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Kent RO Systems Ltd. v. Amit Kotak & Ors., 2017 (69) PTC 551 (Del).

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INTRODUCTION

In this case, the Hon'ble court explained about limits of intermediaries in liability for infringement of intellectual property rights with respect to their online platform as per relevant section under IT Act, 2000 and IT Rules, 2011 and Design Act, 2000.) This ruling entails online platforms (in this case eBay) are not required to screen or block content from their platform, while also upholding the right of “safe harbour.”

FACTS OF THE CASE

1. Kent RO Systems Ltd., water purifier manufacturing company, had registered the design of its products under the Design Act, 2000.¹
2. It used eBay to market its products both physically as well as in online mode. eBay is a marketplace that connects sellers and buyers to sell their products.
3. One of the competitors, Amit Kotak manufactured water purifiers that were very similar in design to those of Kent RO Systems Ltd. Kotak's counterfeit products amounted to copyright infringement wherein it would post on eBay, its products which are in violation of section 19 of the Design Act, 2000.²
4. Prior to filing the lawsuit, Kent RO had notified both Kotak and eBay of the infringement and asked them to remove the infringing listings.
5. eBay addressed the specific infringing content cited by Kent, but it only removed those items and did not take action against other infringing products that he mentioned without issuing direct requests.
6. Kent RO Systems Ltd eventually brought a suit against Kotak for selling identical products, and eBay for negligent monitoring and removal of other infringing products (which Kotak admitted to).

¹ Kent RO Systems Ltd. & Anr. v. Amit Kotak & Ors., 2017 (69) PTC 551 (Del).

² Designs Act, 2000, No. 16, Acts of Parliament, 2000, (India).

ISSUE BEFORE THE COURT

The issue before the honourable court was whether intermediaries liability would arise for infringing content on their platform.

ARGUMENTS ADVANCED

Plaintiff's Arguments

According to plaintiff, eBay is an "intermediary" under the Information Technology Act³ and must abide by Information Technology (Intermediaries Guidelines) Rules, 2011⁴. intermediaries must exercise reasonable diligence in accordance with Rule 3 of IT Rules when performing their tasks:

1. Before anybody can access or use an intermediary's computer resources, the intermediary must post the user agreement, privacy policy, and rules and regulations.
2. Users of computer resources must be informed by such rules and regulations, terms and conditions, user agreements not to host, display, upload, edit, publish, transmit, update, share any information violates any patent, trademark, copyright, other intellectual rights;
3. Sub-rule (2) expressly imposes on the intermediary that it will not knowingly host or publish any information, initiate the transmission, select the receiver of the transmitted message or change the information contained in such transmission.

Defendant's Arguments

The lawyer for eBay (defendant no. 2) stated in his legal papers that eBay acted lawfully, insisting that they did not know which infringing products the first defendant uploaded onto eBay. made illegal items out of sight when I threatened them. eBay's attorney also filed a declaration with the Court that eBay will, in the future, remove all bad goods when Plaintiff complains. Who gets the intermediary to do the due diligence on every content uploaded on the site to ensure that none of it infringes rights. The law obliges the intermediary to warn its users not to upload any copyrighted or unlawful material. The counsel said that as per section 79 of the IT Act, no intermediary can be held liable with respect to any information, data or

³ Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

⁴ Information Technology (Intermediaries Guidelines) Rules, 2011, G.S.R. 314(E) (Apr. 11, 2011) (India).

communication link provided by him because an intermediary is only providing access to a communication system in which the content owned by another party is transmitted, received, stored or temporarily hosted and does not alter it.

JUDGMENT/ DECISION OF THE COURT

The court rejected the argument put forth by the plaintiff that it is weak and that no allegations against Defendant No. 2 (eBay). The Court ruled in favour of the defendant No. 2. The court reasoned - obligations that Act imposes for intermediaries, which includes cautioning users against uploading or sharing things without rights. Moreover, after receiving the plaintiff's complaint, the defendant removed the entire infringing product from its platform. In doing so, defendant No.2 has neither committed any act of negligence nor violated any duty.

CRITICAL ANALYSIS OF THE JUDGMENT

The judgement matter to the e-commerce platforms and the intermediaries:

1. The judgment reinforces the safe harbour principle envisaged in the IT Act since charge of an intermediary should not be levied on platforms like eBay.
2. It lays out the guardrails around which intermediaries will need to operate, preventing possible overreach that could otherwise stifle e-commerce innovation.
3. It explains the intermediary expectations and serves as a landmark judgment for future cases involving intellectual property infringements facilitated by online platforms.

IMPACT

1. The verdict establishes that intermediaries are immunized by Section 79 of the IT Act, 2000 and hence they do not have to verify whether their e-commerce platforms contain infringing content.
2. The case reaffirmed the "safe harbour" concept that providers aren't held accountable for anything they deliver to us, provided it is legal.

3. The case lays down the fair rules with respect to people having a bearing upon such infringing content and e-commerce.

SUGGESTIONS

1. The complaint procedure should be quick to have infringing products removed from the website as fast as possible⁵.
2. Chronic infringers who upload multiple infringements on online postings should be punished more strictly.
3. The online platforms should receive explicit instructions on the equitable treatment of complaints related to intellectual property.

CONCLUSION

This fact illustrates the function of an intermediary well. From an e-commerce platform perspective it is definitely not possible to review all the content that a user uploads. However, the e-commerce operators should be cautious in releasing privacy policies and terms of users. Intermediaries shall be required to ensure that all warning their users from uploading any content that violates any copyright for anything against the public order through those documents.

Intermediary companies shall be very careful when drafting their privacy policy and terms of use as per IT Act and intermediary guidelines⁶. It is futile to file a suit for damages against the intermediary simply because it took down all content that had infringed its IT rules as per law, and this is just a waste of the judiciary's time.

⁵ Shreya Singhal v. Union of India, AIR 2015 SC 1523.

⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E) (Feb. 25, 2021) (India).