiff *viz.* DB Corp. Ltd. is the registered owner *inter alia* of the trademarks “*Dainik Bhaskar*”, “*Divya Bhaskar*”, “*Divya Marathi*” and “*Bhaskar Group*” – registered under Classes 38 and 41 of the Fourth Schedule to the Trade Mark Rules, 2002. The details of registration of Plaintiff’s trademark and the revenue and expenses incurred towards advertising have been set out in the plaint.

18. Plaintiff began circulation of its newspaper on an electronic form

through its websites – “epaper.bhaskar.com” and “epaper.diyyabhaskar.com” on a subscription based model. The said process of digitisation of publication entailed substantial investment in the research and development and other resources in order to provide quality service as well as increase readership of the newspapers. In terms thereof, a reader can subscribe to the Plaintiff’s newspaper by paying a subscription fee. The subscription is for a single individual user to browse content on the website for their personal use, and the subscriber does not have the option of downloading the e-newspapers. Apart from the afore-noted websites, Plaintiff’s e-newspapers and e-magazines can also be accessed through its mobile phone application – ‘*Dainik Bhaskar*’.

19. Defendant No. 1 *viz.* WhatsApp LLC – owns and operates a mobile and web-based application which supports cloud-based instant messaging including sending and receiving photos, videos, documents – such as pdf files, and location.

20. It is contended that Defendants No. 3 to 88 are persons who have formed groups on the platform owned by Defendant No. 1. Plaintiff has been able to track down the administrator(s) of such infringing groups and has learnt that the e-newspapers of the Plaintiff are being circulated on such groups illegally.

21. The counsel for the Plaintiff further contemplates that there might be many other groups and platforms where the e-newspapers of Plaintiff have been unauthorisedly and illegally shared, however, Plaintiff remains

unaware of the same. It is contended that Plaintiff is the owner of the copyright in ‘literary works’ *viz.* the e-newspaper, along with news articles and the content published on its websites and mobile application, and the same cannot be unauthorisedly circulated.

22. Plaintiff has informed Defendant No. 1 *vide* notice dated 30th August, 2021 about the infringing groups and requested them to have the same removed. However, Defendant No. 1 turned down such request and insisted that Plaintiff provide it with an order from the Court to that effect.

23. Counsel for the Plaintiff has shown screenshots of the messages exchanged on the groups – which indicate an unauthorised and illegal sharing of the Plaintiff’s e-newspaper.

24. Thus, Plaintiff has made out a *prima facie* case and the balance of convenience also lies in favour of the Plaintiff. Further, an irreparable loss would be caused, in case an *ex-parte* order of injunction is not granted – restraining the infringing Defendants from illegally circulating and distributing the Plaintiff’s e-newspaper.

25. Accordingly, till the next date of hearing, Defendant No. 1 is directed to take down/ block the WhatsApp groups identified under paragraph 7 of the present application – which are unauthorisedly and illegally circulating the Plaintiff’s e-newspaper.

26. Compliance under Order XXXIX Rule 3 be done within a period of

one week from today.

27. List before the Roster Bench on 2nd May, 2022.

SANJEEV NARULA, J

DECEMBER 24, 2021

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