

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

% **Date of decision: 07 MARCH, 2018**

+ **CS(COMM) 192/2017, IA No.3194/2017 (u/O XXXIX R-1&2 CPC) & IA No.8323/2017 (u/S 151 r/W O-XII R-6 CPC)**

NOVEX COMMUNICATION PRIVATE LTD..... Plaintiff

Through: Mr. Jasdeep Singh Dhillon,
Adv.

Versus

**NATIONAL RESTAURANT ASSOCIATION
OF INDIA & ORS**

..... Defendants

Through: Mr. Sanjay Gupta, Adv. for D-1.
Mr. Ajay Verma & Ms. Diviani
Khanna, Advs. for D-2.
Mr. Anip Sachthey, Ms. Anjali
Chauhan & Ms. Ria Sachthey,
Advs. for D-3.
Mr. H.L. Rana, Adv. for D-4.
Mr. Anuj Sharma, Adv. for D-5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff, claiming to be an assignee, licensee or authorized agent of various copyright owners, has instituted this suit against defendant no.1 National Restaurant Association (NRA), an association of restaurants and against defendants no.2 to 5 viz. Essex Farms Pvt. Ltd., The Embassy Restaurant, Azure Hospitality Pvt. Ltd. and Kapco Banquet and Catering Pvt. Ltd., being a few of the restaurants in Delhi who are members of defendant no.1 association, for the following reliefs:

(i) declaration that the letters dated 9th December, 2015 and 22nd December, 2015 issued by the defendant no.1 are illegal and hence null and void;

(ii) permanent injunction a) restraining the defendant no.1 from issuing letters denying the legitimate rights of the plaintiff; b) restraining the defendant no.1 and its members including the defendants no.2 to 5 from acting in furtherance of the letters dated 9th December, 2015 and 22nd December, 2015; and, c) restraining the defendant no.1 and its members including defendants no.2 to 5 from publicly performing or in any manner communicating the sound recordings in which the plaintiff has rights;

(iii) for rendition of accounts; and,

(iv) recovery of damages in the sum of Rs.1,00,01,000/- from the defendant no.1.

2. It is the case of the plaintiff, that the defendant no.1 vide its letters dated 9th December, 2015 and 22nd December, 2015 to the plaintiff, taking a stand that the plaintiff has no right to do so, requested the plaintiff not to approach the members of the defendant no.1 a) for granting licences in the sound recordings in which the plaintiff claims rights or b) call upon the members of defendant no.1 to show licences for the said sound recordings.

3. The suit was entertained and summons / notice of the application for interim relief issued though no *ex parte* relief sought granted.

4. The counsels for all the defendants appear.

5. The pleadings in the suit have been completed and the suit is ripe for framing of issues and for consideration of the application of the plaintiff for interim relief and of the defendant no.1 for dismissal of the suit under Order XII Rule 6 of the CPC on the ground that the plaintiff is not a copyright society within the meaning of Section 33 of the Copyright Act, 1957.

6. However the pleadings in the applications are stated to be not complete and the counsels are thus not ready to address on the applications. I have, in an attempt to frame the issues in the suit, perused the pleadings and heard counsels and during which the aforesaid facts emerged.

7. I have enquired from the counsel for the plaintiff as to how the suit for the reliefs claimed is maintainable.

8. The plaintiff can have no grievance or cause of action against the defendant no.1 association, for taking a stand or for being of the opinion that the plaintiff has no right in the sound recordings with respect to which the plaintiff is offering licences to the members of the defendant no.1 and advising its members not to take licences from the plaintiff.

9. The counsel for the plaintiff states that such action of the defendant no.1 association is affecting the business of the plaintiff inasmuch as the members of the defendant no.1 are not coming forward to obtain licences from the plaintiff; it is thus suggested that the plaintiff has a cause of action

10. I have enquired from the counsel for the plaintiff, whether the plaintiff can force the members of the defendant no.1 association to take licences from the plaintiff.

11. The counsel for the plaintiff replies in the negative.

12. It is however stated that if the members of the defendant no.1 association, without obtaining licences from the plaintiff, in their respective restaurants play the sound recordings or songs in which the plaintiff has a copyright, the plaintiff can sue therefor.

13. The cause of action for the present suit, at least from the prayer clause, is the letters dated 9th December, 2015 and 22nd December, 2015 of the defendant no.1 to the plaintiff and communication by the defendant no.1 to its members of the same and not the action of the defendants no.2 to 5 of infringing the copyright claimed by the plaintiff. So much so, that the plaintiff, in this suit, has sought recovery of damages only from the defendant no.1 and not from the defendants no.2 to 5 against whom the relief of injunction from infringing the copyright has been claimed.

14. The counsel for the plaintiff then contends that since the stand taken / opinion formed by the defendant no.1 association is affecting the business of the plaintiff, the plaintiff is entitled under Section 34 of the Specific Relief Act, 1963 to seek declaration of the same being wrong.

15. However, the counsel for the plaintiff agrees that even if such a declaration was to be granted, the same would still not compel the members of the defendant no.1 association to obtain licence from the plaintiff.

16. I have enquired from the counsel for the plaintiff, whether not he himself renders opinions to his clients and whether it is open to the persons against whom the counsel has given an opinion to his clients, to restrain the counsel from so giving opinion or to seek declaration that the opinion given by the counsel is wrong.

17. The counsel states that legal opinion stands on a different footing than the opinion rendered by the defendant no.1 association to its members.

18. In my opinion no.

19. In fact, the very purpose of forming an association, as the defendant no.1 is, is to take care of / safeguard the common interest of a class of persons, for the sake of preventing each of such persons spending time and money qua the same matter. I may also add that the defendant no.1, in all probability, would have taken the stand / formed the opinion aforesaid and communicated so to its members, only after obtaining legal advice and the plaintiff cannot stop the defendant no.1 from performing its functions, for performing which it has been constituted / formed. Just like the counsel for the plaintiff, with respect to legal opinions given to his clients has contended that the same are privileged, similarly the communications of the defendant no.1 to its members cannot furnish a cause of action to the plaintiff.

20. I may add that Section 60 of the Copyright Act expressly confers on an aggrieved person a right against a person claiming to be the owner of copyright and threatening with legal proceeding or liability for infringement of copyright, of seeking declaration that the

threats of infringement or liability therefor are wrong/ misplaced and to injunct such person from making such claims and / or meting out such threats. It would thus be seen that rather than the plaintiff being entitled to declaration against the defendant no.1, it is the defendant no.1 who has been conferred a right under the statute to, if of the opinion that claims of plaintiff of copyright and threats meted out by plaintiff of infringement are groundless, institute a suit seeking such declaration and to injunct plaintiff from doing so. Though the defendant no.1 has not instituted any such suit but certainly is entitled to form such opinion and communicate the same to its members and the plaintiff, in law cannot have any cause of action thereagainst.

21. Copyright is a statutory right. The statute i.e. the Copyright Act, though has vested a right to sue a person claiming copyright and threatening another with legal proceedings and liability for infringement thereof, has not vested such right to sue a person denying copyright, as the defendant no.1 is denying copyright claimed by plaintiff. The only right conferred under Section 55 of the Act on a person claiming copyright, is to sue for infringement thereof. It is not the case of the plaintiff that the defendant no.1 association is infringing the copyright claimed by plaintiff. Mere denial of copyright, as the defendant no.1 is doing, does not constitute infringement under Section 51 of the Act.

22. As far as reference to Section 34 of Specific Relief Act is concerned, in my opinion the same cannot be invoked to claim declaration of copyright without alleging infringement by the person against whom declaration is claimed. Copyright being only a creation

of statute and not a natural right, claims therefor axiomatically can only be as conferred by statute, and not outside the statute.

23. Thus, the suit, insofar as against defendant no.1 is concerned, is misconceived and not maintainable in law.

24. As far as claim of plaintiff against defendants no.2 to 5 is concerned, the counsel for the plaintiff has contended that the plaintiff though has not claimed damages from defendants no.2 to 5 but has claimed the relief of accounts from them.

25. However the fact remains that the cause of action for the present suit was the writing of the letters and the cause of action if any for restraining the defendants no.2 to 5 from infringing the copyright claimed by the plaintiff has to be agitated by the plaintiff by way of independent suits against each of the defendants no.2 to 5 who otherwise than being the members of the defendant no.1 association, have no commonality qua the cause of action for infringement. In fact, the counsels for defendants no.3&4 state that they, in their respective restaurants, are not playing any sound recordings or songs in which the plaintiff claims a right in this suit. The counsel for the defendant no.5 states that defendant no.5 is a Banquet Hall and itself does not play any music and music is arranged for by the persons availing the banqueting services of the defendant no.5. The counsel for the defendant no.2 also states that the defendant no.2 in its premises has banqueting services as well as a restaurant and the position qua the banqueting services is the same as of the defendant no.5 and no sound recordings or songs in which plaintiff claims rights are played in the restaurant portion.

26. The plaintiff, if at all has a cause of actions for infringement by defendants no.2 to 5 of copyright claimed by it and is desirous of suing the defendants no.2 to 5 for any relief, cannot be permitted to join the said causes of action and will have to take independent proceedings against each of them, setting out the cause of action and the claim.

27. The counsel for the plaintiff states that the statement of the counsels for the defendants no.2 to 5 aforesaid be recorded and the defendants no.2 to 5 be bound thereby.

28. Any such order would result in the plaintiff subsequently filing executions or other applications alleging violation and which cannot be allowed without the rights of the plaintiff being proved / established in a properly constituted proceedings as aforesaid.

29. The suit, insofar as against the defendant no.1 is thus dismissed as not maintainable and the suit, in so far as against defendants no.2 to 5, is disposed of with liberty to the plaintiff to take appropriate proceedings for infringement if any by the defendants no.2 to 5 of the copyright claimed by the plaintiff.

No costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MARCH 07, 2018

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