

O.A.No.1191 of 2018
in C.S.No.880 of 2018

M.SUNDAR,J.

There is a sole plaintiff and there are two defendants in the main suit.

2. Sole plaintiff in the main suit is the lone applicant in the instant application. Likewise, defendants 1 and 2 in the main suit are respondents 1 and 2 respectively in the instant application. From hereon, parties to this application shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3. Central theme of this suit is 313 film songs, which are referred to as sound recordings. These film songs are part of various cinematograph films. All these 313 film songs with the opening lyrics, with which they are identified and the movies, which they form part of, all have been given in the form of schedule, which is schedule-II to the Judge's Summons. These movie songs i.e., sound recordings (313 in number) as in schedule-II shall be referred to as 'suit songs for the sake of brevity, convenience and clarity.

4. Mr.P.V.Balasubramaniam of M/s.BFS Legal (Law Firm) is before this Commercial Division on behalf of plaintiff.

5. Learned counsel submits that plaintiff has obtained copyright in suit songs and has been issuing license and taking steps for protection of copyright in suit songs. Learned counsel points out that copyright in entire suit songs, have been obtained by the plaintiff by way of Assignment Deeds from three different entities and there is an Agency Agreement with another entity. Three entities from which assignment has been obtained are Zee Entertainment Enterprises Limited, Eros International Media Limited and Tips Industries Limited. With regard to Zee Entertainment Enterprises, the Assignment Deed and the addendum to the same have been placed before me as plaint document Nos.6, 14 and 30 dated 11.08.2015, 01.03.2016 and 06.04.2017 respectively. Assignment from Eros International Media Limited has been obtained vide plaint document No.24 dated 09.02.2017. Assignment from Tips Industries Limited has been obtained vide plaint Document No.33 dated 01.04.2018. Besides this, Agency Agreement with one Yash Raj Films Pvt. Ltd are plaint document Nos. 16 and 17 and the same are dated 08.04.2016 and 27.04.2016 respectively.

6. Learned counsel drawing my attention to the aforesaid plaint documents, submits that plaintiff is an assignee and has copyright in suit songs. In furtherance of his submission, learned counsel submitted that sometime in September 2018, plaintiff came to know that the second defendant had organized an event at the premises of the first defendant, wherein *inter alia* suit songs had been played for entertainment of its invitees, guests and patrons. Even according to learned counsel, that was an in-house event on 15.09.2018. To be noted, this is articulated in paragraph 17 of the affidavit filed in support of the instant application.

7. Learned counsel submits that on coming to know about the aforesaid event, a Cease and Desist notice dated 27.09.2018 was issued, which evoked a reply dated 17.10.2018. A copy of the Cease and Desist notice dated 27.09.2018 has been placed as part of suit file and it is plaint document No.35. Reply to the Cease and Desist notice from the noticee/defendants is dated 17.10.2018 and the same is plaint document No.36.

8. A perusal of plaint document No.36, reveals that the defendants pitch themselves primarily on Sections 33, 34 and 35 of 'Copyright Act, 1957' (hereinafter 'said Act' for brevity). This is as opposed to plaintiff's claim primarily under Section 14(a)(iii) of said Act.

9. Most importantly, learned counsel for plaintiff draws my attention to the aforesaid reply notice i.e, plaint document No.36 and submits that even in plaint document No.36, the defendants have mentioned that in all fairness, they are always inclined to pay genuine, reasonable tariff charges to the copyright owners or to their agents.

10. Under the aforesaid circumstances, learned counsel submits that after receipt of the aforesaid reply to the Cease and Desist notice, plaintiff took all efforts, to interact with the defendants and enter into proper license agreements qua the suit songs but, in vain. Therefore, left with no other option, in the anvil of ensuing festive events, including New Year Eve, as there is imminent threat of defendants playing *inter alia* suit songs for its guests, invitees in events that are likely to be organized for the festive season and New Year Eve, the instant suit has been presented in this Court. This is learned counsel's say.

11. Under the aforesaid circumstances, learned counsel submitted that if the defendants are permitted to play the suit songs in such ensuing festive season and New year Eve, without entering into suitable agreements with the plaintiff and without paying necessary charges for the copyright in the suit songs, the plaintiff will be left high and dry.

12. It was also pointed out that if the prayer in the instant application is acceded to, it will not disrupt the defendants' events as they can still play suit songs if they choose to by entering into suitable agreements/license arrangements with the plaintiff by paying the prescribed tariff. According to learned counsel, tariff is based on the number of guests. The tariff for the suit songs is as follows:

1. 0-300 guests -Rs.1 lakh + 12 % GST
2. 301-600 guests Rs.1.5 lakhs + 12% GST, and
3. 601 & above Rs.2.0 lakhs + 12% GST.

13. In the aforesaid scenario, I have examined the three parameters/determinants for grant of interim injunction namely *prima facie* case, balance of convenience and irreparable legal injury incapable of compensation. Prima facie case is made out, in the light of plaint document Nos.6, 14, 30, 24, 33, 16 and 17 (Assignment agreements and Agency agreements) which have been alluded to supra.

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14. Balance of convenience is in favour of the plaintiff as, as pointed out by learned counsel for plaintiff, the defendants can still play the suit songs subject to paying the aforesaid tariff to the plaintiff after entering into suitable license agreements.

15. With regard to irreparable legal injury incapable of compensation aspect, if the defendants are allowed to play the suit songs, without paying the tariff, the plaintiff will be left high and dry, even if the plaintiff ultimately succeeds in its claim.

16. In the light of this being an interim order, at the stage of inception of suit, before issue of notice to the defendants, this Commercial Division deems it appropriate to hold that all such agreements entered into and tariff paid by the defendants to the plaintiff will be subject to the outcome of the instant application/main suit, if they choose to do so.

17. In the light of the narrative supra, as the festive season has already begun and as new year eve falls in vacation days for this Court, this Commercial Division is convinced that issue of notice to defendants in the instant application will entail delay which can ultimately defeat the objective of interim order that has been sought for. To be noted, this is recording of reasons of this Commercial Division for grant of interim order before issue of notice to the defendants and this is in accordance with proviso to Rule 3 of Order XXXIX of 'The Code of Civil Procedure, 1908' ('CPC' for brevity).

18. In the light of all that have been set out supra, there shall be an interim order as prayed for, for a period of three weeks from today i.e., upto 10.01.2019.

19. Notice to respondents returnable by 10.01.2019. Private Notice permitted.

20. Though obvious plaintiff to comply with provisions of Order XXXIX Rule 3 of CPC and file all necessary affidavits and documents in this regard.

21. List this matter on 10.01.2019.

20.12.2018

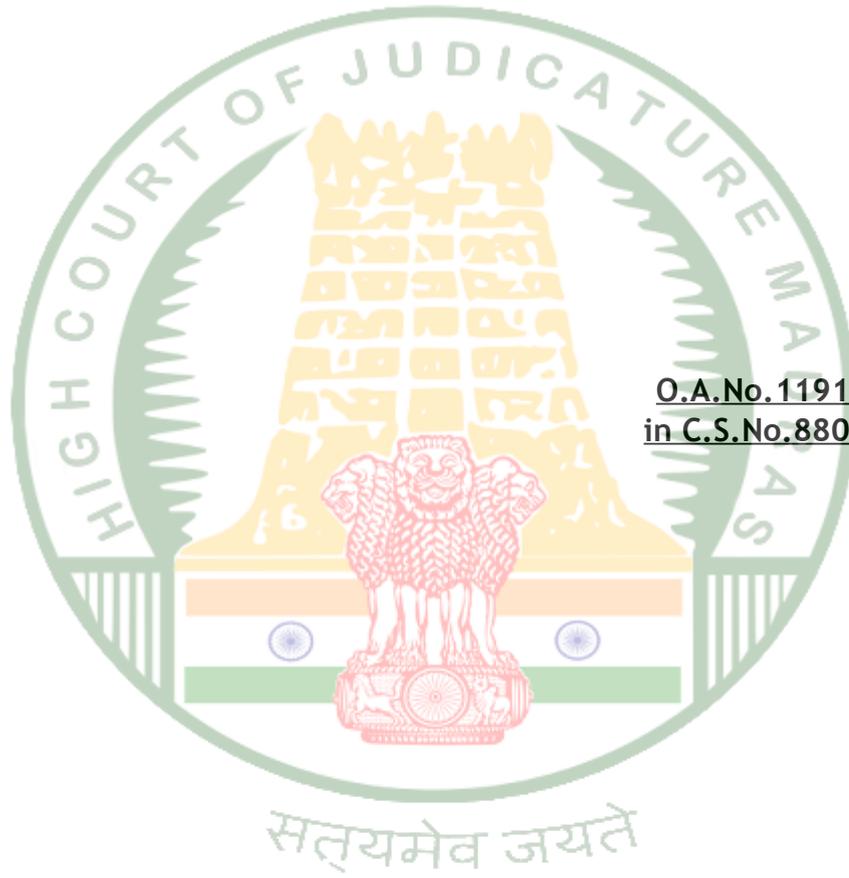
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Note: Issue order copy on 21.12.2018

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M.SUNDAR,J

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