

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO. 857 OF 2017
IN
COMMERCIAL SUIT (L) NO. 755 OF 2017

Novex Communication Pvt. Ltd.Plaintiff
V/s.
China Gate Restaurant Pvt. LtdRespondents

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Mr. Rashmin Khandekar a/w. Ms. Priti Naik i/by. M/s.
M.P. Savla and Co. Advocate for the plaintiff, applicant.

Mr. P.C. Kansara, Advocate for the defendant no.3.

**CORAM :- SANDEEP K. SHINDE, J.
(VACATION COURT).**

DATE :- 29TH DECEMBER, 2017.

P.C. :-

1. The plaintiff has entered into assignment deeds with the following companies and acquired rights for public performance of sound recording of songs contained in the films :-

(a) Zee Entertainment Enterprises (ZEE).

(b) Eros International Media Ltd (EROS).

(c) Shemaroo Entertainment Ltd. (SHEMAROO).

2. The plaintiff is also the authorised agent of Yashraj Films Private Limited in terms of provisions of Section 30 of the Copyrights Act. The plaintiff has obtained assignment of and/or exclusive control over copyright in sound recordings limited to the usage of sound recordings from respective copyright owners. The plaintiff is dealing in protection of copyrights by taking necessary legal action in case of infringement of the copyright in the sound recordings.

3. It is the plaintiff's case that by virtue of Section 18(2) of the Act, the plaintiff has become the owner of copyrights as assigned to it by ZEE vide deed of assignment dated 11th August, 2015.

. It is the plaintiff's case that, vide deed of assignment dated 9th February, 2017 with Eros International Media Ltd, EROS transferred and assigned

on ground of performance rights in sound recording of the songs contained in the films in favour of the plaintiff as its assignee in accordance with Section 18 of the said Act.

4. It is the plaintiff's case that it has entered into the assignment agreement vide deed of assignment dated 9th March, 2017 with Shemaroo Entertainment Limited whereby Shemaroo has transferred and assigned on ground performance rights in sound recordings and the songs contained in the film in favour of the plaintiff as its assignee.

5. It is the plaintiff's case that, under Section 51(a) of the Act, copyright in a work shall be deemed to be infringed when any person without a license from the owner of the copyright does anything, the exclusive right of which are granted to the owners of the copyright. The plaintiff, in para-29 of its plaint, alleged that the defendant had played the plaintiff's copyright sound recordings without obtaining requisite license on 5th July, 2017 at Tap Resto Bar; on 18th July, 2017 at Tap Resto

Bar at Andheri, Lokhandwala and again on 9th September, 2017 at Tap Resto Bar, Juhu Beach.

6. The plaintiff therefore caused notice to the defendant in August, 2017. It is the plaintiff's case that, the defendant never approached the plaintiff for the purpose of acquiring the requisite licenses but have been continuing the unauthorised and illegal use of sound recordings licensed by the plaintiff and infringed the copyright.

7. In view of the facts aforestated, the plaintiff has filed a Commercial Suit on 19th December, 2017 seeking a decree of perpetual injunction restraining the defendants, its partners, its Directors, employees or any person claiming through them from publicly performing and/or in any manner communicating the sound recordings/musical compositions of songs, assigned and authorised to plaintiff in terms of the deed of assignments as referred to hereinabove.

8. The plaintiff has taken out the Notice of Motion

seeking the interim relief in terms of prayer clause (a) of the Notice of Motion. The same reads as under :-

(a)that pending the hearing and final disposal of this suit this Hon'ble Court be pleased to issue an order of injunction against the Defendants, its partners, directors, their servants, employees, agents, assignees, licensees, representatives and/or person claiming through them or acting on their behalf, from publicly performing in any manner communicating the sound recordings/musical composition of the songs assigned and authorised to the Plaintiff or allowing their premises or any premises under their control to be used for the said purposes, without license from the plaintiff, or otherwise infringing copyright in any work owned and protected by the Plaintiff.”

9. Heard Mr. Khandekar, Learned Counsel for the plaintiff and Mr. Kansara, Learned Counsel for the defendants.

10. Perused the deed of assignments. Also perused the orders passed by the High Court of Delhi and order

dated 28th September, 2017 passed in Commercial Notice of Motion (Lodg) no. 625 of 2017 in Commercial Suit No. 549 of 2017 at the instance of the plaintiff herein.

11. The grievance of the plaintiff is that, the defendants are playing the sound recordings, the copyright of which are vested in the plaintiff, in their hotel for entertainment purposes. The three deed of assignment, as referred to hereinabove, prima-facie, establishes plaintiff's exclusive control over copyright in sound recordings obtained from the respective copyright owners. The contention of the defendant that the plaintiffs have not obtained such rights, therefore, does not have any substance.

. In my view, the plaintiff has made out a prima-facie case for granting the interim relief. Even otherwise, balance of convenience tilts in favour of plaintiff. If interim relief is not granted, plaintiff will suffer irreparable losses, and as such it is necessary to protect the plaintiff's right by restraining the defendant from

playing the songs in respect of which the plaintiff has copyrights without obtaining the license from the plaintiff till further orders. Hence, ad-interim relief in terms of prayer clause (a) is granted.

12. Place the Notice of Motion for hearing on 16th February, 2018.

13. Parties to act on a copy of this order authenticated by the Associate of the Court.

(SANDEEP K. SHINDE, J)

