

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 13<sup>TH</sup> DAY OF DECEMBER 2018

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

**MICELLANEOUS FIRST APPEAL No.7420 OF 2018 (IPR)**  
**C/W**

**MICELLANEOUS FIRST APPEAL No. 7421 OF 2018 (IPR)**

**IN MFA No.7420 OF 2018**

**BETWEEN**

Smt. Shumita Deb  
D/o. Probodh Chandra Dey  
@ Manna Dey  
Aged about 59 years,  
No.402, 4<sup>th</sup> Cross, 5<sup>th</sup> Main,  
HRBR 2<sup>nd</sup> Block,  
Bengaluru-560043.

...Appellant

(By Sri. K.N.Phanindra, Sr. Counsel for  
Ms. Sunayana Basu Mallik and  
Sri. Shanth Nagendra, Advocates)

**AND**

1. Saregama India Limited  
2<sup>nd</sup> Floor, Spencer Building,  
30 Forjett Street, Landmark,  
The Lane Opp. Bhatia Hospital  
Grant Road (West)  
Mumbai - 400036.  
Represented by Managing Director

Also at Kolkata Office  
33, Jessore Road,  
Dum Dum  
Kolkata-700028.

Also at Bengaluru Office  
Basaveshwaranagar  
Siddiahpuranik Road,  
Near Karnataka Bank  
Bengaluru-560079.

2. Sony DADC Manufacturing (I) Pvt. Ltd.  
Plot No. C-106, TTC Industrial Area  
Pawne MIDC, Pawane Village  
Navi Mumbai – 400705  
Represented by Managing Director.

...Respondents

(By Sri. S.S.Naganand, Sr. Counsel for  
Sri. Achal Anand V J., Advocate for R1,  
Sri. Harshith, Advocate for M/s Agra Legal for R2)

This MFA is filed under Order 43 Rule 1(r) read with Section 151 of CPC, 1908, against the order dated 25.06.2018, passed on I.A.No.2 in O.S.No.6676/2017, on the file of the XVIII Additional City Civil Judge, Bengaluru, (CCH-10), dismissing the I.A.No.2 filed under Order 39 Rule 1 & 2 of CPC.

**IN MFA No.7421 OF 2018**

**BETWEEN**

Smt. Shumita Deb  
D/o. Probodh Chandra Dey  
@ Manna Dey  
Aged about 60 years,  
No.402, 4<sup>th</sup> Cross, 5<sup>th</sup> Main,  
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(By Sri. S.S.Naganand, Sr. Counsel for  
Sri. Achal Anand V J., Advocate for R1,  
Sri. Harshith, Advocate for M/s Agra Legal for R2)

This MFA is filed under Order 43 Rule 1(r) read with Section 151 of CPC, 1908, against the order dated 25.06.2018, passed on I.A.No.1 in O.S.No.6676/2017, on the file of the XVIII Additional City Civil Judge, Bengaluru, (CCH-10), dismissing the I.A.No.1 filed under Order 39 Rule 1 & 2 of CPC.

These MFAs coming on for admission this day, the court delivered the following:

**JUDGMENT**

The plaintiff in O.S.6676/2017 on the file of XVIII Additional City Civil Judge, Bengaluru, has filed these two appeals aggrieved by the order dated 25.06.2018 dismissing her applications -I.A.Nos.1 and 2 filed under Order XXXIX Rules 1 and 2 CPC. These two appeals are disposed of by common order. The necessary facts for disposal of these appeals are as follows : -

2. The plaintiff's suit is for permanent injunction to restrain the defendants or anybody claiming under them from manufacturing, circulating, distributing, disseminating or selling by way of remixes, adaptations, cover versions or any other manner, infringing or violating the copyrights over the compositions and songs of late Manna Dey. The plaintiff is the daughter of a legendary singer of yesteryears Sri Prabodh Chandra Dey, popularly known as Manna Dey. The plaintiff has stated that she received training from her father and had rendered joint performances with him. In the year 2000, Sri Manna Dey moved to Bengaluru. On 26.08.2013,

Manna Dey executed a Power of Attorney in favour of the plaintiff. Sri Manna Dey authorized the plaintiff to manage his business like to receive royalty, to protect his proprietary rights, to take legal action for any violation, for safeguarding his interest and to release newspaper advertisement and other information to the media to safeguard his interest and generally do all other acts such are necessary. After demise of Manna Dey, defendant no.1 released a music album C.D.No. CDNF143737 titled "Hoyto Tomari Jonno" containing 14 songs of late Manna Dey and sung by Smt. Swagatalakshmi. These songs were embedded in the first defendant's new music player "Saregama Caravan" which was launched during May 2017. The songs are distortion of the original songs of late Manna Dey. This amounted to infringing the copyrights of Manna Dey. These songs were released in the cover versions. In fact during the year 1992 the first defendant released one cover song of Manna Dey and this was opposed by him. The first defendant illegally and clandestinely represented that it is the copyright holder of Manna Dey and therefore engaged Smt. Swagatalakshmi

to sing his songs. The first and second defendants manufactured, reproduced, released and distributed the songs of Manna Dey in the infringed C.D without any permission from the plaintiff, the legal heir of Manna Dey. Therefore, according to the plaintiff, the acts of the defendants amounted to infringing the copyrights of Sri Manna Dey. In the suit filed by her, she filed two applications for temporary injunction to restrain the defendants from manufacturing, circulating, distributing, disseminating or selling by way of remixes, adaptations or copy versions, infringing or violating the copyrights over the compositions and songs of Manna Dey. The plaintiff stated that pending disposal of the suit if an order of temporary injunction is not granted, her interest will be very much affected on account of infringement of the copyrights of Manna Dey by the defendants.

3. The first defendant has stated that it was formerly known as 'Gramophone Company of India Limited' which was popular by the name 'HMV' (His Master's Voice) and that it is the successor in interest of the said Company. The first

respondent has denied that the plaintiff has any right to assert copyright of her father in respect of the 14 songs. Out of 14 songs, the songs at sl.nos.3 and 5 were composed by Late Manna Dey. In respect of other songs Sri Manna Dey was not either lyricist or composer, but he was only a singer of those songs and therefore he was not covered under the definition of the term 'author' under the Copyright Act, 1957. It has also contended that the songs at sl.nos.4, 6, 7 and 9 were part of cinematograph films and therefore the producers of those films were the first owners of all the works. The producers of these cinematograph films assigned their interest in favour of the first respondent. In so far as the songs at sl.nos. 3 and 5 are concerned, it is contended by the first respondent that the lyricists of those songs are Mr.Bankim Ghosh and Pulak Banerjee and those songs were produced by it. The lyricists were the first owners and that they assigned their interest in favour of first respondent. Though Late Manna Dey was the composer of the songs, he assigned his interest to the first respondent by executing two agreements on 06.05.1957 and 17.11.1965. Therefore, the

first respondent has contended that it has the absolute discretion to manufacture, reproduce, sell, use, etc., of all or any of the titles recorded pursuant to the agreements. The first respondent was paying royalty to Sri Manna Dey and the same has been acknowledged by him in the General Power of Attorney produced by the plaintiff. The first respondent has stated that the plaintiff has concealed the actual facts and misrepresented before the court that Manna Dey was the author and owner of the 14 songs. The intention of the plaintiff is to make unlawful and unjust gains. She cannot claim any authorship or ownership over the said songs. The first respondent has not infringed the plaintiff's copyright, question of infringement does not arise in these circumstances. Therefore, the plaintiff has not made out prima facie case; balance of convenience and relative hardship do not lie in her favour and that she cannot claim temporary injunction.

4. The court below, for denying the temporary injunction, has assigned reasons that the plaintiff is asserting her right on the basis of a power of attorney dated



26.08.2013 said to have been executed in her favour by her father. But, with the death of her father, the power of attorney also came to an end and the plaintiff cannot represent herself to be an agent of her father and claim copyright.

5. It is also held that except two songs, the other songs were not composed by late Manna Dey, nor was he a lyricist; therefore he was not the author of 12 songs. In regard to other two songs composed by Manna Dey, he had assigned his interest by executing two agreements dated 06.05.1957 and 17.11.1965. The two songs were covered under these agreements. The first defendant was the producer of ten songs; therefore it was the author. The other four songs are part of cinematographic films and their producers are the authors. The plaintiff, thus cannot claim copyright and complain of infringement of her right. With regard to cover version, the court below has held that Section 31C of the Copyright Act applies to third parties who want to make a sound recording and it is not applicable to the present case as the first defendant appears to be owner of copyright. It is

further held that if the plaintiff has suffered loss, she can claim damages, but no case exists for granting temporary injunction.

6. The learned counsel for the appellant assailed the impugned order by arguing that the court below has not exercised proper discretion. According to him apparently infringement of copyright can be noticed. The cover of the CD contains the picture of Sri. Manna Dey and the defendants admit that at least two songs were composed by Manna Dey. This much material is sufficient to lean towards plaintiff. With reference to the two agreements that the defendants relies upon, the learned counsel submitted that they were in connection with performance; they do not contain any clause showing assignment of interest by Manna Dey in favour of the defendants. He referred to Section 31C of the Copyright Act to argue that before releasing the cover version, it was necessary that the defendants should have given prior notice in compliance of the said Section. Violation of Section 31C of the Act itself amounts to infringement of Copyright. Therefore it was the argument

that the conclusions drawn by the court below do not stand to reasoning, and are arbitrary. He also argued that in the given set of circumstances, awarding damages is not an adequate remedy. In support of his arguments, he referred to some decisions viz., ***Penguin Books Ltd., Vs. M/s. India Book Distributors and others [ILR (1985) I Delhi 35]***, ***K.P.M. Sundhram Vs. M/s. Rattan Prakashan Mandir and others [AIR 1983 SC Del 461]***, ***Deshmukh and Co. (Publishers) Pvt. Ltd., Vs. Avinash Vishnu Khandekar and Others [2005 (3) Mh.L.J. 387]*** and ***Saregama India Ltd., Vs. Suresh Jindal and others [AIR 2006 Cal 340]***.

7. The learned counsel appearing for respondents/defendants canvassed the points that Sri. Manna Dey never claimed copyright in respect of the subject matter songs, and the plaintiff, being his daughter cannot assert any kind of copyright. He referred to plaint where cause of action for suit is stated to have firstly arisen three years prior to date of suit. It is evident that she did not take action for three years. Delay defeats rights, and this delay itself can be considered to dismiss the appeal. He further

argued that Late Manna Dey was not the author for 12 songs, this is not disputed. He only sang those songs and he did not have copyright over these songs. Out of 12 songs, 4 songs were part of cinematograph films, and the producers of those films assigned their interest in favour of defendants. With regard to two songs composed by Manna Dey, he executed two agreements assigning interest in favour of defendants and therefore the plaintiff has no right to claim copyright. He also argued that while deciding an application for temporary injunction relating to copyright, equitable considerations do not arise as copyright is statutory. With regard to Section 31C of the Copyright Act, the learned counsel for the respondent argued that the said Section is not applicable because the CD that the defendants have released is not a cover version. These being the circumstances, the plaintiff cannot claim an order of temporary injunction. A perusal of the impugned order shows that the court below has rightly come to conclusion that there is no case for granting temporary injunction. When the discretion appears to have been exercised

properly, the appellate court should not interfere. Therefore he argued for dismissing the appeal.

8. I have considered the points of arguments. The plaintiff is complaining of infringement of copyright by the defendants in respect of 14 songs. It is undisputed fact that out of the 14, only 2 songs were composed by Manna Dey and therefore according to section 2(d)(ii), he was the author of those two songs. The other 12 songs were not composed by Manna Dey and therefore he was not the author. Of these 12 songs, the songs at sl.nos. 4, 6, 7 and 9 were part of cinematograph films. For these reasons even if all these 12 songs had been sung by Sri Manna Dey, the plaintiff cannot say that her father was the author or the first owner of the songs. The copyright vests with the producer of the cinematograph films and the authorship with the composer of those songs. So far as 2 songs composed by Manna Dey is concerned, the defendants rely upon two agreements referred to above. According to the plaintiff these agreements were only performance agreements for a particular period and not agreements showing assignment of

his rights by Manna Dey. It is very difficult to accept this argument at this stage because the clauses 6, 7, 8 and 9 make it very clear that the predecessor in interest of the defendant company had been given absolute discretion to manufacture, sell, catalogue the records of all or any of the titles in any part of the world. In fact, clause (8) further makes it clear that the company was the owner of the original plate within the meaning of the Indian Copyright Act, 1914. Though in clauses (1) and (2) of the agreement there is a reference to the word 'performance', if the agreement as a whole is read, it is possible to interpret that Sri. Manna Dey had agreed to give performance as per the requirement of Gramophone Company besides agreeing to other conditions envisaged in clause 6 and onwards. The learned counsel for the appellant has relied upon two judgments in the case of **K.P.M.Sundhram** and **Deshmukh and Company** (supra), In these two judgments it is held that if the consideration under the agreement consists of payment of royalties or a share of profits rather than a sum of money as downright payment, it is difficult to say that

there is assignment of interest. I do not think that at the time of deciding an application for temporary injunction, such a minute examination of the terms of the agreement is permitted and such an exercise can be taken up only after conclusion of recording of evidence. The agreements produced by the respondents show a kind of assignment by Sri Manna Dey for consideration and therefore these two agreements cannot be ignored now by simply holding them as performance agreements.

9. By referring to Section 31C of the Copyright Act, 1957, the learned counsel for the appellant argued that non-compliance of this section violates Copyright. This section envisages that any person having obtained licence or consent of the owner of the right in the work, may make a cover version and such person should give prior notice of his intention to the owner of rights in respect of copies to be made by him at the rate fixed by the appellate Board. I do not think that the plaintiff/appellant can make use of this section for vindicating her rights as she does not appear to be the owner. Moreover she claims right on the basis of

Power of Attorney said to have been executed by her father. It is difficult to say that she can act on the power of attorney after death of her father.

10. The learned counsel for the appellant has also referred to two more judgments namely **Saregama India Limited and Penguin Books Limited** (supra). The first of these judgments has been probably relied upon in the context of what is stated in para 49. Because the agreements referred to by the defendant contain a time period, the appellant, by placing reliance upon this judgment, tries to emphasise that those two agreements were not for unlimited time. It is difficult to apply the ratio laid down in this judgment to the facts of the case as the period that is found in these two agreements may be in relation to performance and not in relation to other clauses of the agreement.

11. The second case in **Penguin** (supra), it is held in para 47 that in actions of infringement of copyright, damages are not often adequate remedy since there are difficulties in



ascertaining and quantifying the damages as injury to the plaintiff's property, business and goodwill. But if relief no.7 claimed in the plaint is seen, the plaintiff appears to have quantified damages at Rs.10,00,000/- towards unlawful monetary benefit made by the defendants by violating the moral rights of Sri Manna Dey. Therefore, it is difficult to apply the ratio in Penguin Books Limited, anyway it is a matter to be decided by the trial court.

12. The learned counsel for the respondent has referred to judgment in ***Super Cassettes Industries Limited vs Mr.Chintamani Rao and Others [2011 SCC Online Del 4712]*** a case decided by the Hon'ble High Court of Delhi which has held that copyright is a statutory right and no person is entitled to copyright in any work otherwise than in accordance with the provisions of the Act. Therefore, applying this ratio, it can be very well held that the plaintiff cannot claim copyright of her father based on a power of attorney said to have been executed by her father. The plaint does not show existence of statutory right in her favour. Thus I find that the plaintiff has not made out a case

for grant of temporary injunction as has been prayed for in the two applications filed by her. The trial court has come to right conclusion that a case for grant of temporary injunction does not exist. The reasons given by trial court cannot be disturbed even though it is possible to take other view by upholding the plaintiff's case. Therefore, I conclude that these two appeals should be dismissed. Accordingly, they are dismissed.

**Sd/-  
JUDGE**

ckl/sd