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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Rev.Pet. 7/2018**
in
CS (OS) 2068/2015

THE INDIAN SINGERS' RIGHTS ASSOCIATION

..... Plaintiff

Through: Mr. Dhruv Anand, Ms. Udita Patro and
Mr. Shamim Nooreyzdan, Advocates.

versus

SAURABH YADAV & ANR.

.... Defendants/Review
Petitioner

Through: Mr. C.M. Lall, Senior Advocate with
Mr. Ankur Sangal, Ms. Sucheta Roy and
Ms. Richa Bhargava, Advocates for Saregama
India Ltd.

CORAM: JUSTICE S. MURALIDHAR

ORDER

% **05.01.2018**

IA No. 150/2018 (for exemption)

1. Exemption allowed, subject to all just exceptions.

Rev. Pet. 7/2018 in CS (OS) 2068/2015

2. This is a review petition by Saregama India Ltd. (SIL) seeking review and recall of the judgment and decree dated on 12th August, 2016 in CS (OS) No. 2068 of 2015.

3. This Court has heard the submissions of Mr. C.M. Lall, learned Senior counsel appearing for the Applicant and Mr. Dhruv Anand, learned counsel

appearing for the non-Applicant.

4. This review petition has been filed pursuant to the leave granted to SIL by a Division Bench of this Court by a judgment dated 16th November, 2017 in RFA (OS) (Comm.) No. 87 of 2016 and batch. The genesis of this review petition is an ex parte judgment and decree passed by this Court on 12th August, 2016 in CS (OS) No. 2068 of 2015 which was a suit filed by the Indian Singers' Rights Association ('ISRA') as Plaintiff against the Defendant, Chapter 25 Bar and Restaurant operating at the Metropolitan Mall, Pushp Vihar, New Delhi the proprietor of which is Saurabh Yadav. The Defendant chose to remain ex parte.

5. The assertions of the Plaintiff ISRA, *inter alia*, in the suit were that the Defendant, by playing in the restaurant the Plaintiff's repertoire compromising performances of all its members and members of its sister society without paying royalties and obtaining clearance, had infringed the Plaintiff's performance rights. Specifically, it was urged that the Defendant had violated the Plaintiff's right to receive royalties (R3 rights) and the performer's rights.

6. This Court decreed the above suit on 12th August, 2016 and issued a permanent injunction as under:

“In that view of the matter, the suit is decreed and a decree of permanent injunction is issued restraining the Defendant, its officers, servants, agents and representatives and all other acting for and on its behalf from communicating to the public the Plaintiff's repertoire comprising of performer's performances of all its members and that of the members of its sister societies which it is authorised to administer in

India, without paying royalties to and obtaining a clearance from the Plaintiff Society or doing any other act infringing the Plaintiff's Performer's rights through any medium including but not limited to radio stations, TV and usage by mobile companies and violating the Right to Receive Royalties ('the R3') and their Performer's Rights."

7. No appeal was filed against the above judgment and decree by the original Defendant. However, SIL which is the present Review Petitioner and Super Cassettes Industries Private Ltd. ('SCIPL') filed appeals before the Division Bench of this Court assailing the said judgment and decree. Both the said Appellants placed reliance on a judgment dated 2nd November, 2017 passed by the Division Bench in RFA (OS) (Comm.) 16/2017 (*Saregama India Ltd. v. Indian Singers' Rights Association*) and batch.

8. The Division Bench in its order dated 16th November, 2017 observed that the Appellants before it i.e. SIL and SCIPL were not parties to the suit but in view of the judgment dated 2nd November, 2017 in RFA (OS) (Comm.) 16/2017, they "should seek recourse of the remedy of review and approach the learned Single Judge at the first instance."

9. At this stage it is necessary to refer to the judgment dated 2nd November, 2017 passed by the Division Bench in RFA (OS) (Comm.) 16/2017. Those appeals were against identical orders passed in certain commercial suits whereby a learned Single Judge allowed applications under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 ('CPC') and decreed the suits in terms of the settlement between the parties to the suits. The grievance of the Appellants before the Division Bench was that they had already filed applications before the learned Single Judge under Order I Rule 10 CPC for

being impleaded as parties to the suits. The Appellants were seeking to assert their rights in the sound recordings that formed the subject matter of the suits as opposed to the rights asserted by the Plaintiff against the Defendants in those suits.

10. The Division Bench in its judgment dated 2nd November, 2017 in RFA (OS) (Comm.) 16/2017 etc. was, *inter alia*, of the view that the settlement arrived at between the parties to the suits “involves injury to the property of the Appellants”. Since the Appellants through their applications under Order I Rule 10 CPC had pointed out that their rights were being adversely affected by the settlement being arrived at between the parties, the learned Single Judge was obliged to examine whether the settlement was lawful or unlawful or void or voidable. Since that question had not been considered at all by the learned Single Judge, the Division Bench set aside the settlement recorded and the decree passed in terms thereof by the order dated 17th May, 2017 of the learned Single Judge and restored to the file of the learned Single Judge for a fresh determination, the applications both under Order XXIII Rule 3 CPC as far as Appellants' applications under Order I Rule 10 CPC.

11. As far as the present case is concerned, it must straightway be noticed that during the pendency of the suit CS (OS) 2068 of 2015, there was no pending application by the present Review Petitioner SIL under Order I Rule 10 CPC. Mr. Lall, learned Senior counsel appearing for the Review Petitioner SIL, however, submits that in view of the *ex parte* decree passed by this Court, the rights of SIL qua the sound recordings that formed the

subject matter of the decree were adversely affected. According to him SIL was precluded from asserting its rights *qua* the public performances by the Defendant of the said sound recordings. It is submitted that there is a possibility that SIL might want to issue licences to the same Defendant, which is today restrained by the permanent injunction granted by this Court from publicly performing those sound recordings, and that the copy right in those sound recordings in fact vests with SIL and not the original Plaintiff ISRA.

12. As far as the above submission is concerned, the Court notes that in the review petition itself there is no assertion by SIL Petitioner that it proposes to issue any licence to the very same Defendant which is bound by the *ex parte* decree passed by this Court. As far as the assertion by SIL of its rights in the sound recordings forming the subject matter of the decree, the Court notes that the decree passed by this Court is not binding on SIL since it is not a party to the suit. SIL is, therefore, not precluded from asserting, in independent substantive proceeding, its rights *qua* the said sound recordings. Even if SIL proposes in the future to issue licences to the Defendant in the suit *qua* the sound recordings in question, nothing precludes SIL from initiating action in independent substantive proceedings to assert such right and the Court which is approached will decide such claim in accordance with law independent of the judgment and decree passed by this Court on 12th August, 2016 in CS (OS) No. 2068 of 2015.

13. The Court is of the view that the above clarification is sufficient to allay any apprehension that SIL may have that its rights are adversely affected by

the decree in question.

14. There is yet another difficulty that the Court foresees if SIL's application under Order I Rule 10 CPC in CS (OS) No. 2068 of 2015 (which already stands decreed) were to be allowed at this stage. There will be a genuine confusion as to who the Plaintiff would be when the Court allows such application under Order I Rule 10 CPC since it essentially would be a claim by SIL of its rights in the sound recordings *qua* everyone else, including ISRA. In fact, we will have a situation where it would be unclear, after allowing SIL's application under Order I Rule 10 CPC whether thereafter SIL would be the Plaintiff and ISRA the Defendant whereas the original Plaintiff was ISRA. The position *qua* the original Defendant, who has chosen to remain *ex parte*, is even more unclear. Further, the original plaint in the suit will have no relevance to the claims now asserted. We are, in effect, looking at a completely different cause of action for which there would be no supporting pleadings.

15. These are the reasons that weigh with the Court in declining to allow SIL's application under Order I Rule 10 CPC or entertain the present review petition to recall the judgment and decree dated 12th August 2016 in CS (OS) No. 2068 of 2015 and reopen the entire suit. The better course, therefore, is to permit the SIL to institute separate substantive proceedings in which it can assert its rights against whomsoever it wishes to assert such rights. It is clarified that such claims of SIL will be decided independent of the judgment and decree passed by this Court on 12th August, 2016 in CS (OS) No. 2068 of 2015 to which SIL was not a party.

16. With the above clarifications, the review petition and the application are dismissed.

IA No. 151/2018 (for enlargement of time for filing court fees) & I.A. No. 14129 of 2017 (under O I Rule 10 CPC)

17. In view of the above order, these applications are dismissed. The next date before the Joint Registrar stands cancelled.

S. MURALIDHAR, J.

JANUARY 05, 2018

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