

O.A.No.819 of 2018

in

C.S.No.613 of 2018

M.SUNDAR,J.

Sole plaintiff in the main suit is the lone applicant herein and sole defendant in the main suit is the lone respondent herein. Parties in this application are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

2. Ms.M.Sneha, learned counsel for plaintiff and Ms.Gladys Daniel, learned counsel for sole defendant are before this Commercial Division. Main suit has been filed seeking injunctive relief against defendant with regard to plaintiff's copyright in 51 Tamil feature films.

3. It is the case of the plaintiff that as part of their business transaction, it had entered into assignment agreements with various producers and copyright holders for cinematograph films for valuable consideration for exploitation of the same through satellite and other modes.

4. To be noted, it is the case of the plaintiff that it is a television network in South India and that plaintiff's channels have larger viewership. It is averred by the plaintiff that they run about 33 channels.

5. The plaint is predicated on the ground that defendant owns two Television channels, which go by the names 'MK TV' and 'MK Tunes' and defendant telecast songs and clippings of movies i.e, cinematograph films in which the plaintiff has absolute copyright. To be noted, the claim of the plaintiff in this suit is with regard to 51 Tamil feature films and the details are as follows:

SL NO	NAME OF THE MOVIE	ASSIGNMENT (S) DATE
1.	7G RAINBOW COLONY	19.05.2004
2	3	23.02.2012
3	AANANDHAM	06.08.2001
4	AAYIRATHIL ORUVAN	28.01.2009
5	AZHAGIYA TAMIL MAGAN	31.05.2007
6	ANBAE SIVAM	10.06.2002
7	ANNIYAN	29.06.2005
8	ARASU	26.02.2003
9	BHAGAVATHY	10.06.2002
10	BIRIYANI	02.09.2013
11	BOYS	05.07.2003
12	DEEPAVALI	02.04.2007 & 10.04.2007
13	DEVI	29.07.2016
14	EYARKAI	18.03.2004
15	GEMINI	01.10.2001
16	GHILLIE	19.05.2004
17	JAYAM	20.08.2003
18	JEYAM KONDAAN	18.08.2008
19	KAADHAL KONDEN	26.07.2003
20	KAAKI SATTAI	26.06.2014
21	KAZHUGOO	23.12.2011
22	KOVIL	22.01.2004
23	KUTTY	11.01.2010
24	MAYAKKAM ENNA	24.11.2011

SL NO	NAME OF THE MOVIE	ASSIGNMENT (S) DATE
25	MOUNAM PESIYADHE	09.12.2002
26	NAAN EE	09.05.2012
27	NAAIGAL JAAKIRATHAI	28.11.2014
28	NEPAALI	01.06.2007
29	NERAM	13.05.2013
30	OSTHE	18.11.2011
31	PAAYUM PULI	04.11.2015
32	PICHAIKKARAN	17.03.2016
33	POKKIRI	29.05.2007
34	POLLADHAVAN	17.05.2007
35	RED	25.09.2001
36	POOVELLAM UN VAASSAM	01.12.2001
37	PRIYAMAANAVALA	04.10.2000
38	RUN	07.10.2002
39	SUBRAMANIAPURAM	24.09.2009
40	SAKKARAKATTI	28.07.2008
41	THAVASI	03.11.2001
42	THIRUPACHI	27.08.2003
43	THORANAI	18.06.2009
44	THOZHA	05.05.2016
45	UNNAI NINAITHU	10.06.2002
46	VAANAM	11.05.2011
47	VANAKKAM CHENNAI	24.09.2013
48	VASOOL RAJA M.B.B.S.	23.08.2004
49	VENGHAI	20.06.2011
50	VIYABAARI	26.07.2007, 27.04.2007 & 08.05.2007
51	YARADI NE MOGINI	02.06.2007 & 11.06.2007

6. It has been averred in the plaint, particularly in Paragraph 9, at Page 7, that the aforesaid alleged offending transmission/broadcast / telecast was made on various dates and the details of dates, names of show, name of the songs and the duration for which the alleged offending telecast was made, has been set out in a tabular form and the same reads

as follows:

MK TUNES SONGS 03-07-2018 & 04-07-2018					
S.N	Date	Movie Name	Show Name	Song Name	Duration
1	03.07.2018	7G RAINBOW COLONY	EVERGREEN HITS	KANNA KANUM	00:04:41
2	03.07.2018	AANANDHAM	NIGHT MUSIC	PALLAANGUZHIN	00:04:57
3	03.07.2018	ANBAE SIVAM	NIGHT MUSIC	YELLE MACHI	00:03:50
4	03.07.2018	ARASUDHARBAR	NIGHT MUSIC	MALLIGAI	00:05:00
5	03.07.2018	AZHAGIYA THAMIZHMAGAN	BREAKLESS BAND	KELLAMAL	00:03:18
6	03.07.2018	BHAGAVATHY	NIGHT MUSIC	ALLU ALLU	00:04:51
7	03.07.2018	BIRIYANI	NIGHT MUSIC	BOOM BOOM	00:02:05
	04.07.2018		EXPRESS MUSIC	BOOM BOOM	00:02:25
8	03.07.2018	BOYS	NIGHT MUSIC	SA RE GA MAE	00:05:31
9	03.07.2018	GEMINI	EVERGREEN HITS	KATTA KATTA	00:03:58
10	03.07.2018	GILLI	NIGHT MUSIC	APPADI PODU	00:04:12
	04.07.2018		SIX PACK	APPADI PODU	00:04:10
11	03.07.2018	EYARKAI	EVERGREEN HITS	KADHAL VANTHAL	00:04:53
12	03.07.2018	JAYAM KONDAN	NIGHT MUSIC	SUTRIVARUM BOOMI	00:04:08
13	03.07.2018	KAKKI SATTAI NEW	EXPRESS MUSIC	SOKKA	00:02:23
14	03.07.2018	KAADHAL KONDEN	EVERGREEN HITS	NENJODU	00:02:17
15	03.07.2018	KAZHUGU NEW	BREAKLESS BAND	AATHADI MANASUTHA	00:03:42
16	03.07.2018	KOVIL	NIGHT MUSIC	KADHAL PANNA	00:04:11
	04.07.2018		SIX PACK	KOKKU MEENA	00:02:38
17	03.07.2018	KUTTY	NON STOP	NEE KADHALIKUM	00:03:15

MK TUNES SONGS 03-07-2018 & 04-07-2018					
			MUSIC	PONU	
18	03.07.2018	MAYAKKAM ENNA	MUSIC MASALA	KADHAL EN KADHAL	00:04:08
19	03.07.2018	3 [MOONU]	EVERGRE EN HITS	POONIPO	00:03:07
20	03.07.2018	MOUNAM PESIYADHE	NIGHT MUSIC	EN ANBAE	00:04:37
21	03.07.2018	NAAIGAL JAAKIRATHAI	NIGHT MUSIC	DOGGY DOGGY	00:01:42
	04.07.2018		BREAKLE SS BAND	DOGGY DOGGY	00:02:38
22	03.07.2018	NAAN.E	NIGHT MUSIC	NEEN EE EN PERU	00:04:24
23	03.07.2018	SUBRAMANIAPURAM	NIGHT MUSIC	KANNGAL IRRANDAL	00:05:30
24	03.07.2018	NEPALI	NIGHT MUSIC	KANNAVILLAE	00:04:50
25	03.07.2018	NERAM	NIGHT MUSIC	KADHALIN	00.04.03
26	03.07.2018	PICHAIKKARAN	ORU KUCHI ORU KULFI	KODI KODI	00:02:10
27	03.07.2018	POOVELAM UN VAASAM	EVERGRE EN HITS	KADHAL VANTHATHUM	00:04:37
28	03.07.2018	PRIYAMAANAVALA	NIGHT MUSIC	ENNAVOO	00.04.43
29	03.07.2018	RED	ORU KUCHI ORU KULFI	OLLIKUCHI	00:04:08
30	03.07.2018	RUN	EVERGRE EN HITS	KADHAL PISASAE	00:04:03
31	03.07.2018	SAKKARAKATTI	ORU KUCHI ORU KULFI	AASAE AASAE	00.03.42
32	03.07.2018	THAVASI	NIGHT MUSIC	THANTHAN THANTHAN	00:03:50
33	03.07.2018	THORANAI	BREAKLE SS BAND	PATTUCHA	00:03:18
34	03.07.2018	THOZHA		I-FEEL	00:03:17
	04.07.2018		MUSIC MASALA	DOOR NUMBER	00:03:56
35	03.07.2018	UNNAI NINAITHU	NIGHT MUSIC	YAAR INTHA	00:03:03

MK TUNES SONGS 03-07-2018 & 04-07-2018					
36	03.07.2018	VAANAM	BREAKLE SS BAND	YEVANDI UNNA	00:04:15
37	03.07.2018	VANAKKAM CHENNAI	NIGHT MUSIC	OSAKKA	00:03:43
38	03.07.2018	VENGAI	BREAKLE SS BAND	KAALANGATHAL A	00:03:44
39	03.07.2018	VYABARI	NIGHT MUSIC	AASA PATTA	00:04:22
40	03.07.2018	YARADI NE MOGINI	NIGHT MUSIC	ORU NAALAIKU	00:04:43
41	04.07.2018	OSTHI	NIGHT MUSIC	OSTHI MAAMU	00:03:00
42	04.07.2018	DEEPAVALI		DOLLU BAAJI	00:04:17
43	04.07.2018	POKKIRI		POKKIRI PONDAL	00:04:31
44	04.07.2018	POLLADHAVAN		KUDICHI	00:01:45
45	04.07.2018	THIRUPACHI	NIGHT MUSIC	NEE ENTHA OORU	00:04:28
46	04.07.2018	ANNIYAN	COOL TUNES	KANNUM KANNUM	00:05:09
47	04.07.2018	DEVI	KETTA DATA	CHALLMA	00:03:59
48	04.07.2018	PAAYUM PULI	MUSIC MASALA	MADURA KAARI	00:04:20
	04.07.2018		MUSIC MASALA	NAA SOODANA	00:04:20
49	04.07.2018	JAYAM		THIRUVIZHANU	00:04:00
50	04.07.2018	VASULRAJA MBBS	NIGHT MUSIC	AALWARPET	00:05:10
	04.07.2018		NIGHT MUSIC	SIRICHI	00:03:20
51	04.07.2018	AAYIRATHIL ORUVAN	NIGHT MUSIC	KOVIDHA	00:05:06

7. Ms.Gladys Daniel, learned counsel, who is on caveat for sole defendant, accepted notice on behalf of the sole defendant in the main suit and on behalf of the sole respondent in the instant application.

8. In response to the aforesaid plaint averments, which were

reiterated in the hearing by learned counsel for plaintiff, learned counsel for defendant submitted that the telecast, set out in the tabular column supra, is not in dispute, but the defendant has approached the plaintiff *inter alia* under Section 31 of 'The Copyright Act, 1957' ('CR Act' for brevity) pertaining to compulsory licence and that the plaintiff has not responded until today.

9. It is submitted by learned counsel for defendant that the Copyright Board has become defunct, the powers are now vested with the 'Intellectual Property Appellate Board' (IPAB) and Rules, in this regard qua IPAB, are yet to be framed.

10. In this backdrop, it is pointed out that the defendant will be approaching the IPAB only after refusal by the plaintiff, if that be so. If the plaintiff accedes to the request and if the terms are arrived at, it may not be necessary to approach the IPAB, is her submission. The framing of rules in this regard is a prerequisite for the defendant to approach the IPAB, if the defendant has to do so, is her say. It is also pointed out that there were prior suits between the same parties and that the aforesaid request of the defendant for compulsory licensing is *inter alia* under Section 31 of the CR Act was in the course of such prior suits.

11. To be noted, one ex parte order dated 03.11.2017 in O.A.No.1100 of 2017 in C.S.No.856 of 2017 has been pressed into service by the plaintiff by filing the same as Plaint Document No.303. The said order refers to 'Schedule A', but 'Schedule A' has admittedly not been annexed to plaint

document No.303. Learned counsel for plaintiff undertakes to produce Schedule A by next listing.

12. Be that as it may, what emerges and unfurls clearly from the aforesaid narrative is that the defendant is not claiming any independent copyright in the aforesaid songs and the clippings in the 51 Tamil feature films / Tamil cinematograph films which were telecast on various dates. To be noted, as alluded to supra, telecast is not in dispute. The defendant only submits that the plaintiff is sitting over its request under Section 31 of CR Act.

13. Learned counsel for defendant undertakes to make a fresh request under Section 31 of CR Act forthwith and learned counsel for plaintiff undertakes to respond to the same within a fortnight from today.

14. In the light of the narrative supra, I am of the considered view that prima facie case has been made out by the plaintiff as plaintiff has placed before this Court deeds of assignment in 51 movies, balance of convenience is in favour of acceding to the interim prayer as continued telecast without copyright / pending request under Section 31 of CR Act has to be interdicted and irreversible injury incapable of compensation is likely to be caused if defendant continues the admitted exploitation of songs sequence and clippings in the aforesaid 51 movies. In other words, all three parameters / determinants for grant of interim injunction, viz., prima facie case, balance of convenience and irreversible legal injury incapable of

compensation operate in favour of plaintiff at this juncture.

15. Under such circumstances, it would only be appropriate that the defendant does not continue the offending telecast as admittedly the defendant does not have copyright for the same.

16. Therefore, there shall be an interim order as prayed for till 26.09.2018. It is not in dispute that plaint with all supporting documents, affidavits filed in support of this application together with documents pressed into service and all other relevant documents have already been served on learned counsel for defendant. To be noted, learned counsel for defendant is on caveat. Learned counsel seeks time to complete pleadings in instant application and in main suit. Therefore, compliance with Order XXXIX Rule 3 does not arise is the common submission made by both counsel. This is recorded.

List on 26.09.2018.

07.09.2018

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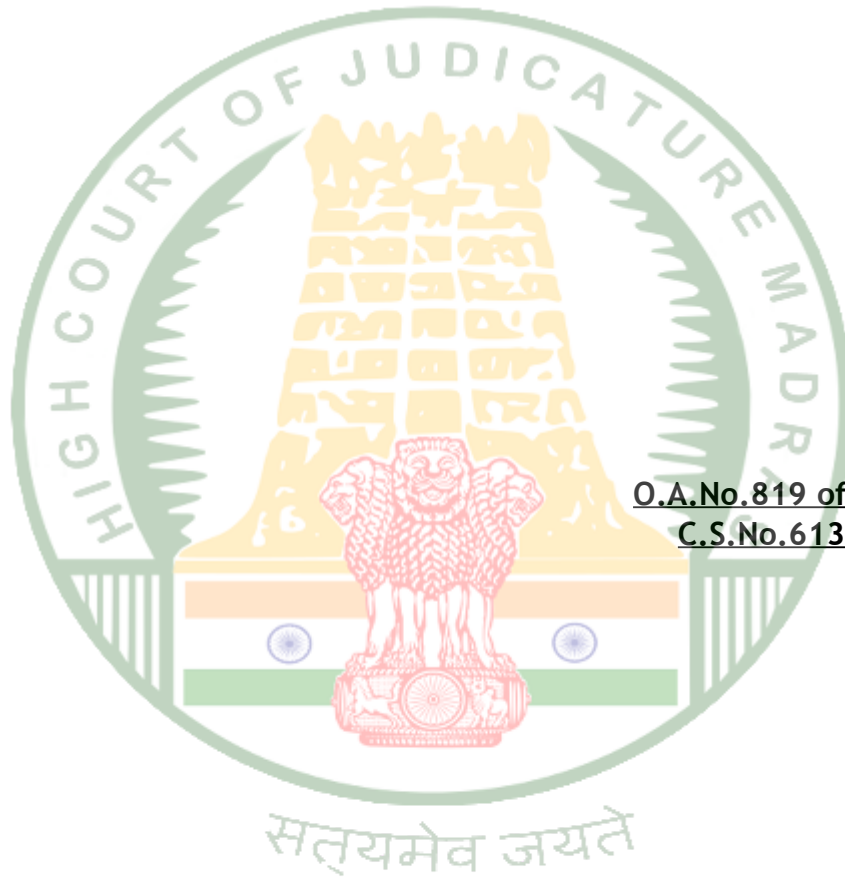
Note to Office:

Issue order copy on 7.9.2018.

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M.SUNDAR.J.,

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