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

+ CS(COMM) 318/2017

NOVEX COMMUNICATION PRIVATE LIMITED Plaintiff

Through: Mr. Jay Savla, Advocate with Ms. Shilpi
Chowdhary, Mr. Bharat Aggarwal and
Mr. Rajpal Singh, Advocates

versus

ODISHA TELEVISION LIMITED Defendant

Through: None

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

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03.05.2017

I.A. 5405/2017 (Exemption)

Subject to the plaintiff filing the original/certified/legible/taped copies of the documents annexed with the plaint within four weeks, the application is allowed and disposed of accordingly.

C.S.(OS) 318/2017

The plaint be registered as a suit.

Issue summons in the suit in the prescribed form to the defendant, on the plaintiff filing the process fee within one week, by ordinary process, speed post, courier and *dasti* as well, returnable before the Joint Registrar on 25.07.2017 for completion of service and pleadings and submission of statements of admission/denial of documents.

The summons to be issued to the defendant shall indicate that written statement be filed within the prescribed timeline, with a copy to the other side, who shall file a replication thereto before the next date of hearing.

List before this Court on 09.10.2017.

I.A. 5404/2017 (by plaintiff u/O XXXIX R 1 & 2 CPC)

Notice for the date fixed i.e. 09.10.2017.

The plaintiff has instituted the accompanying suit seeking permanent injunction restraining the non-applicant/defendant from infringement of copyright of the former; damages; and rendition of accounts etc.

Mr. Jay Savla, learned counsel appearing on behalf of the applicant/plaintiff states that the plaintiff company was incorporated in the year 2002 and has been licencing sound recordings for non-physical use i.e. for all forms of exploitation of copyright in sound recordings except the manufacture and sale thereof. Such non-physical exploitation of sound recordings, which the Plaintiff company licenses, includes public performance in hotels and restaurants and other venues for communication to the public.

It has been stated that the plaintiff company's repertoire consists of large number of films and non-films songs, in Hindi and regional languages. It has been further stated that the plaintiff company is the assignee of the owner of the copyright of Zee Entertainment Enterprises Limited and is entitled to the exclusive rights, flowing from the Deed of Assignment dated 11.08.2015; renewed by way of the addendums thereto, the first one, dated 01.03.2016 and the second one, until 31.03.2020. Under the said deed and the addendums thereto, the assignment of 'On Ground Performance Rights' in the 'sound recordings' of the songs contained in the films, which are part of the repertoire of Zee Entertainment Enterprises Limited, have been made in favour of the plaintiff as its assignee. It has thus been stated that the plaintiff company is the exclusive owner of 'On Ground Performance Rights' of the songs contained in the films of which the rights have been assigned to them.

The plaintiff company is also stated to be an authorized agent of M/s Yash Raj Films Pvt. Ltd., for identifying opportunities for exploitation of the ground license rights and usage of sound recordings and underlying works in public avenues, by way of the Agency Agreement dated 27.04.2016.

Learned counsel appearing on behalf of the applicant/plaintiff draws the

attention of this Court to the list of songs, annexed to the accompanying suit as Annexure P-8, that have been assigned to the plaintiff by Zee Entertainment Enterprises Limited w.e.f. 15.05.2015 to 14.11.2016; and M/s Yash Raj Films Pvt. Ltd., and states that the plaintiff company issued a public performance licence for playing the sound recordings in the said songs, on annual or background basis to various entities.

It has been stated that the defendant is a media company, having its registered office within the territorial jurisdiction of this Court, and engaged in producing shows, where music is played. In this behalf, it has been stated that the defendant, without obtaining requisite license from the plaintiff, has played the latter's copyrighted sound recordings in various TV shows, award presentations and live events, whereby large number of independent audience/public was present and songs/sound recordings are played through various mediums.

Lastly, learned counsel appearing on behalf of the plaintiff invites the attention of this Court to their legal notice dated 08.03.2017 and the response thereto issued by the defendant dated 10.04.2017, admitting playing the sound recordings of the songs from the repertoire of music assigned to the plaintiff company.

In view of the foregoing, in my view, the plaintiff company has demonstrated a good *prima facie* case, and further that grave and irreparable loss shall be occasioned to the plaintiff company, in the event an *ad interim* injunction, as hereinafter elaborated, restraining the defendant company, is not granted. Therefore, the balance of convenience lies in favour of the plaintiff company.

Accordingly, till further orders, the defendant their partners, directors, servants, employees, agents, representatives or any person claiming through them or acting on their behalf, are restrained from publicly performing or in any manner communicating the sound recordings works of the plaintiff of the songs

mentioned in Annexure P-8, to the public; or allowing their premises or any premises under their control to be used for the said purposes, without obtaining license from the plaintiff; or otherwise infringing copyright in the said work owned and administered by the plaintiff.

Provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 be complied with, within a period of two weeks from the date of receipt of this Order.

Dasti.

SIDDHARTH MRIDUL, J

MAY 03, 2017/dn