

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

**NOTICE OF MOTION IN COMMERCIAL  
DIVISION MATTERS (L) NO. 3199 OF 2018  
IN  
COMMERCIAL IP SUIT (L) NO.1763 OF 2018**

Novex Communication Private Limited ...Applicant

V/s.

Goldenglobe Hotels Private Limited ...Respondent

----

Mr.Rashmin Khandekar a/w Mr.Kunal Parekh i/b Dua Associates for  
the Applicant/Original Plaintiff.

----

**CORAM : SMT.BHARATI H. DANGRE, J.**

**DATE : 26<sup>th</sup> DECEMBER 2018  
(VACATION COURT)**

**P.C.**

1. The plaintiff, a Private Limited company who claims to be the owner/assignee of the sound recordings has instituted the suit seeking a declaration that the defendant, a Private Limited Company which is an offshore casino, be restrained from publicly performing or in any manner communicating sound recording of the songs assigned to the plaintiff without any licence being issued. It is the claim of the plaintiff that the company, has entered into various agreements with the different music labels and has acquired rights of ground public performance of several sound recording of the

songs contained in the films of the said entities. It is alleged that the defendant company, in its course of business organizes various commercial events, etc at the casino and conducts live performances, 'DJ' nights etc.

The plaintiff claims that he is the owner of certain copy rights in sound recordings and the musical composition and in such circumstances the action of the defendant in indulging into performing any of this sound recordings or playing the sound recordings in any of the events organized by it is infringement of his copy right and he is ready and willing to permit the said performance only in terms of the license that would be issued to the defendant.

2. The plaintiff has also taken out a Notice of Motion and has made attempt to serve the defendant. It has also been conveyed to the defendant that the matter is listed before the Court today and a request was made to remain present. Thereafter, when the matter is posted at 3.00 p.m. another notice is served and it is intimated to the defendant that the Notice of Motion would be pressed and an ad-interim relief is being sought. On directions of this Court an affidavit of service is placed on record and the plaintiff has placed on record the two intimations which are addressed to the defendant

and which are duly received by them. However, when the matter is called out today at the end of the day neither the defendant nor the counsel is present.

3. I have carefully perused the pleadings in the suit and also the averments made in the affidavit supporting the Notice of Motion. The plaintiff has made *prima-facie* case that he possess on Ground Public Performance rights in the sound recordings and he has placed on record the copies of the agreement by which the rights have been acquired. In light of these agreement the plaintiff is entitled to claim that the defendant be restrained from using any of these sound recordings without seeking a license from the plaintiff.

4. In such circumstances, the Notice of Motion is granted in terms of prayer Clause (a) and it is made clear that only on the plaintiff issuing such a licenses, the defendant would be entitled for public performance of the sound recordings of the plaintiff in respect of which the plaintiff has a copy right.

In case of the defendant securing the license from the plaintiff and publicly performing the work of the plaintiff, in such a contingency the recording of the event should be presented to the

plaintiff within a period of 15 days so as to verify as to whether the entire event was based on the plaintiff's work or otherwise since the plaintiff would be entitled only for asserting his claim of license qua his work. Let the Notice of Motion be listed after four weeks.

**(SMT.BHARATI H. DANGRE, J.)**