

**CASE COMMENT: MY SPACE VS SUPER CASSETTES INDUSTRIES LTD,
LANDMARK JUDGEMENT REGARDING SAFE HARBOUR IMMUNITY OF
INTERMEDIARIES AND INTERPRETATION OF VARIOUS PROVISIONS OF IT
ACT 2000 AND COPYRIGHT ACT 1957**

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FACT OF THE CASE

Myspace Inc. is a user-generated content (UGC)-based website that provides a neutral platform for uploading, viewing, and sharing music, entertainment, videos, and more. Their main source of income is the ads that are generated based on the keywords entered by the user rather than the content the user is looking for. Users wishing to upload content must register and agree to abide by our Terms of Service. Our terms of service clearly state that you may not upload content that infringes on the intellectual property (IP) of others. As a US-based company, they comply with the Digital Millennium Copyright Act (DMCA) and follow our notice and takedown features. Super Cassettes Industries Ltd., commonly known as T Series, is India's largest music company with over 100,000 copyrighted songs. They do business by selling and licensing copyrighted material in physical or virtual space through Internet Service Providers (ISPs) and streaming platforms.

On February 20, 2008, SCIL issued a notice to the Myspace website to remove infringing content published on www.myspace.com. Despite initial compliance, things got complicated when infringing content continued to air and SCIL's copyright was violated and followed by this the Super Cassettes Industries Limited (SCIL) filed a suit against MySpace, alleging copyright infringement against the platform that they allowed users to upload and share media files, *inter alia*, and it was discovered that users were sharing SCIL's copyrighted works without authorisation. SCIL promptly proceeded to file a civil suit against MySpace for primary infringement under section 51(a)(i) of the Copyright Act as well as secondary infringement under section 51(a)(ii) with a single judge in the Delhi High Court after an amicable settlement failed. My space denied the contentions that they had strategically used advertising to exploit the SCIL's work.

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PROCEDURAL HISTORY

In 2012 the single bench of the Delhi High Court held that My Space was liable for infringement under section 14, 51 (a)(ii) and 51 (a) (i) of the Copyright Act, 1957 despite the fact that they didn't have actual knowledge of infringement.

In 2016 the division bench consisting of Justice Rabindra Bhatt and Deepa Sharma revised the 2012 judgement and held that in the case of internet intermediaries section 51 (a)(ii) of the Copyright Act, 1957 stipulates actual knowledge not general awareness and also strengthened safe harbouring provided under section 79 of IT act, 2000 and relieved MySpace from pre-screening user-generated content.

QUESTIONS PRESENTED TO COURT / ISSUES

Whether MySpace could be said to have knowledge of infringement so as to attract liability for secondary infringement under section 51 (a)(ii).

Whether the proviso to Section 81 in the Information Technology Act, 2000 overrides the "safe harbour" granted to intermediaries under Section 79.

Whether sections 79 and 81 of the IT Act and Section 51 of the Copyright Act can be read harmoniously.

RULE OF LAW

Section 51(a)(i), 51(a)(ii), of the copyright act and section 79 and section 81 are the provisions dealt with in the case.

What would amount to infringement has been given under section 51 of this Act. "Section 51 (a) (i) lays down that a copyright in a work shall be considered to be infringed when any person does any act without a license given by the owner of the copyright or Registrar of Copyrights under this Act, or if he does any act in contravention of the conditions given in the license which was so granted to him or contravenes any condition imposed on him by any competent authority, where the exclusive right to do such act vests exclusively with the owner of the copyright under this Act. Section 51 (a) (ii) lays down that when a person provides for profit any place to be used for communicating to the public, such communication can be regarded as an infringement unless that person is not aware and he also has no reasonable grounds for

believing that such communication to the public will amount to infringement. Section 79 of the IT Act 2000 provides with exemption from the liability of an intermediary in certain circumstances. As per section 81, the provisions of the IT Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

APPLICATION / ANALYSIS

The division bench in 2016 overruled the single bench decision in the case. “It was held that in the case of internet intermediaries section 51 (a)(ii) of the Copyright Act 1957 stipulates actual knowledge not general awareness and also strengthened safe harbouring provided under section 79 of IT act, 2000 and relieved MySpace from pre-screening user-generated content. And the relief granted to SCIL was that they were directed to give a list of their infringed works and MySpace was also directed to keep a record of removal of the infringed works and the benefits obtained out of adding advertisements in the work.”

The decision of the court can be said to be a remarkable step in fixing intermediary liabilities otherwise which would have led to discomforts in the digital realm in India. If the intermediary liability was established irrespective of the fact that the platform didn't have actual knowledge of an infringement, it may force other digital entrepreneurs to relocate their business to some other country granting them better protection. But through this verdict court has tried to maintain a balance between intermediary liability and the protection of copyright.

CONCLUSION

The division bench in 2016 overruled the single bench decision in the case. It was held that in the case of internet intermediaries section 51 (a)(ii) of the Copyright Act 1957 stipulates actual knowledge, not general awareness and also strengthened safe harbouring provided under section 79 of the IT Act, 2000 and relieved MySpace from pre-screening user-generated content. The relief granted to SCIL was that they were directed to give a list of their infringed works and MySpace was also directed to keep a record of the removal of the infringed works and the benefits obtained out of advertisements added to the work.

BIBLIOGRAPHY

[1] INDIA KANOON, [<https://indiankanoon.org/doc/>](last visited dec, 6.2023)

[2] The Copyright Act, 1957, §51, No 14, Acts of Parliament, 1957 (India).

[3] IT Act, 2000, No 21, Acts of Parliament, 2000 (India).

[4] My Space Inc v. Super Cassettes Industries Ltd (2017) 236 DLT 478 (DB).

