

\$~1

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

+ **CS (OS) 2068/2015**

THE INDIAN SINGERS' RIGHTS ASSOCIATION

..... Plaintiff

Through: Mr. Sudhir Chandra, Sr. Advocate with
Mr. Pravin Anand, Mr. Dhruv Anand and Ms.
Udita Patro, Advocates

versus

SAURABH YADAV & ANR.

.... Defendants

Through: None

Mr. Amit Sibal, Sr. Advocate with Mr. Neel
Mason, Ms. Ridhima Pabbi, Mr. Uday S. Chopra
and Ms. P. Venuela, Advocates for the Review
Petitioner

CORAM: JUSTICE S. MURALIDHAR

ORDER

% **09.02.2018**

Rev. Pet. 517/2017 in CS (OS) 2068/2015

1. This review petition by Super Cassettes Industries Pvt. Ltd. ('SCIPL') seeking review and recall of the judgment and decree dated 12th August, 2016 in CS (OS) No. 2068 of 2015, has been filed pursuant to the leave granted to it by a Division Bench of this Court by a judgment dated 16th November, 2017 in RFA (OS) (Comm.) No. 87 of 2016 and batch.

2. 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 Defendants, Chapter 25 Bar and Restaurant operating at the Metropolitan Mall, Pushp Vihar, New Delhi, and its Proprietor Saurabh Yadav. The Defendants chose to remain *ex parte*.

3. The assertions of the Plaintiff ISRA, *inter alia*, in the suit were that the Defendants, 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 Defendants had violated the Plaintiff's right to receive royalties (R3 rights) and the performer's rights.

4. This Court decreed in 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.”

5. No appeal was filed against the above judgment and decree by the

original Defendants. However, SCIPL which is the present Review Petitioner and Saregama India Ltd. ('SIL') 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.

6. 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."

7. 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.

8. 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 of the applications both under Order XXIII Rule 3 CPC and under Order I Rule 10 CPC.

9. Turning now to the present review petition, at the outset Mr. Amit Sibal, learned Senior counsel appearing for SCIPL produced a copy of an order dated 4th January 2018 passed by a learned Single Judge of this Court in batch of suits including CS (Comm) 886 of 2017 (*The Indian Singers' Rights Association v. Amit Kumar Chauhan & Anr.*) where the pendency of other similar suits as well as the present review petition before this Bench was noted and it was directed that all the said suits "as well as other suits/proceedings aforesaid" should be listed before the "same Bench" on 22nd March 2018. Mr. Sibal submitted that SCIPL contemplated filing an application before the learned Single Judge who passed the said order seeking clarification whether the said direction also applied to the present review petition.

10. This Court is of the view that in terms of the Delhi High Court (Original Side) Rules, a review petition will have to be decided by the same learned Judge who passed the order of which review is sought, unless the said Judge has ceased to be a Judge of this Court. The order dated 4th January 2018 in CS (Comm) 886 of 2017 cannot, therefore, be understood as requiring the listing of this review petition before some other learned Judge. In any event, that would be a futile exercise since any other Judge before whom this petition is listed would be constrained, in terms of the extant Rules, to require its listing before this Bench. Consequently, this review petition is required to be decided only by this Court and that is what this Court now proceeds to do.

11. The second issue was whether the present review petition should be dismissed in view of the order dated 5th January 2018 passed by this Court in SIL's Review Petition No. 7 of 2018 rejecting an identical prayer of seeking review of the judgment and decree dated 12th August 2016 of this Court in CS (OS) 2068 of 2015?

12. Mr. Sibal sought to contend that although the prayer in both review petitions was identical, SCIPL was placed differently from SIL. According to Mr. Sibal although this Court may have clarified that the judgment and decree dated 12th August 2016 does not bind SIL, there is no restraint on ISRA continuing to rely on the said judgment and decree in other suits filed by ISRA against its erstwhile licencees or members, in which ISRA's claims in fact stand negated by the superior rights of SCIPL in sound recordings that form the subject matter of those suits. Mr. Sibal referred to a sampling

of agreements of SCIPL with individual performers/singers to urge that SCIPL was the original rights holder in respect thereof to the exclusion of every other entity including ISRA. He submitted that ISRA had suppressed this fact in the present suit. He further urged that since SCIPL's substantive legal and contractual rights have been directly and materially affected by the judgement and decree dated 12th August 2016, without even making SCIPL a party or affording it an opportunity to be heard, this Court should declare that SCIPL was a "person aggrieved" and a necessary and proper party to the suit.

13. The above submissions have been considered. This Court finds no difference in the prayers made by SIL and SCIPL as far as seeking review of the judgment and decree dated 12th August 2016 in the present suit is concerned. While there may a difference in the scope and extent of the rights in sound recordings asserted by SCIPL and SIL, or for that matter ISRA, the clarification already issued by this Court in its order dated 5th January 2018 in Review Petition No.7 of 2018 of SIL will apply equally to SCIPL. The Court is of the view that the said clarification, which this Court proposes to reiterate hereafter more than adequately protects the rights and contentions of SCIPL.

14. As far as the prayer that SCIPL should be held to be a necessary party to the suit, the Court notes that during the pendency of CS (OS) 2068 of 2015, there was no application filed by SCIPL under Order I Rule 10 CPC seeking impleadment. There was therefore no occasion for this Court in its judgment and decree dated 12th August 2016 to determine whether SCIPL was a

necessary or proper party to the suit. This Court does not propose to do so in this review petition for the first time. Such question will be decided by the learned Single Judge in those suits where the question arises.

15. Now coming to the clarification on the lines of that issued by the Court in its order dated 5th January 2018 in Review Petition No. 7 of 2018 filed by SIL, this Court clarifies that the judgment and decree dated 12th August 2016 passed by this Court in the present suit is not binding on SCIPL since SCIPL was not a party to it. SCIPL is, therefore, not precluded from asserting, in independent substantive proceedings, its rights *qua* the sound recordings that formed the subject matter of the suit. Even if SCIPL proposes in the future to issue licences to the Defendant in the suit *qua* the sound recordings in question, the judgment and decree dated 12th August 2016 will not preclude SCIPL from initiating independent substantive proceedings to assert such right or defending such right in proceedings that may be instituted against it. The Court which is seized of the proceedings 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. This will include proceedings initiated by SCIPL against ISRA or vice versa.

16. The Court is of the view that the above clarification is sufficient to allay any apprehension that SCIPL may have that its rights are adversely affected by the judgment and decree 12th August, 2016 in CS (OS) No. 2068 of 2015.

17. In view of the above clarification, the Court sees no reason to allow SCIPL's petition to review and recall the judgment and decree dated 12th

August 2016 in CS (OS) No. 2068 of 2015. The review petition is accordingly dismissed.

S. MURALIDHAR, J.

FEBRUARY 09, 2018

mw