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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO.1451 OF 2014
IN
SUIT (L) NO. 603 OF 2014

M/s. Leopold Cafe and Stores and Ors. ...Applicants/
Plaintiffs
Versus
NOVEX Communications Pvt. Ltd. ...Defendants

Dr.Virendra Tulzapurkar, *Senior Advocate, a/w R.D. Soni, Ankit Virmani, Aakanksha Saxena i/b M/s. Wadia Ghandy & Co., for the Plaintiffs.*

CORAM: G.S. PATEL, J
DATED: June 26, 2014

PC:-

1. Heard Dr. Tulzapurkar, learned Senior Counsel for the Plaintiffs. An affidavit of service dated 26th June 2014 is tendered. It shows that notice of today's application was given by the Plaintiffs' attorneys to the Defendant by notice dated 24th June 2014. The enclosures of that notice included copies of the Plaint, the Notice of Motion and the affidavit in support. This notice was hand delivered, and delivery was acknowledged by the Defendant.

Despite this notice none appears for the Defendant. Dr. Tulzapurkar presses his application for an ad-interim injunction in terms of prayer clause (b) of the Notice of Motion.

2. Plaintiff No.1 is Leopold Café, a well known restaurant and eatery in Colaba in South Mumbai. Plaintiff No.2, Samrat Hotel, is a hotel in Khar, Mumbai. The Plaintiffs seek, *inter alia*, a declaration that the Defendant (“Novex”) is not entitled to “administer” copyright licenses, to grant such licenses and collect license fees in respect of copyrighted work from various third party entities. Permanent and temporary restraints are also against the Defendant from purporting to carry on any such business and to make demands on the Plaintiffs grant of license.

3. Dr. Tulzapurkar points out that the Defendant is clearly, by its own admission in correspondence preceding the suit, engaged in the business of purporting to grant copyright licenses ostensibly on behalf of copyright owners. This is in direct violation of the provisions of section 33(1) of the Copyright Act 1957:

33. Registration of copyright society:-(1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licenses in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant license in respect of his own works

consistent with his obligations as a member of the registered copyright society:

[Provided further that the business of issuing or granting license in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act;

Provided also that performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 shall be deemed to be a copyright society for the purposes of this chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.]

...

(3) The Central Government may, having regard to the interest of the authors and other owner of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licenses in applicants, register such association of persons as a copyright society to such conditions as may be prescribed.

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works

4. Dr. Tulzapurkar points out that it is only an association registered as a copyright society under section 33(3) of the Copyright Act 1957, that can carry on the business of issuing and granting licenses. There is already such a society in existence, namely Phonographic Performance Limited, and that the 1st Plaintiff already has a license from PPL. A copy of this license is annexed to as Exhibit 'M' to the plaint.

5. On 14th May 2014, Novex wrote to the Food and Beverage Manager of the 1st Plaintiff contending that it had been "duly authorised to administer/grant/exploit public performance rights for various audio or video and only visualise without audio of cinematographic contents, musical composition and sound recording" from four different entities. It also alleged that these were "libraries administered by" Novex and that 1st Plaintiff was required to obtain a licenses from Novex before use of any of this material protected by copyright.

6. It seems that the Plaintiffs are not the only the parties to whom Novex has addressed such communications. Annexed to the plaint is a copy of a letter addressed by Novex on 9th August 2011 to one Oceanic Restaurant in Chembur in which Novex lays claim to be authorised to administer or grant public performance rights of Yash Raj Films and Shemaroo, both of whom independently own copyright in various works.

7. Novex thus contends that it is "essential for hotel and/or restaurant to apply for" a license from it "before public exhibition of literary, dramatic or domestic works".

8. *Prima facie* all these assertions and allegations by Novex are entirely illegal and unlawful and are in the teeth of the plain provisions of the Copyright Act. Dr. Tulzapurkar points out that in its own publicity material from its own website, Novex has made similar claims regarding such alleged authorisation. Novex is not authorised society under section 33(3) of the Copyright Act. It has no authority in law whatever to purportedly administer, grant or not grant any such license, nor can it purport to act on behalf of the owners of the copyright to enforce licensing by the original copyright owners. This view, though at the *prima facie* stage, is on any fair reading of the act and Novex's communication, inescapable. The entire action by Novex *prima facie* appears to be without legal or lawful justification.

9. Dr. Tulzapurkar relies on a decision of the Supreme Court in *Hotel & Restaurant Assn. & Anr. vs Star India (P) Ltd. & Ors.*,¹ in which the Supreme Court *inter-alia* held that where the management as subscriber under TRAI Act provides service to its own patrons, it is not transmitting and broadcasting. The 2nd Plaintiff has an appropriate PPL license for Cable T.V. relays to guests in its hotel while 1st Plaintiff has an appropriate license from PPL for playing sound recordings. Thus both Plaintiffs have licenses appropriate to their respective businesses from the only society that is authorised in law to grant such licenses. That authority is not Novex, the Defendant.

¹ (2006) 13 SCC 753

10. In view thereof, there will be an ad-interim injunction in terms of prayer clause (b) of the Notice of Motion which reads as follows:

(b) Pending the hearing and disposal of the present Suit, this Hon'ble Court be pleased to pass an order of temporary injunction restraining the Defendant, its employees/servants/agents or any other persons directly or indirectly acting for or on behalf of the Defendant, from:

(i) making any demands on the Plaintiffs for obtaining license and/or payment of license fee, or

(ii) taking any steps or making any threats against the Plaintiffs, in furtherance of demands and notices, including the Notices dated 14th May 2014 (Exh. E to the Complaint) and 26th May 2014 (Exh. F to the Complaint),

(iii) in respect of any copyrighted works, broadcast reproduction rights or other rights under the Copyright Act, 1957, including the works of Yash Raj Films Pvt. Ltd., UTV Software Communications Ltd., Shemaroo Entertainment Pvt. Ltd. and Big Net Communications Pvt. Ltd. and broadcast reproduction rights of Multi Screen Media Private Limited/MSM Discovery Pvt. Ltd;

11. The Plaintiffs' attorneys shall at liberty to serve an authenticated copy of this order by courier, fax, hand delivery, and, if possible by e-mail on the Defendant.

12. Notice of Motion is made returnable on 15th July 2014. Affidavit in reply, if any, to be filed and served on or before 8th July 2014. Affidavit in re-joinder to be filed and served on or before 11th July 2014. Motion to be listed on 15th July 2014, for hearing and final disposal.

(G. S. PATEL, J.)

Bombay High Court