

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL APPEAL (L) NO. 70 OF 2017
IN
NOTICE OF MOTION (L) NO. 515 OF 2017
IN
COMMERCIAL SUIT (L) NO.459 OF 2017

WITH
NOTICE OF MOTION (L) NO. 52 OF 2017
IN
COMMERCIAL APPEAL (L) NO. 70 OF 2017
IN
NOTICE OF MOTION (L) NO. 515 OF 2017
IN
COMMERCIAL SUIT (L) NO.459 OF 2017

1. Super Cassettes Industries Pvt. Ltd.
A Company incorporated under the
Companies Act, 1956 and having its
Office at No.B-32, T Series Business
Park, New Link Road, Andheri (W),
Mumbai – 400 053.
2. Bhushan Kumar, Indian Inhabitant
Having his office at B-32, T Series
Business Park, New Link Road,
Andheri (W), Mumbai – 400 053.
3. Kishan Kumar, Indian Inhabitant
Having his office at B-32, T Series
Business Park, New Link Road,
Andheri (W), Mumbai – 400 053.

4. Vertex Motion Pictures Pvt. Ltd.
A Company incorporated under the
Companies Act, 1956 having its office
At 11/11A, Pushpa Milan Sophia
College Lane, Warden Road,
Mumbai – 400 026.

5. Milan Luthria, Indian Inhabitant
having its office At 11/11A,
Pushpa Milan Sophia College Lane,
Warden Road, Mumbai – 400 026.

... Appellants
(Orig. Defendants)

Versus

Trimurti Films Pvt. Ltd., a company
Incorporated under the Companies Act
1956, having its registered office at B-11
Commerce Centre, Tardeo Road,
Mumbai – 400 034.

... Respondents
(Orig. Plaintiff)

WITH
COMMERCIAL APPEAL (L) NO. 71 OF 2017
IN
NOTICE OF MOTION (L) NO. 515 OF 2017
IN
COMMERCIAL SUIT NO.459 OF 2017

WITH
NOTICE OF MOTION (L) NO. 53 OF 2017
AND
NOTICE OF MOTION (L) NO. 54 OF 2017
IN
COMMERCIAL APPEAL (L) NO. 71 OF 2017
IN
NOTICE OF MOTION (L) NO. 515 OF 2017
IN
COMMERCIAL SUIT NO.459 OF 2017

Universal Music (India) Pvt. Ltd.
A Private Limited Company incorporated
under the provisions of the companies
Act, 1956, having its registered Office
address at Sameer Complex,
St. Andrews Road, Bandra (West),
Mumbai – 400 050.

... Appellants

Versus

1. Trimurti Films Pvt. Ltd., a company
Incorporated under the Companies Act
1956, having its registered office at B-11
Commerce Centre, Tardeo Road,
Mumbai – 400 034.
2. Super Cassettes Industries Pvt. Ltd.
A Company incorporated under the
Companies Act, 1956 and having its
Office at No.B-32, T Series Business
Park, New Link Road, Andheri (W),
Mumbai – 400 053.
3. Bhushan Kumar, Indian Inhabitant
Having his office at B-32, T Series
Business Park, New Link Road,
Andheri (W), Mumbai – 400 053.
4. Kishan Kumar, Indian Inhabitant
Having his office at B-32, T Series
Business Park, New Link Road,
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5. Vertex Motion Pictures Pvt. Ltd.
A Company incorporated under the
Companies Act, 1956 having its office

At 11/11A, Pushpa Milan Sophia
College Lane, Warden Road,
Mumbai – 400 026.

6. Milan Luthria, Indian Inhabitant
having its office At 11/11A,
Pushpa Milan Sophia College Lane,
Warden Road, Mumbai – 400 026.
7. Mangal Murti Films Pvt. Ltd.,
a Company incorporated under the
Companies Act, 1956 having its Office
at 802, 8th Floor, Plot – CS 3/301
Lodha Supremus Odeon Theaters
Dr. E. Moses Road, Worli, Naka,
Mumbai 400 018.

.....

Mr. Ravi Kadam, Senior Advocate a/w Mr. Abhinav Chandrachud,
Mr. Ammet Naik, Ms. Madhu Gadodia & Mr. Ravi Suryawansh i/b.
M/s. Naik Naik and Company for the Appellants/Applicants in
NMCAL/52/2017 in COMAPL/70/2017.

Mr. Venkatesh Dhond, Senior Advocate a/w Rashmin Khandekar,
Mr. Rohan Kadam, Mr. Ayaz Bilawala and Siddhi Doshi i/b. M/s.
Bilawala & Co. for the Appellant/Applicants in NMCAL/53 &
54/2017 in COMAPL/71/2017.

Mr. Virag Tulzapurkar, Senior Advocate with Mr. Adheesh
Nargolkar, Mr. Nishad Nadkarni, Mr. Amey Nargolkar and Mr.
Vaibhav Keni i/b. M/s. Khaitan & Co. for the Respondents.

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**CORAM : S. C. DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.**

DATE : AUGUST 28, 2017.

ORAL JUDGMENT (PER S. C. DHARMADHIKARI, J.) :

1. The first Commercial Appeal on our board is by the original defendants 1 to 6 in the Suit for infringement of copyright being Commercial Suit (L) No. 459 of 2017.

2. That Suit was filed by the respondent in this Appeal.

3. Since detailed arguments have been canvassed, we proceed to dispose of this Appeal finally by this order.

4. At the outset, we must clarify that this Appeal challenges an ad-interim order of the learned Single Judge in the above Commercial Suit (L) No.459 of 2017.

5. An application for interim injunction vide Notice of Motion (L) No. 515 of 2017 was made in that Suit by the respondent/plaintiff. In that application, the urgent ad-interim injunction was sought by the respondent/plaintiff against the appellants/original defendants. On 22nd August, 2017, that application for urgent ad-interim injunction has been considered and granted. It is such an ad-interim order which is under challenge in this Appeal.

6. Mr. Kadam, learned Senior Advocate appearing in support of this Appeal submits that though this Appeal is directed against an ad-interim order, the appellants/original defendants would have no grievance if this Court passes an order disposing of the Notice of Motion for interim injunction finally by this order. Equally, Mr. Tulzapurkar, learned Senior Advocate for the respondent/plaintiff would submit that the order in this Appeal can be taken as a final order in interim injunction application/Notice of Motion (L) No.515 of 2017.

7. At the further outset, Mr. Kadam states that since the matter is argued on the basis of the documents and which are annexed to the plaint, and their contents falling for interpretation of this Court, the appellants do not desire to file any affidavit-in-reply. They would proceed on the basis of denial. The appellants would reserve their rights and contentions as far as merits are concerned at the final hearing of the Suit. This Court, therefore, should not express any final opinion is the request made by Mr. Kadam.

8. This course is also not objected by Mr. Tulzapurkar, learned Senior Counsel appearing for the respondent.

9. Hence, we proceed to admit the Appeal. Respondent waives service. Filing of paper book is dispensed with. By consent of the learned Senior Counsel appearing for the parties, we dispose of this Appeal by the present order.

10. At the outset, we must record our strong disapproval with regard to the manner with which the Registry of this Court is proceeding to accept Commercial Suits and applications for interim reliefs therein. The Registry should be aware of the fact that merely because a Commercial Suit is lodged and the parties desire to obtain urgent ad-interim reliefs does not mean dispensing with the procedural rules, and particularly the Bombay High Court (Original Side) Rules, 1980. The Registry is proceeding to assign a lodging or a temporary number to the Suit and to the application for interim injunction. Repeatedly it has been observed that this results in utter confusion and chaos. Sometimes, the same lodging number is assigned to the interim application in another Suit. On most occasions, when there are cross suits, without even bothering to refer to its lodging register or the computer software, same numbers are assigned by the

Registry officials. They do not even bother then to post the matters for directions regarding removal of office objections. They allow such state of affairs to continue and never repair them and applications or Suits are disposed of on lodging number. The Registry officials do not make any efforts to then number the Suit or application. The defects and deficiencies remain as they are and objections raised in the process are never complied with. There are no consequences ever visited on those Advocates and parties who have not bothered to comply with the procedural rules. This is not a proper approach and should be discouraged. The Registry officials should remind themselves that their duty does not end merely on registration or lodging of suits and appeals. Even when they are finally disposed of, the orders passed by this Court have to be uploaded, their certified copies prepared, and for all this, final registration numbers are required. If there are permanent registration numbers for identifying the proceedings and Suits that would assist the litigants. Eventually the litigants and their Advocates suffer on account of inefficiency and inept handling of the matters by the Registry officials. Even the Court work suffers as Hon'ble Judges have to wade through the files if they are

required to refer to interim and final orders in Suits, for other matters of similar nature. We direct that within 72 hours of the lodging of every suit or interim application, the same should be registered. If the applicants, plaintiffs and their Advocates do not co-operate and have no genuine or *bona fide* reasons for their non-assistance, the Registry officials should take requisite steps in accordance with law and if the matters are on board before any Court, then, they must apprise the Court by a report and due endorsement on the file itself that the Advocates and the litigants are not co-operating with the Registry officials in registration and numbering of the Suits or Appeals. It is then for the Court to deal with indiscipline, non co-operation and refusal of the litigants and their Advocates. We do not think that the Original Side Registry should expect any special favours and treatment from the litigants and the Court. Even without or with installation of the software and modern technology, the Appellate Side of this Court can register commercial appeals and other proceedings within the above time, there is no reason why the Registry of the Original Side should not be following this practice. We say nothing more and expect that corrective measures and steps would be taken.

11. The respondent/plaintiff filed a Suit against the appellants in this Court and under The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short, 'the Act No. 4 of 2016') alleging that it is a company incorporated under the Companies Act, 1956. It is one of the biggest and oldest film production houses in India and it has produced several films which have been super hits. One of the film titled and involved in the present proceedings is 'Deewar'. The respondent/plaintiff produced this film and it is stated in para 1 that it is the owner of the copyright in this film and the underlying works in it. The appellants before us (original defendant nos. 1 to 5) are co-producers of a film titled 'Baadshaho'. That film is slated and scheduled for release. The 6th defendant is impleaded as the distributor of this film. The plaintiff alleged that the film "Deewar" was released in 1975. The film received the Best Film award and which is instituted by a magazine/periodical called 'Filmfare'. It also received other awards. It was ranked as a super hit film of 1975. The film contains some songs and one of the songs "Kah Doon Tumhe" was part and parcel of this film. The songs and music of this film are also immensely popular.

12. For the song in question “Kah Doon Tumhe”, the plaintiff states that it engaged the services of a well known poet and writer Mr. Sahir Ludhianvi and a music composer equally well known, Mr. R. D. Burman. In para 6 of the plaint, the plaintiff states that a contract of service dated 3rd April, 1974 was executed by and between the plaintiff and Mr. R.D. Burman. Mr. R. D. Burman composed the tune for the song in question. The tune constitutes an original musical work in which the copyright subsists. It is submitted that pursuant to the said contract of service, all copyrights for the entire world for the music, tunes for all songs, including the subject song composed for the film 'Deewar' vested in and came to be owned by the plaintiff. Thus, the plaintiff is the owner of the copyright in the underlying musical work. It is alone entitled to exploit the same or authorize the exploitation of the same in any manner. Annexure “A” to the plaint is the copy of the the agreement dated 3rd April, 1974 between the plaintiff and Mr. R. D. Burman. In para 7 of the plaint, it is stated that the plaintiff engaged the services of well known lyricist Mr. Sahir Ludhianvi for the purpose of composing the underlying lyrics for the songs/ sound recordings of the film “Deewar” and which included the

subject song. The contract of service dated 3rd April, 1974 was executed by and between the plaintiff and Mr. Sahir Ludhianvi. Thus, Mr. Sahir Ludhianvi composed the lyrics for the subject song and this lyrics constitute an original literary work in which copyright subsists. Pursuant to the contract of service, the plaintiff became the owner of all copyrights for lyrics of all songs, including the subject song/song in question. The plaintiff, therefore, annexed a copy of the agreement dated 3rd April, 1974 between it and Mr. Sahir Ludhianvi and that is annexed as annexure "B".

13. Then, the plaint proceeds by alleging that being the producer of the sound recordings/songs of the film "Deewar", the plaintiff is the first owner of the copyright in the sound recordings/songs, including in particular the sound recording/song titled "Kah Doon Tumhe". Annexure "C" is a copy of the lyrics of the song in question and annexure "D" is a compact disc (CD) containing the sound recording/song incorporating the lyrics as well as the tune in which the copyright is owned by the plaintiff. It is stated that on 2nd January, 1974, an agreement was

executed by the plaintiff with M/s. Polydor of India Limited (PIL), whereby the plaintiff granted PIL the right to make and sell gramophone records of the songs of the film “Deewar” and the recording rights and mechanical reproduction rights for the limited purpose of making and selling gramophone records. Annexure “E” to the plaint is a copy of the agreement dated 2nd January, 1974. It is submitted that the right to use the sound recordings or the underlying works, including the lyrics and the tune for any other purpose whatsoever, continues to vest with the plaintiff.

14. The allegations and version insofar as this aspect are to be found in para 9 of the plaint which reads as under:

“.....In particular and in the context of what is relevant for the purposes of the present suit, the Plaintiff continues to own (i) the right to exploit or permit the exploitation of the sound recording or any part thereof, of the original song KAH DOON TUMHE by incorporation in any other film, (ii) the right to exploit or permit to be exploited the underlying lyrics and/or the musical work/tune or any parts thereof, of the song KAH DOON TUMHE either by way of a performance or by way of incorporation in a completely new sound recording or a new film and therefore any exploitation by any third party in the

manner above without the permission or the authorization of the Plaintiff would amount to infringement of the copyrights of the Plaintiff in the sound recording titled KAH DOON TUMHE and/or the copyrights owned by the Plaintiff in the underlying works thereof i.e. the lyrics and/or the tune/composition of the song KAH DOON TUMHE.....”

15. It is stated that the said PIL thereafter underwent a change of name and is today known as Universal Music (India) Private Limited (Universal). By a letter dated 15th May, 2008, the said Universal has confirmed the position with regard to the rights of the plaintiff in respect of the songs of various films of the plaintiff, including the film “Deewar” and consequently, the underlying works in the song/sound recordings of the song in question as that of the plaintiff stand acknowledged in terms of this letter. The cause of action for the institution of the Suit arose on 7th August, 2017 when the plaintiff came across an article titled “Beyond the deewar for Emraan, Esha” along with the sub-title “The actors are reviving yesteryear hit 'Kah Doon Tumhe' for Milan Luthria's new action thriller”. This article appeared in the newspaper Mumbai Mirror Edition dated 6th August, 2017. Annexure “G” is a copy of this relevant page bearing the article referred above. This article

suggests that the defendant nos. 1 to 5 are producing a film titled “Baadshaho”, for which they have caused to be recorded a sound recording using/reproducing the lyrics and tune of the song “Kah Doon Tumhe” owned by the plaintiff. This is done for incorporation in the film “Baadshaho” and for the purpose of ancillary exploitation thereof. The song is referred as an infringing song/song in question. Thereupon, the plaintiff made further inquiries. Though the plaintiff has not been able to gather further information, but from the internet and a compact disc (annexure “H”) they have learnt that the defendants propose to release the film with the impugned song on or about 1st September, 2017. The defendant no. 6 appears to be the distributor for the impugned film and is therefore aiding and abetting defendant nos. 1 to 5 in the wrongful acts complained of by the plaintiff.

16. The wrongful acts summarized by the plaintiff in paragraphs 10 and 11 of the plaint are use and exploitation of the lyrics and the tune and/or the sound recording of the original song “Kah Doon Tumhe” and/or any part/parts thereof. That is without any intimation to and/or authorization and/or permission from the

plaintiff. That is equally without payment of any royalty to the plaintiff. The defendants also have sought to unauthorizedly alter the lyrics of the original song by adding additional lyrics to the same which is not permitted in law and amounts to distortion and/or mutilation of the works owned by the plaintiff. It is in these circumstances that the use/reproduction/performance/adoption/ modification/ alteration/ communication to the public or other exploitation in any manner or form, of the lyrics and the tune and/or the original song “Kah Doon Tumhe” or any part thereof is sought to be prevented.

17. After setting out as to how the plaintiff's films, their songs have gained immense popularity (the lyrics and the tunes), it is stated that the goodwill and reputation of the plaintiff in the market is sought to be exploited. The plaintiff relies upon the ownership and the rights in respect of the feature film “Deewar”, it's song and its musical tune to contend that the performance of this is associated by the members of the public exclusively with the plaintiff. By the unauthorized acts and mentioned in para 10 and 11 of the plaint, the defendants are misrepresenting that they are authorized by or have some connection with the plaintiff. That

is causing irreparable harm and damage to the plaintiff and to the goodwill and reputation of the plaintiff. It is in these circumstances that the plaintiff claims the reliefs more particularly set out in para 14 of the plaint. This is also by alleging that the plaintiff would suffer irreparable harm and injury and monetary compensation would not be sufficient to redress the continuing harm resulting from the defendants infringing plaintiff's copyright. A perpetual injunction is claimed and in terms of prayer clauses (a) to (h) of the plaint. By prayer clauses (e) and (f), with which we are not presently concerned, the plaintiff's are seeking an order and direction to deliver for destruction all the materials, particularly the original plate bearing the infringing song and damages in the sum of Rs.3,00,00,000/- or alternatively, directing the defendants to render a true and faithful account of all the profits pursuant to their unauthorized acts as detailed in the plaint, and to pay the sum as may be found due on the account being taken.

18. We are concerned with prayer clauses (g), (h), (i), (j) and (k) of the plaint.

19. These are the interlocutory reliefs in furtherance of the principal and essential relief of permanent injunction.

20. Bearing in mind that the film was scheduled for release on 1st September, 2017, an urgent ad-interim application was moved by the plaintiff in the above Suit.

21. That application was styled as a Notice of Motion/ad-interim Application. The prayers in the Notice of Motion read as under:

“a. That pending the hearing and final disposal of the suit, the Defendants, its directors, subordinates, representatives, agents, associate concerns/firms, distributors and all other persons claiming through or under them or acting on their behalf be restrained by an order and injunction of this Hon'ble Court from in any manner whatsoever infringing the copyrights of the Plaintiff in the song/sound recording titled “KAH DOON TUMHE” from its film DEEWAR or any underlying works comprised therein including in particular the lyrics thereof (at Exhibit C to the plaint) and the tune/musical work thereof (as reproduced in the song annexed at Exhibit D to the plaint) or any part thereof;

b. That pending the hearing and final disposal of the suit, the Defendants, its directors, subordinates, representatives, agents, associate concerns/firms,

distributors and all other persons claiming through or under them or acting on their behalf be restrained by an order and injunction of this Hon'ble Court from in any manner whatsoever using / reproducing / performing / adopting / modifying / altering / communicating to the public or exploiting in any other manner or form, the lyrics (as set out at Exhibit C to the Plaintiff) and the tune and/or the original song KAH DOON TUMHE (as set out in the compact disc at Exhibit D to the Plaintiff) from the Plaintiff's film DEEWAR or any parts of the aforementioned works, in the Infringing Song (as described/defined in paragraph 10 of the Plaintiff) or in any other song/sound recording; and/or using or reproducing or performing or communicating to the public or in any manner exploiting the aforementioned works of the Plaintiff or the Infringing Song (as described/defined in paragraph 10 of the Plaintiff) within the Impugned Film titled BAADSHAHOO (as referred to in paragraph 2 of the Plaintiff) or any other cinematograph film or in any manner or medium (physical or non-physical) whatsoever;

c. That pending the hearing and final disposal of the suit, the Defendants, its directors, subordinates, representatives, agents, associate concerns/firms, distributors and all other persons claiming through or under them or acting on their behalf be restrained by an order and injunction of this Hon'ble Court from in any manner whatsoever exploiting, releasing or exhibiting or communicating to the public or broadcasting or causing to be exploited, released or exhibited or communicated to the

public or broadcasted, the film BAADSHAHO (as referred to in paragraph 2 of the plaint) or any other film which comprises of the Infringing Song (as described/defined in paragraph 10 of the plaint) or any other song which infringes the copyrights of the Plaintiff in the original song KAH DOON TUMHEY from the film DEEWAR or any underlying work thereof (i.e. the lyrics or tune or performance thereof) and from doing any of the above acts through any physical or non-physical medium including without limitation in cinema halls, the internet, satellites, DVDs, blue ray discs; removable or embedded drives, ring tones, MP3 CDs, CDs, ring tones, caller tunes, or any soft / digital method of defraying the said infringing material either on visual medium or an audio medium;

d. that pending the hearing and final disposal of the suit, the Defendants, its directors, subordinates, representatives, agents, associate concerns/firms, distributors and all other persons claiming through or under them or acting on their behalf be restrained by an order and injunction of this Hon'ble Court from in any manner whatsoever exploiting, releasing or exhibiting or communicating to the public or broadcasting or causing to be exploited, released or exhibited or communicated to the public or broadcasted, the Infringing Song (as described/defined in paragraph 10 of the plaint) or any other song which infringes the copyrights of the Plaintiff in the original song KAH DOON TUMHEY from the film DEEWAR or any underlying work thereof (i.e. the lyrics or tune or performance thereof) and from doing

any of the above acts through any physical or non-physical medium including without limitation in cinema halls, the internet, satellites, DVDs, blue ray discs; removable or embedded drives, ring tones, MP3 CDs, CDs, ring tones, caller tunes, or any soft/digital method of defraying the said infringing material either on visual medium or an audio medium;”

22. The affidavit-in-support of this Notice of Motion was filed by one Mr. Umesh G. Mehta being the authorized signatory of the plaintiff.

23. After an advance intimation and notice, this application was moved before the learned Single Judge of this Court. The learned Single Judge of this Court, after hearing both sides, passed an order on 22nd August, 2017. That order was passed considering the allegations and averments in the plaint and the contents of the accompanying documents/ annexures thereto. The learned Single Judge was pleased to pass an order in the following terms:

“(a) Defendants are hereby restrained from releasing the film “Baadshaho” containing the song “Keh Doon Tumhe” as in Exhibit-H to the plaint and as described in paragraph-10 of the plaint. It is clarified that defendants may release the film “Baadshaho” by removing the infringing song from the film;

(b) Defendants are also restrained by an injunction

from selling or otherwise distributing copies of CDs, cassettes or any other media containing the infringing song “Keh Doon Tumhe” through any physical or non physical medium including without limitation in cinema halls, the internet, satellites, DVDs, blue ray discs, removable or embedded drives, ring tones, MP3, CDs, caller tunes or any soft/digital method of defraying the said infringing material either on visual medium or an audio medium.

16. Defendants to file affidavit in reply within 3 weeks. Rejoinder if any, to be filed within 2 weeks thereafter. Notice of Motion made returnable after six weeks.”

24. It is this order of the learned Single Judge which is impugned and challenged in the present appeal.

25. Mr. Kadam, learned senior counsel appearing for the defendants/appellants would submit that the impugned order is *ex facie* erroneous and illegal. The learned Single Judge has erred in granting an ad-interim injunction and in the above reproduced terms. The learned Single Judge has completely misread and misinterpreted the documents in question. He has failed to take note of the provisions of the Copyright Act, 1957.

26. Mr. Kadam submits that recitals of the agreement dated 2nd January, 1974 are relied upon by the plaintiff to claim absolute

assignment of the right in the sound recording of the infringing song. However, if the further document and which is referred to in the plaint and a copy of which is also annexed to the Notice of Motion seeking stay of the impugned order filed in this Appeal would reveal that by this agreement dated 10th July, 2017, the defendants have acquired absolute assignment of the sound recording rights from PIL/Universal. If the clauses of this agreement are read in the backdrop of the agreement dated 2nd January, 1974, and particularly clause 9(b) thereof, then, the plaintiff cannot urge that they have any rights in the sound recording. Mr. Kadam would submit that the plaintiffs are divested of their rights in the sound recording of the film. The sound recording rights now stand assigned and absolutely in favour of Universal. If Universal were capable of dealing with the rights further, then, their agreement dated 10th July, 2017 with these defendants would enable them to exploit the infringing song for their upcoming film “Baadshaho”.

27. Mr. Kadam would submit that if the matter is approached from the above angle, then, the defendants require no prior

authorization, nor do they have to seek any permission of the plaintiff for using and exploiting the subject song in their upcoming film. Mr. Kadam then took us through the scheme of the Copyright Act, 1957. Mr. Kadam submits that if the Copyright Act, 1957, as amended now, and even earlier, is an act to amend and consolidate the law relating to copyright, then, its provisions would enable us to hold that the learned Single Judge, unmindful of the scheme of the law and the provisions particularly relied upon by the plaintiff, granted the ad-interim injunction.

28. After taking us through the definitions as appearing in Section 2 of the Copyright Act, 1957, and particularly the definition of the words “record”, “recording” and “work”, Mr. Kadam would submit that by Section 3, “publication” is defined. By Section 4, it is stated that except in relation to infringement of copyright, a work shall not be deemed to be published or performed in public, without the licence of the owner of the copyright. Then inviting our attention to Sections 5, 6, 7 and 8, Mr. Kadam would submit that Chapter III of this Act titled as “Copyright” would enable us to differentiate and distinguish

between a copyright which subsists throughout India in the classes of work. He would invite our attention to Sub-section (1) of Section 13, and particularly Clause (c) thereof. Mr. Kadam then would invite our attention to Sub-section (3) of Section 13 and Clause (b) thereof to submit that copyright shall not subsist in any record made in respect of a literary, dramatic or musical work, if in making the record, copyright in such work has been infringed.

29. Then, Mr. Kadam would invite our attention to Section 14 to submit that if that Section is perused carefully, it would denote that the copyright is defined to mean the exclusive right, by virtue of and subject to the provisions of the Copyright Act. In cases of literary, dramatic or musical work, it authorises doing of the acts and enumerated in the sub-clause (a) of Sub-section (1) of Section 14.

30. Mr. Kadam would submit that we must read these Sub-clauses and thereafter appreciate the basic contention canvassed by him. He, in elaborating his arguments, gave an illustration that a particular film is a result of the efforts and contribution of

several persons and eminent in the field. Some of them may script the film, some of them may direct it, some may act in it and if it is a musical film, then, some may write their lyrics and these lyrics are then sung on a musical tune. The lyrics or the words are penned by the lyricists and who are eminent poets. In the instant case, Mr. Sahir Ludhianvi, an eminent poet, was requested to pen the lyrics for the film "Deewar". One of the lyrics went into becoming a song, namely, the infringing song. The musical outline to the song was composed by Mr. R. D. Burman. Mr. Kadam would submit that the sound track of the film comprises of all this and once a sound recording is made, then, that sound recording subsumes in itself all the works, and particularly the lyrical work and the music and musical tune or musical work. If such sound recording is then assigned and the rights created in favour of a distinct party like Universal, then, nothing prevents Universal in dealing with this right and assigned to it further. Then, Universal would step in the shoes of the plaintiff and would be the owner recognized and in relation to the subject work. It was therefore, open for Universal to have created rights in favour of the defendants, and that is how the rights in respect of the song in

question have been created. Those have been obtained by an agreement in writing. If the sound recording rights vest in Universal and they are transferred/assigned in favour of the defendants, then, nothing remains for the plaintiff to assert and rely upon. They have divested themselves of the sound recording rights and now they cannot complain. Mr. Kadam has, therefore, analyzed the scheme of the Act and in great details to submit that if distinct rights are contemplated in the work like a film, but if one views the film or the efforts and steps taken in relation to making or preparation of a film of the nature “Deewar”, then, the plaintiff cannot be said to be retaining any right in the sound recording in its favour. They have divested themselves of these rights. Mr. Kadam has laid great emphasis on Section 17 contained in Chapter IV of the Copyright Act. He would submit that ownership of copyright in the sound recording is statutorily recognized. That is crystallized in Section 17. It is in these circumstances that he would submit that the learned Single Judge could not have proceeded on the basis that the right of the plaintiff is infringed. Thus, there was no *prima facie* case, nor the balance of convenience was in favour of the plaintiff. On the other

hand, irreparable loss and damage has been caused to the defendants by granting a blanket injunction which prevents them from using the song in question in any manner. Now that the film is ready for release, its songs and music have already been recorded and the distinct rights and in relation thereto are sold, have also been disposed of for the open market across the world, then, all the more, this Court should interfere with the order under challenge.

31. To substantiate his arguments, Mr. Kadam would invite our attention to the annexures to the plaint. He would submit that the learned Single Judge had before him the agreement dated 2nd January, 1974. He laid great emphasis on clause 1 of this agreement and the definition of the word “record” or “gramophone record”. He would submit that clauses 1 to 3 of this agreement, and particularly the later part of clause 4 and clauses 7 to 9 together with sub-clauses (b) and (c) of clause 9 would denote that the plaintiff's case is not well founded at all. The plaintiffs have left with them nothing and they cannot claim that the underlying lyrics or the musical tune belongs to them. If the

word 'record' is understood in proper perspective, and if that refers to films, including the original lyrics and original musical tune and which is part and parcel of the sound track, sound recording rights, then assignment and transfer thereof results in the plaintiffs being deprived of their status as owner of these works. It is this understanding and emerging from the documents relied upon by the plaintiff which enables the defendants to urge that the impugned order is erroneous and illegal.

32. Mr. Kadam submits that the plaintiff has made much capital of a letter at annexure "F" (page 83) dated 15th May, 2008 and that is addressed to Trimurti Films Pvt. Ltd./plaintiff by the said Universal. However, the paragraphs of this letter relied upon do not indicate that the said Universal acknowledged any subsisting rights and in the underlying works as belonging to the plaintiff. The said Universal rather reiterated the above position and in terms of the agreement. The plaintiff has assigned in favour of Universal, absolutely free from any encumbrances and without any limitation for the entire world, the copyright to the exclusive right, inter alia, to make records from recordings embodied in the

said film. This wider assertion of the said Universal would indicate that the further parts of this letter do not take away anything from the agreement relied upon by the defendants. In these circumstances, Mr. Kadam would submit that the learned Single Judge could not have relied upon the said letter.

33. Finally, he submits that the learned Single Judge has based his order only on some admissions, but assuming there are any concessions and admissions on a point of law they cannot bind the plaintiff. Hence, no advantage can be taken of these concessions by the plaintiff.

34. Mr. Kadam has relied upon the following judgments to support his above contentions:

1. *Rupalli R Shah vs Adani Wilmer Ltd. & Ors*, reported in *2012 (52) PTC 305 (Bom.)*,
2. *Indian Performing Right Society Ltd. Vs Eastern Indian Motion Pictures Association & Ors.*, reported in *(1977) 2 SCC 820* and
3. *Salim Khan and anr. vs Sumeet Prakash Mehra & Ors.*, reported in *(2013) Bom CR 556*.

35. On the other hand, Mr. Tulzapurkar, learned Senior Counsel appearing on behalf of the respondent-plaintiff submits that there is no merit in this Appeal. It is directed against an ad-interim injunction order. Apart therefrom, the learned Single Judge has applied correct legal principles and there is no factual dispute. If the agreements have been interpreted at this *prima facie* stage by the learned Single Judge to grant an ad-interim injunction, then, unless that interpretation is so perverse or vitiated by an error of law apparent on the face of record, we should not interfere in our appellate jurisdiction. The view taken by the learned Single Judge is imminently possible.

36. Mr. Tulzapurkar would submit that the defendants should not be permitted to argue anything to controvert any of the arrangements and which have been worked out by the plaintiff with the music composer Mr. R. D. Burman and the song writer/poet Mr. Sahir Ludhianvi. None of them, nor their representatives or heirs have ever, and in all these decades, questioned the contents of the documents, namely, annexures "A" and "B". The film has been made long time back. The impugned

song has been part and parcel of that film and its musical score for decades together. It had been associated with that film “Deewar” and none other. There is no reason, therefore, to dispute the arrangement as between Mr. R. D. Burman and Mr. Sahir Ludhianvi. None on their behalf have come forward to question these documents.

37. Equally, as far as Universal is concerned, they are aware that what they have derived and under the agreement dated 2nd January, 1974, are limited rights. They do not have any rights in the underlying work. Mr. Tulzapurkar was at pains to point out that the law recognizes and makes a distinction and differentiation between the literary work, musical work and as far as a film goes, the law has made a clear distinction in that regard as well. Mr. Tulzapurkar has heavily relied upon Section 14 of the Act to submit that it is incorrect to urge that anything is subsumed and becomes part and parcel of the limited rights flowing from the agreement with Universal and the projection of Mr. Kadam in that behalf is contrary to law. Mr. Tulzapurkar submits that as far as the differentiation made and in the case of a literary, dramatic or

musical work, the same permits doing and authorizes the doing of the acts enumerated in Sub-clauses (i) to (viii) of Clause (a) of Sub-section (1) of Section 14. In the case of an artistic work, the doing or authorization is in terms of Clause (b) of Sub-section (1) of Section 14 and in the case of a cinematograph film, the defining Clause is Clause (c) of Sub-section (1) of Section 14. That permits doing or authorises the doing of the acts enumerated in Clauses (i) to (iv) and then the law makes a distinction in the case of 'record'. That is contemplated by Clause (d) of Sub-section (1) of Section 14. In the case of a recording rights, the copyright shall not subsist in the underlying work. Else, the law would not have contemplated subsistence of a distinct copyright in the classes of works in Section 13(1)(a) to (c). Mr. Tulzapurkar, therefore, would submit that the argument of Mr. Kadam that the agreement with Universal authorizes or permits them to even modify or use or alter the underlying works, namely, the lyrics and the musical tune is incorrect and fallacious. That is contrary to law and equally, the documents on record.

38. Mr. Tulzapurkar submits that once the limited nature of the

rights have been acknowledged by Universal in writing and that letter is on record and addressed as far back as May, 2008, then, anything contrary thereto cannot be argued by the defendants. That is because Universal are aware of the nature of the rights conferred in them in law. In such circumstances, Mr. Tulzapurkar would submit that none of the arguments of Mr. Kadam deserve to be accepted.

39. He would submit that the order of the learned Single Judge requires no interference as it is correct both on facts and in law. As far as the factual aspects are concerned, the learned Single Judge has rightly relied on the concession or admission of the defendants in that behalf. As far as the application of the legal principle is concerned, there as well, the learned Single Judge has not committed any error. Therefore, the order under challenge suffers from no legal infirmity. It should be maintained and the Appeal be dismissed.

40. With the assistance of Mr. Kadam and Mr. Tulzapurkar, we have perused the Appeal paper book. We have perused the impugned order. We have perused the relevant provisions of the

Copyright Act, 1957 and the decisions brought to our notice.

41. At the outset, we must clarify that we are at an interim stage. We are not analyzing or interpreting any of the contents of the documents finally. It is for a limited purpose and namely, to consider an application for interim injunction, and particularly to find out whether there is a strong *prima facie* case, the balance of convenience is in favour of the plaintiff and who will suffer irreparable loss and injury that we have gone through the plaint and its averments and the annexures thereto. We have also, for a very limited purpose, allowed Mr. Kadam to make submissions on the point of law and equally, Mr. Tulzapurkar to controvert them.

42. In the first place, we must see the averments in the plaint. We have adverted to them in great details in the foregoing paragraphs. The case of the plaintiff is that there is a feature film "Deewar" and which has been made by it. That feature film produced by the plaintiff had a storyline and for the proper flow of that storyline and the script, at proper places, that was interspersed or intertwined by songs. These songs, in the sense,

the lyrics thereof, were penned by Mr. Sahir Ludhianvi. The musical score was set by Mr. R. D. Burman.

43. At the outset, Mr. Tulzapurkar is right in contending that the defendants cannot be allowed to challenge the stipulations and the terms of the contracts between the plaintiff and Mr. Sahir Ludhianvi and the plaintiff and Mr. R. D. Burman. Though Mr. Kadam would term these contracts with them not of employment but of service and the services were rendered for a remuneration by these persons and therefore, they were free to allow use of their works by anybody, including the defendants, we do not think that we can allow the defendants to argue on the contents of the letters/agreements with Mr. Ludhianvi and Mr. R. D. Burman and the plaintiff. These agreements are dated 3rd April, 1974. They are on the subject of the picture "Deewar" and which was directed by Mr. Yash Chopra and produced by the plaintiff.

44. There were certain personal discussions the chairman of the plaintiff had with Mr. R. D. Burman and thereafter, the terms and conditions broadly agreed in respect of services as music director

for the film “Deewar” came to be recorded.

45. Till today, nobody has questioned these terms and conditions, nor was there any dispute with regard to their understanding by the plaintiff raised by either Mr. R. D. Burman during his lifetime or anybody claiming through him thereafter. The same is the position with regard to a distinct contract or arrangement with Mr. Sahir Ludhianvi. Mr. Kadam would submit that we must analyze and interpret the contents of these two letters, for unless we do that and in great details, we would not be able to appreciate his arguments on the rights derived by Universal from the plaintiff.

46. We do not think that it is necessary for us as we must proceed on the basis that these two letters of 3rd April, 1974 denote that the plaintiffs have *prima facie* certain rights vested in them. Though the lyrics have been penned by Mr. Sahir Ludhianvi, the lyrical or literary work is part and parcel of the film “Deewar”. The songs and penned by Mr. Sahir Ludhianvi and set to tune by Mr. R. D. Burman are incorporated in the film

“Deewar”. The whole motion picture/feature film “Deewar” is produced by the plaintiff and *prima facie*, all the rights in relation to this film vest in the plaintiff. Undisputedly, sound recording or recording rights are part and parcel of the rights that the plaintiff possess in relation to this film. Else, neither the plaintiff and the said M/s. PIL could not have carved out this distinct legal right for transfer and assignment in PIL's favour.

47. The Indian Copyright Act, as amended and even prior to its amendment, is an Act to amend and consolidate the law relating to copyright. Chapter I contains the preliminary provisions and Section 2 therein contains definitions. The work “adaptation” is defined in Section 2(a) and to mean, post amendment, in relation to the dramatic work, the conversion of the work into a non-dramatic work, in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise, in relation to a literary or dramatic work, any abridgment of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or

in a newspaper, magazine or similar periodical, and in relation to a musical work, any arrangement or transcription of the work. By Act 38 of 1994, Sub-clause (v) has been added to Clause (a) of Section 2, in the definition of the word “adaptation”. The word “artistic work” is defined in Section 2(c). The word “author” is defined in Section 2(d) to mean, in relation to a literary or dramatic work, the author of the work, in relation to a musical work, the composer. The word “broadcast” is defined in Section 2(dd). Section 2(f) defines the word “cinematograph film” to mean any work of visual recording and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films.

48. Prior to the Act being amended by Act No.27 of 2012, this definition was reading as under:

“(f) “cinematograph film” includes the sound track, if any, and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography.”

49. We do not see a great difference, for the word “cinematograph film” includes a sound track, and as defined

earlier and now, it specifically means any work of visual recording and includes a sound recording accompanying such visual recording. Similarly, the words “communication to the public” which were substituted by Act 27 of 2012, came to be substituted by Act 38 of 1994 earlier and that is with effect from 10th May, 1995. Earlier to that, Clause (ff) was inserted by Act 23 of 1983 with effect from 9th August, 1984. Therefore, Section 2(ff), before such substitution, meant making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work.

50. What are relevant then, and for our purpose, are the definitions of the terms “literary work” as appearing in Section 2(o), “musical work” as defined in Section 2(p) to mean any combination of melody and harmony or either of them, printed, reduced to writing or otherwise graphically produced or reproduced. The word “performance” is defined in Section 2(q) and these definitions in the amended and unamended Act would also be relevant. What we find is that the definition of the word

“record” as appearing in Section 2(w) was omitted by Act 38 of 1994. However, prior to its omission, it was defined to mean any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a sound track associated with a cinematograph film.

51. The term “recording” is defined in Section 2(x) to mean the aggregate of the sounds embodied in and capable of being reproduced by means of a record.

52. Now, the definition has been substituted by Act 38 of 1998 with effect from 10th May, 1995 and the word “reprography” which has been inserted is defined to mean making of copies of a work, by photocopying or similar means, and what we have is a distinct definition of the word “sound recording”. That is appearing in Section 2(xx).

53. The word “work” is defined in Section 2(y) to mean the works which are enumerated in Sub-clauses (i) to (iii) thereof. Sub-clause (iii) has been substituted by the Act 38 of 1994 and the word “record” is now substituted by the word “sound recording”.

54. Since we are not referred to all the Sections by the counsel, we would not refer and enumerate them as they appear in parts of Chapter I and the substantive Chapter II.

55. Chapter III of the Act is titled as "Copyright". That word has been understood as appearing in Sub-section (1) of Section 13. That is understood as a copyright subsisting throughout India in the classes of works. Thus, subject to the provisions of Section 13 and the other provisions of the Copyright Act, 1957, copyright subsists in original literary, dramatic, musical and artistic works, cinematograph films and records (now, sound recording).

56. Mr. Kadam is, therefore, not right in urging that when the sound recording rights are obtained, the arrangement in that regard would take into its fold or subsume the original literary, dramatic, musical and artistic work. If these works are distinctly defined and understood by law, then, the copyright must subsist distinctly in them. It cannot be that they are defined and recognized as different categories or classes of works, but the copyright therein is one and the same. Meaning thereby, if

copyright subsists in one, that necessarily takes in it the copyright in relation to the other classes as well. If that is how the law is *prima facie* understood, then, we cannot ignore the arguments of the plaintiff's counsel that for the purpose of this Appeal, which is relevant and *prima facie* is the nature of the right conferred in M/s. Universal by the plaintiff.

57. Since heavy reliance has been placed on Section 14 as appearing in the Act prior to the amendment, we would reproduce it for our purpose:

“ 14. (1) For the purpose of this Act, “copyright” means the exclusive right, by virtue of and subject to the provisions of, this Act,-

(a) in the case of a literary, dramatic or musical work, to do and authorise the doing of any of the following acts, namely:- सत्यमेव जयते

(i) to reproduce the work in any material form;

(ii) to publish the work;

(iii) to perform the work in public;

(iv) to produce, reproduce, perform or publish any translation of the work;

(v) to make any cinematograph film or a record in respect of the work;

(vi) to communicate the work by radio-diffusion or to communicate to the public by a loud-speaker or any other similar instrument the radio-diffusion of the work;

(vii) to make any adaptation of the work;

(viii) to do in relation to a translation or any adaptation of the work any of the acts specified in relation to the work in clauses (i) to (vi);

(b) in the case of an artistic work, to do or authorise the doing of any of the following acts, namely:-

- (i) to reproduce the work in any material form;*
- (ii) to publish the work;*
- (iii) to include the work in any cinematograph film;*
- (iv) to make any adaptation of the work;*
- (v) to do in relation to an adaptation of the work any of the acts specified in relation to the work in clauses (i) to (iii).*

(c) in the case of a cinematograph film, to do or authorise the doing of any of the following acts, namely:-

- (i) to make a copy of the film;*
- (ii) to cause the film, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;*
- (iii) to make any record embodying the recording in any part of the sound track associated with the film by utilising such sound track;*
- (iv) to communicate the film by radio-diffusion;*

(d) in the case of a record, to do or authorise the doing on any of the following acts by utilising the record, namely:-

- (i) to make any other record embodying the same recording;*
- (ii) to cause the recording embodied in the record to be heard in public;*
- (iii) to communicate the recording embodied in the record by radio-diffusion.*

(2) Any reference in sub-section(1) to the doing of any act in relation to a work or a translation or an adaptation thereof shall include a reference to the doing of that act in relation to a substantial part thereof.”

58. Thus, the term copyright for the purposes of the Copyright Act, 1957 means the exclusive right subject to the provisions of

the Copyright Act, to do or authorise the doing of the acts in respect of the work or for substantial part thereof. Therefore, copyright subsists in a work and when it is to subsist in that manner, then, the acts in respect of each work and enumerated in the clauses of Section 14 and its Sub-clauses would have to be necessarily borne in mind.

59. All the more, when in the case of a literary, dramatic or musical work, not being a computer programme, the acts which can be done or authorized to be done are a reproduction of the work in any material form, including the storing of it in any medium by any electronic means, to issue copy of the work to public not being copies already in circulation, to perform the work in public, or communicate it to the public, to make any cinematograph film or sound recording in respect of the work, to make any translation of the work, to make an adaptation of the work any of the acts specified in relation to the work in Clauses (i) to (vi).

60. Mr. Kadam would submit that as far as literary, dramatic or musical work is concerned, if the law permits doing or authorizing

the doing of the acts and which includes cinematograph film and sound recording in respect of the work, then, rights in relation thereto gets subsumed in the cinematograph film or sound recording. *Prima facie*, this does not appear to be a correct reading of the law. If it is the doing or authorizing the doing of any of the acts in the case of a literary or dramatic or musical work and that includes making any cinematograph film or sound recording in respect of the work, that does not mean further that the moment such act is performed or authorized to be performed, the rights in relation to the literary, dramatic or musical work do not survive.

61. The law would have specifically said so had it intended. Else, what would happen and by accepting the argument of Mr. Kadam is that in case of a computer programme, in the case of an artistic work, in the case of a cinematograph film and equally, in the case of a sound recording, the doing or authorizing of the doing of any of the acts in relation thereto would not have been enumerated at all. By illustration in the case of a sound recording, the doing or authorizing the doing of an act of making any other

sound recording embodying it, and now including storing of it in any medium by electronic or any other means, to sell or even hire or offer for sale or hire any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions, clarifies the position prior to the substitution of this part, namely, Clause (ii) in Clause (e) of Section 14 and communicating the sound recording to the public.

62. It is not, therefore, that these acts have been enumerated without any purpose. It is to recognize the distinction and difference brought about by law in the work and the copyright subsisting in the work or the class of work that all these provisions have been inserted.

63. Mr. Kadam would submit that the moment the act as set out in section 14(1)(a)(v) is done or authorised to be done, the exclusive right conferred by Section 14(1) in the case of literary, dramatic or musical right does not survive or in any event gets subsumed in the cinematograph or a record in respect of the work. *Prima facie*, that is a incorrect reading of the law. The Act protects

and subserves the right in the underlying literary, dramatic or musical work but allows to do or authorises the doing of the acts enumerated in section 14(1)(a)(i) to (viii). Such doing or authorisation does not and without anything more exhaust the copyright. Section 14(1) defines “copyright” to mean the exclusive right, by virtue of and subject to the provisions of the Act and follows Section 13 which sets out the classes of works in which copyright shall subsist and this section (unamended + amended) reads as under:-

Unamended Section 13

“13. (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say, -

- (a) original literary, dramatic, musical and artistic works;*
- (b) cinematograph films; and*
- (c) records.*

(2) Copyright shall not subsist in any work specified in subsection (1), other than a work to which the provisions of section 40 or section 41 apply, unless, -

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than an architectural work of art, the author is at the date of the

making of the work a citizen of India or domiciled in India; and

(iii) in the case of an architectural work of art, the work is located in India.

Explanation – In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist -

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any record made in respect of a literary, dramatic or musical work, if in making the record, copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a record shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the record is made.

(5) In the case of an architectural work of art, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.”

Amended Section 13

“13. Works in which copyright subsists. – (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say, -

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) sound recording.

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless,-

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than work or architecture, the author is at the date of the making of the work citizen of India or domiciled in India; and

(iii) in the case of work of architecture, the work is located in India.

Explanation – In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist -

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or, as the case may be, the sound recording is made.

(5) In the case of work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.”

64. A bare perusal of this provision and particularly Sub-section (4) thereof completely falsifies the argument of Mr. Kadam. If the positioning of the right is as projected by Mr. Kadam, then, there was no necessity of an agreement between the plaintiff and M/s. PIL. That such an agreement dated 2nd January, 1974 was necessitated means the said entity was required to be authorised by the plaintiff to do the acts enumerated in section 14(1)(d). Else, the acts enumerated in section 14(1)(c) in the case of a cinematograph film if authorised to be done, there was no necessity to specify what a record means and what does recording signify [see Sections 2(w), 2(x) and 14(1)(d)]. Hence, it is futile to urge that the underlying works, namely, the lyrics and musical tune of the infringing song is subsumed in the rights conferred in favour of M/s. P. I. L.

65. The above positioning of the rights in law has been accepted by M/s. P. I. L. As far as the facts are concerned, what Universal derived and *prima facie* was the authorization in terms of the agreement dated 2nd January, 1974. That agreement is between the plaintiff and the predecessor in title of the said Universal

Music India Private Limited. Polydor of India Private Limited is termed as a company in this agreement, whereas, the plaintiff is the client. The plaintiff is engaged in business of producing motion pictures and the company/Polydor of India Private Limited is manufacturing and selling gramophone records. It was interested in recording the plaintiff's artistic work and from the motion pictures of the plaintiff and/or to exploit the sound tracks of some of the motion pictures.

66. That is how the agreement stipulates that the parties understand the word "work" as defined in Section 2(y)(i) of the Indian Copyright Act and the word "record" or "gramophone record" shall mean a double sided disc record, a magnetic tape or any other sound-bearing contrivance or appliance reproducing a performance or performances by the Client's artists and musicians of one or more works owned by the Clients.

67. For a period of five years from 2nd January, 1974, the plaintiffs would supply only and exclusively to the company at their own expenses with artists and musicians etc. to perform

musical and/or other works from their films for the purpose of making gramophone records, and the artists and musicians etc., shall attend at the Company's studio or such other place as may be appointed by the Company and shall at such place and time record at Client's costs such works as the Company shall select. Thereafter, by clause 2, it is understood that the work and in terms of the earlier part of clause 2 would be selected by said Polydor of India Private Limited for release of records under Polydor or any other label and mark as the Company shall determine. That alone is permitted to be done, prima facie. Then, clause 3 carries the intent and object further.

68. It is understood that the plaintiff shall, at the request of the Company supply the artists and musicians etc., to repeat any work until a master matrix thereof can be obtained suitable in the opinion of the Company for the reproduction of records. Clause 4 is relied upon. It opens with the words "notwithstanding the provisions in Clause 2 and 3". However, despite such effect given to the Clause 4, what it records is that the plaintiff shall, during the term of this agreement, at their own expenses and at the

request of the said Polydor, supply within reasonable time and only and exclusively the Polydor with sound tracks or recorded tapes of their musical and/or other works (including sound-tracks and recorded tapes from motion pictures the production of which has been started but not finished during the term hereof) and the Company shall utilise such sound tracks or recorded tapes for the purpose of re-recording therefrom and subsequent manufacture of gramophone records as referred in the earlier clauses provided they are in opinion of the Company, namely Polydor of India Limited, suitable for such purpose. Then, there is a covenant in clause 5 and which gives a pre-emptive right to Polydor for a period of 25 years. No rights which are forming part of the agreement dated 2nd January, 1974, therefore, would be created or conferred with by the plaintiff so long as there is this arrangement with M/s. Ploydor. They would do nothing so as to defeat the said agreement. The parties then reiterate the arrangement and which is carved out by the agreement. What clause 7 stipulates is transfer and assignment to M/s. Ploydor of all recording rights and all mechanical reproduction rights (including the rights in the performance of the plaintiffs artists,

musicians etc.) in all works to be recorded or re-recorded under the provisions of the agreement.

69. Clauses 8 and 9 are heavily relied upon. They read as under:

“8. The Company shall be the owner of the original plate within the meaning of the Copyright Act, 1957, and any extensions or modifications thereof of each title recorded or re-recorded under the provisions of this Agreement at the time when such plate shall be made. The Company shall also be entitled to the sole right of production, reproduction, sale, use and performance (including broadcasting) throughout the world by any and every means whatsoever of the records of the works performed by the artists and musicians etc., under this Agreement. The Company shall in its absolute discretion be entitled to authorise any other persons, firms or corporations in any part of the world to manufacture, sell and or catalogue records of all or any part of the world to manufacture, sell and or catalogue records of all or any of the titles recorded or re-recorded under the provisions of this Agreement.

9. a. In consideration of the services rendered and the rights transferred and assigned hereunder the Company shall pay to the Clients a royalty of ten per cent (10%) for all records with works recorded or re-recorded hereunder and sold and not returned, such royalty to be calculated on the net price in the country of manufacture.

b. However, in the event that a record shall embody performances by the Client's artists of any work owned by the Clients together with performances by other artists, the royalty shall be reduced by such proportion as the playing time of the work or workds performed by other artists bears to the total playing time of the record.

- c. *The above royalty payable to the Clients shall include all royalties, fees and other remuneration to the owner of the works recorded or re-recorded hereunder as well as for the clients' artists, musicians etc. whose performances are embodied in the records hereunder. The Clients warrant and represent that they will satisfy all claims (if any) in connection therewith and will hold free and harmless and indemnify the Company with respect to any such claims.*
- d. *If the Clients shall at any time during the period set forth in section 5 above allow their artists, musicians etc. or any of them to record any work re-recorded or re-recorded under this Agreement or permit the recording of such works from any film sound-track or recorded tape or other means, for any other person, firm or corporation whatsoever, the Company shall be no longer obliged, without limitation to Company's order rights and remedies, to pay any royalties to the clients with respect to the relevant recording.”*

70. A perusal of these two clauses together with the prior and the subsequent clauses leave us in no manner of doubt at this *prima facie* stage, that they stipulate that the said Polydor shall be the owner of the original plate within the meaning of the Copy Right Act, 1957 and any extensions or any modifications thereof of each title recorded or re-recorded under the provisions of this Agreement at the time when such plate shall be made. It shall have the sole right of production, reproduction, sale, use and performance (including broadcasting) throughout the world, and by clause 9, consideration for the services rendered and rights

conferred and assigned under this agreement is determined. That also clarifies that in the event that a record shall embody performances by the plaintiff's artist or any work owned by the plaintiff together with performances by other artists, the royalty shall be reduced by such proportion as the playing time of the work of works performed by other artists bears to the total playing time of the record. This only clarifies that the consideration in terms of clause 9(a) shall stand reduced in the event a record embodying the performances by the clients' /plaintiff's artists of any of the work owned by the plaintiff together with performances by other artists has been made and when it is made, the royalty shall be reduced by such proportion as the playing time of the work or works performed by other artists bears to the total playing time of the record.

71. It is then elaborated further that the royalty payable to the plaintiff shall include all royalties, fees and other remuneration to the owner of the works recorded or re-recorded hereunder as well as for the plaintiff's artists, musicians etc. whose performances are embodied in the records.

72. If this arrangement is understood in the backdrop of the copyright in respect of a underlying work as understood by the Copyright Act, then, it is evident that there is a recognition of such copyright in the classes of the work. Section 13(1) sets out “sound recording” in Clause (c) as one of the classes of works. As far as sound recording is concerned, the definition thereof is clear. It means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is the method by which the sounds are produced.

73. The Act, as originally enacted, also understood this concept, but instead of the word “sound recording” Clause (c) of Sub-section(1) of Section 13 read as “record”. The word “record” was defined in the initial enactment to mean any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a sound track associated with a cinematograph film, and “recording” means the aggregate of the sounds embodied in and capable of being reproduced by means of a record. The word “work” is also defined

to distinctly include a literary, dramatic, musical or artistic work or a cinematograph film or a record.

74. If these definitions in the unamended or the original Act and the amended Act are read together with the substantive provisions, namely, Sections 13 and 14, then, it is *prima facie* clear that the copyright subsists distinctly in relation to each of above works.

75. Else, the doing or authorizing the doing of any act was not necessary and to be specified in Section 14. It is only to understand as to what a copyright means and in what the exclusive right vests or is recognized that everything is clearly spelt out. Therefore, there are distinct acts which can be done or authorized to be done in respect of a work such as a literary, dramatic or musical work, within which even a computer programme is not to be confused as a literary, dramatic or musical work, but distinctly understood. Even in the case of an artistic work, what are the acts which can be done or authorized to be done are to be found in Clause (c) of Section 14. In relation of a

cinematograph film, Clause (d) of Section 14 states that to make a copy of the film is an act which can be done, including a photograph of any image forming part thereof, or storing of it in any medium by electronic or other means, now, to sell or give on commercial rental or offer for sale or for such rental, any copy of the film, or to communicate the film. As far as sound recording is concerned, the acts contemplated are making of any other sound recording embodying it, including storing of it in any medium by electronic or other means, to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording and to communicate the sound recording to the public. This stipulation with regard to the acts which can be done or authorized to be done as appearing in Section 14 Clause (e) is more or less on par with what is understood by Section 14 Clause (d) of the unamended Act. There, the 'sound recording' was equivalent to a 'record' and in the case of a record, what can be done or authorized to be done and by utilizing the record is to make any other record embodying the same recording, to cause the recording embodied in the record to be heard in public, to communicate the recording embodied in the record by radio-

diffusion.

76. *Prima facie*, these are the rights which Universal/its predecessor Polydor derived under the agreement dated 2nd January, 1974 from the plaintiff. If the rights derived were as absolute as emphasized by Mr. Kadam before us, there was no occasion for the Universal to address a communication dated 15th May, 2008.

77. The subject of this letter/communication, copy of which is at page 83 of the paper book, is “Copy Rights of 'Deewar, Yudh, Joshila, Johny Mera Naam' Film”.

78. It is clear that Universal says that under an agreement of assignment dated 7th January, 1970 between the plaintiff and Polydor, the plaintiff has assigned in favour of the Polydor absolutely free from all encumbrances and without any limitation for the entire world, the copyright to the exclusive right, inter alia, to make records from recordings embodied in the said film. The communication asserts that the period of assignment of the copyright and all other rights in the work is as per Section 27 of

the Copyright Act, 1957. Under that agreement in respect of recordings, inter alia, an exclusive right to exploit the work is assigned to Universal now. Then, this communication clarifies that all sounds and visual images (designing and promotional printing material) which are embodied in respect of the cinematograph film in the record are assigned in favour of M/s. Universal.

79. It is, therefore, asserted that in continuation and during subsistence of this agreement, Universal is exploiting sound records assigned to it under the said agreement from time to time, and therefore, the payment of royalty is payable to the plaintiff and the royalty payment calculated upto 30th September, 2007 for physical sale and upto 31st December, 2006 for ring-tone was forwarded.

80. There was a discussion and a subsequent mail of 10th May, 2008 is referred and that is why it is confirmed that the plaintiff would be entitled to use the lyrics of the song (partially or fully) and re-cord the version of 'Deewar' and 'Johny Mera Naam' films and the plaintiff may use it in it's future production for which

Universal will neither have any objection nor will it raise any claim. It will also not have any grievance or complaint if the plaintiff assigns any remaking rights of these films to any third party, and similarly, they shall also be entitled to use the song or songs or any portion of the song or songs or to sell the re-recorded versions of the songs in the remake of the above films to any party.

81. Therefore, we do not think that at this *prima facie* stage, the defendants can be allowed to argue anything to the contrary. It is M/s. Universal's understanding of the agreement and as a successor in interest to M/s. Polydor of India Private Limited. It is Universal's understanding that lyrics of the song can be used by the plaintiff and the rights derived under the agreement with the plaintiff do not authorize the doing of an act and which is clarified as capable of being done only by the plaintiff. If the said Universal had any reservation on the parties' understanding of the rights conferred under the agreement in their favour, then, this assertion as appearing at page 83 of the paper book would not have been reduced in writing. The assertion is that whatever rights are

derived under the agreements of 1970 and 1974, they are intact. Despite such rights being intact and conferred in wide terms, still the plaintiff has not authorized to be done the other acts, and therefore, the authorization is, in that sense, limited. It is not permitting the Universal to use the lyrics of the song (partially or fully). Therefore, the underlying works and the copyright in the same is not subsumed, as urged by Mr. Kadam, *prima facie* in the agreement with Universal. If Universal do not derive such rights as are contended and pressed before us, then surely, the defendants who claim through Universal cannot be permitted to assert any higher rights. The rights that they derived are pursuant to the arrangement recorded in writing by the plaintiff and the Universal. Else, Universal would not have been able to enter into any agreement in relation to the rights derived by it and understood by this document at page 83 with the defendants. It may be that the agreement between the defendants and the said Universal gives an impression to the defendants that some rights and much wider and higher than those derived by M/s. Universal in the original package or arrangement are vested and conferred in their favour. However, when the arrangements have to be

considered only in the light of the preceding documents in favour of M/s. Universal, then, we do not see how the defendants' assertions and arguments as indicated above can be accepted, much less, at this *prima facie* stage. We are not inclined to go into any further and decide any wider or larger controversy. We must avoid making any observations, much less, on the interpretation of the legal provisions. Given the limited issue before us and which is whether these acts as enumerated above justify grant of interim injunction in the terms prayed, we should avoid making reference to the legal provisions in further details, much less, analyze them in the light of the decisions brought to our notice.

82. Suffice for our purpose that the decision of the learned Single Judge (one of us, Justice S. C. Dharmadhikari) in the case of **Rupalli Shah** (*supra*) was not dealing with any copyright in the underlying work. As rightly pointed out by Mr. Tulzapurkar, in paragraph 45 of the order passed in the case of **Rupalli shah**, the Court proceeded on the basis of the concession in that case that the copyright in the underlying work has not been claimed by the defendant No.2 in that Suit. It had no claim of ownership insofar

as the lyrics or composition of the songs and music is concerned.

83. In the case before us, the defendants/appellants specifically claim such rights and of ownership. Once the underlying works are distinctly understood and with the copyright therein, *prima facie*, as narrated above, then, this decision is of no assistance.

84. Equally, the case before the Hon'ble Supreme Court in the landmark decision, namely, ***Indian Performing Right Society Ltd.*** (*supra*) was somewhat distinct.

85. There, the appellant was incorporated for the purpose of carrying on business in India of issuing or granting licences for performance in public of all existing and future Indian musical works in which copyright subsists in India. Its members comprised of music composers, authors of literary and dramatic work and artists. It published a tariff laying down the fees, charges and royalties that it proposed to collect for the grant of licences for performance in public of works in respect of which it claimed to be an assignee of copyrights and to have the authority to grant licences as required by the Copyright Act, 1957. The respondents

in the Appeal before the Hon'ble Supreme Court were associations of producers of cinematograph films claiming to be the owners of such films including the sound track thereof. They filed objections repudiating the appellant's claim on the basis that the producers engaged composers and song writers under contract of service for composing songs to be utilised in their films and that the musical works prepared by the composers under such contracts having been utilised and incorporated in the sound track of the cinematograph films produced by them and that therefore no copyright subsisted in the composers.

86. The Hon'ble Supreme Court, in dealing with such an issue and controversy, found that once the author of a lyric or a musical work parts with a portion of his copyright by authorising a film producer to make a cinematograph film in respect of his work and thereby to have his work incorporated or recorded on the sound track of a cinematograph film, the latter acquires by virtue of Section 14(1)(c), on completion of the cinematograph film, a copyright which gives him the exclusive right inter alia of performing the work in public i.e. to cause the film in so far as it

consists of visual images to be seen in public and in to far as it consists of the acoustic portion including a lyric or a musical work to be heard in public without securing any further permission of the composer of the lyric or musical work for the performance of the work in public. That is why the existing and future rights of a music composer and a lyricist in their respective works has capability of assignment subject to condition stipulated in Section 18 as also in Section 19, which required the assignment to be in writing, signed by the assignor or by his duly authorized agent. It is in that sense the relied upon paragraphs of this judgment ought to be read. Mr. Kadam only reads the portion where the Hon'ble Supreme Court discusses as to what would be subsumed in the term "cinematograph film" and the sound track associated with it. Even if that is understood from this judgment to be so subsumed, what is relevant for our purpose is the nature of the right conferred in the present case and by the agreement dated 2nd January, 1974 by the plaintiff to Polydor/Universal. We do not think that at this *prima facie* stage, we should enlarge it beyond the understanding of M/s. Universal itself, purely on the assertion to the contrary of the plaintiffs. Presently, at this interlocutory

stage, we do not think that we can discard or brush aside the said communication at page 83 of the paper book.

87. Looked at from this angle, even the judgment of the Hon'ble Supreme Court is of no assistance to the appellants.

88. The order in the case of *Salim Khan* (supra) as well can be of no assistance. There, on facts it was found that the entire script was taken over for consideration from Shri Dharmendra by Shri Prakash Mehra and it was the argument of the writer Salim Khan, who was a script writer, that a remaking of the film with the same title "Zanjeer" is illegal. That injunction was denied after noting the arrangement between Shri Dharmendra and Shri Prakash Mehra.

89. We have considered all the arguments of the parties. As a result of the above discussion, we do not find any substance in this Appeal. The same is dismissed.

90. In the view that we have taken, it is not necessary to consider the alternate argument of Mr. Kadam. The alternate

argument was that even if there are limited rights conferred in favour of Universal and which flow in favour of the defendants under a distinct arrangement between Universal and them, still, they do not rule out the utilization or use of the song in question. The song, therefore can be used and in the way and manner the defendants choose. This argument is controverted by Mr. Tulzapurkar by pointing out that once the rights are very limited in nature, then, such restricted and limited rights cannot be enlarged to claim the liberty or the facility as asserted before us. Meaning thereby, no artist in the upcoming film “Baadshaho” can be allowed to independently reproduce or sing the song and set to tune by the defendants. At best, the very same record or recording can be played in the upcoming film “Baadshaho” and any character or artist therein can be depicted or shown as hearing it.

91. Having heard parties, we do not think that once the injunction as claimed can be granted, and in the form prayed by the plaintiff, then, any note be taken of this alternate argument. The defendants can be permitted to act strictly within the four corners of the rights derived from Universal which rights in turn

depend upon the arrangement between the predecessor of Universal and the plaintiff. Apart from this, there is no prejudice or loss to the appellants as their film can be released, viewed by the public even if the infringing song is deleted from it.

92. In the view that we have taken, we have not gone by any concession save and except that before us, as well, it was never disputed that the song which the defendants seek to incorporate in their film “Baadshaho” is identical to that which was penned by Mr. Sahir Ludhianvi and set to music by Mr. R. D. Burman and incorporated in the film “Deewar”. The learned Single Judge had an occasion to hear both songs as they were played during the course of the proceedings before him. He has recorded that the song “Kah Doon Tumhe” from the film “Baadshaho” is the same song as it was in the film “Deewar”, but with slight modification. Consequently, no concession and contrary to the factual position on record and purely of law has been recorded, and on that score as well, we do not find the order under challenge to be erroneous or illegal.

93. As a result of the above discussion, we find that the injunction as granted by the learned Single Judge and to operate in terms of the order at page 11(I) of the paper book suffers from no serious legal infirmity or perversity warranting our interference in appellate jurisdiction. We have found that since the film was to release on 1st September, 2017 and the rights created by the defendants allegedly in favour of the third parties being at much advanced stage, the learned Single Judge, and equally we are justified in taking up the matter urgently. We have seen from the materials produced that there is a serious issue to be tried and an arguable case presented by the plaintiff. Thus, they have made out a *prima facie* case and given the subsistence of the agreement in their favour way back from 1974, the balance of convenience was also in favour of the plaintiff. It is they who could have suffered irreparable loss, harm and injury in the event the relief was denied.

94. Hence, the legal principles also justify grant of injunction as directed by the learned Single Judge.

95. As a result of the above discussion, we proceed to dismiss the above Appeal. It is dismissed but without any order as to costs.

96. There is an Appeal preferred by M/s.Universal Music (India) Private Limited and Mr. Dhond, learned Senior Counsel appearing on their behalf would submit that the rights and contentions of the said Universal are seriously prejudiced and affected because of the interim injunction granted in favour of the plaintiff in the Suit. He would submit that the plaintiff, without joining said Universal, who is a necessary party, have obtained this injunction and in granting that injunction/interim relief, the learned Single Judge has finally pronounced upon the rights under the agreement between the plaintiff and the Universal. Therefore, though the said Universal is not a party to the suit, leave be granted to the said Universal to file an appeal against the impugned order.

97. We have heard Mr. Dhond at great length on this point and issue. With his able assistance, we have perused the order under challenge. We do not think that the learned Single Judge has in any manner concluded the issue of the rights that M/s. Universal

claims in terms of the agreement between the predecessor in title M/s. Polydor of India Limited and the plaintiff. All that the learned Single Judge was called upon and to decide at a *prima facie* stage is whether any rights higher than the rights and which are recorded in the agreement between the plaintiff and said Polydor can be claimed by the defendants to the Suit. It is the defendants alleged infringing acts which are the subject matter of the Suit and no relief was claimed at the interlocutory stage by the plaintiff against the said Universal.

98. In such circumstances, all the more by clarifying that none of the rights of the said Universal shall be prejudiced, affected and all remedies are open for them, including seeking a joinder as a party defendant to the present Suit, and keeping open the contentions of all the parties with regard thereto as well, we dismiss the Appeal preferred by M/s. Universal Music (India) Private Limited. However, there would be no order as to costs in both Appeals.

(SMT. VIBHA KANKANWADI, J.)

(S. C. DHARMADHIKARI, J.)