

ORDER SHEET

TA NO.52 OF 2012  
WITH  
T NO.6 OF 2012

IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE

*SAREGAMA INDIA LTD.*  
*Versus*  
*BALAJI TELEFILMS LTD. & ORS.*

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

Date : 18th April, 2012.

Mr. P. Chatterjee, Mr. S. N. Mookherjee, senior advocate,  
Mr. R. Bachawat, Mr. D. Ghosh, Mr. G. Banerjee,  
Mr. S. Roy Chowdhury...for petitioner.

Mr. S.K. Kapur, Mr. Tilok Kr. Bose, senior advocate,  
Mr. S. Sengupta, Mr. A. Guha, Mr. R. Dev...for defendant no.1

Ms. M. Bhattacharyya, Mr. S. Moitra...for defendant nos.4 & 5.

The Court : This is an interim application in a suit seeking an injunction on the defendants from broadcasting or by any other means showing the cinematograph film titled "Dirty Picture" or at any rate the song therein "Ooh La La Ooh La La".

The cause for complaint is this. In part of the above song there is a lyric and tune "Ooh La La Ooh La La". It is said that this part of the song infringes the copyright of the plaintiff in the song "Ui Amma Ui Amma". This song also has a part, which runs "Ui Amma Ui Amma". This song is of an old hindi film "Mawali" the music of which was composed by Mr. Bappi Lahiri.

It is submitted that the “satellite launch” of the film would be on Sunday i.e. 22<sup>nd</sup> April, 2012. This means that the film will be widely telecast on and from that day. The plaintiff would be satisfied if the said part of the song “Ooh La La Ooh La La” is deleted.

During hearing of this application both the songs were played on a laptop for my hearing. Upon hearing the songs it appears to me that the tune of the said part of the song in the film “Dirty Picture” is quite similar to the tune of the said old song. But Mr. S.K. Kapur and Mr. Tilak Kumar Bose, learned senior advocates appearing for the first defendant submit that such a small part of the old song spanning a few seconds has virtually no content in lyric or music and hence there is no copyright of any person in it.

It cannot be said that the allegedly offending part of the song “Ooh La La Ooh La La” is a copy of that part of the old song, it was submitted.

Furthermore the said learned Counsel for the said defendant submitted that the Deed of Assignment of copyright which the plaintiff relies on, is not valid as there is no specific duration of the assignment mentioned in the deed. I was shown section 19(5) of the Copyright Act, 1957 which says that if the period of assignment is not stated it shall be deemed to be five years from the Deed of Assignment.

But the learned counsel for the plaintiff very rightly pointed out that this sub-section 5 of section 19 was introduced at a much later point of time after the assignment. On perusal of the Deed of Assignment it appears prima facie to be an unconditional and absolute assignment and before the amendment. Therefore, this point regarding validity of the assignment, prima facie fails.

What is very important are the undernoted facts.

The music of the film “Dirty Picture” was released on television on 21<sup>st</sup> October, 2011. The film was released on 2<sup>nd</sup> December, 2011.

The plaintiff relies on an opinion of a musicologist dated 21<sup>st</sup> January, 2012 being Annexure "C" at page 47 of the petition which certifies that the said part of the song in the film "Dirty Picture", is similar to the said old song.

The learned Counsel for the first defendant further submits that the plaintiff had waited so long to move this application. The plaintiff ought to have been aware and is deemed to be aware of the broadcast of the music of the film "Dirty Picture" on television from 21<sup>st</sup> October, 2011. They ought to have been were further made aware by release of the film on 2<sup>nd</sup> December, 2011. Therefore, there was no cause for them to wait for such a long time. Having so waited they have lost their right to get an ad interim order of injunction as held by the Hon'ble High Court of Bombay in the unreported case of Mr. Ajay Monga vs. Red Chillies Entertainment Pvt. Ltd. decided on 6<sup>th</sup> August, 2008 and the Division Bench Judgment of the said High Court in Nariman Pictures and Ors. Vs. Baba Arts Ltd. And Ors. decided on 22<sup>nd</sup> December, 2011.

Now I come to my prima facie findings.

After hearing both the songs I find that the tune of the allegedly infringing part of the song in the film "Dirty Picture" is substantially similar to the said part of the old song. The words are different but when these words are set to tune, the over all impact is substantially similar to the said part of the old song. I have considered the Judgment of Ram Sampath vs. Rajesh Roshan & Ors; 2009(40) PTC 78(Bom.) cited on behalf of the plaintiff that even a small part of the song is capable of copyright protection. Thus, a prima facie case of infringement has been made out by the plaintiff.

But two things have to be considered.

The first is the above question of delay. In my opinion, there has been an inordinate delay by the plaintiff in approaching this Court. The Supreme Court of India in the case of Medas Hygiene Industries (P) Ltd. & Anr. Vs. Sudhir Bhatia & Ors.

reported in (2004) 3 SCC 90 has said that if infringement is established then injunction must follow as a matter of course. But the two decisions of the Bombay High Court referred to by me earlier show that when the balance of convenience is altered by reason of delay then the above principle of automatic grant of injunction may not be applicable. It was submitted by Mrs. Bhattacharya, learned Advocate appearing for the fourth and fifth defendants that her clients have bought the broadcasting rights from the first defendant for about Rs.25 crores gross. The film is scheduled to be telecast on 22<sup>nd</sup> April, 2012. If an injunction is granted now, there would be an irreparable prejudice to their rights and contentions.

I take into account such submission.

I also take into account the letter on behalf of the plaintiff dated 7<sup>th</sup> February, 2012 to the first three defendants that there was infringement of their above copyright but they were ready and willing to grant a licence to them. Everybody knows that such a licence is granted on consideration.

Furthermore, in my opinion by virtue of Medas Hygiene Industries [P] Ltd. & Anr. Vs. Sudhir Bhatia & Ors. [supr] the plaintiff was entitled to injunction irrespective of delay. But because of a substantial alteration of the balance of convenience I am not granting any injunction. But the plaintiff have not lost the right of exploitation of the copyright by sale of the licence. By such sale they would have got cash immediately. Damages will suffice to compensate for this infringement.

It was submitted on behalf of the plaintiff that if such licence was requested from them at the point of time they wrote the above letter dated 7<sup>th</sup> February, 2012 they would have expected a minimum of Rs. 2 Crores for grant of that licence.

In appreciation of the above prima facie case and balance of convenience I pass the following order :

The defendants will be permitted to make broadcast of the film "Dirty Picture" upon condition that the first defendant will deposit a sum of 'Rs. 2 Crores with the Registrar, Original Side within 25<sup>th</sup> April, 2012, to the credit of the suit. The Registrar will invest the fund in a short term deposit with a nationalised bank. It is also ordered that till the above deposit is not made in Court the said defendant will not operate any bank account without leaving a withdrawable balance of Rs. 2 Crores. If such balance is unavailable in their bank account today, the first defendant will not deal with any asset belonging to them without setting apart assets worth Rs.2 crores. They will file an affidavit in this Court stating the banks where they have accounts, the balance as of date, the details of other assets, if applicable, with a copy to the plaintiff. Such affidavit is to be filed only if the above deposit is not made.

Affidavit-in-opposition by 7<sup>th</sup> May, 2012, list this application on 17<sup>th</sup> May, 2012 and Affidavit-in-reply may be filed in the meantime.

Stay of operation of this order is prayed for by the defendants. Such prayer is considered and refused.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(I. P. MUKERJI, J.)

Pkd./Msen.