

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

% **Date of decision: 4th January, 2021**

+ **CS(OS) 666/2006, IAs No.4558/2006 (u/S 10 CPC), 19921/2011 (u/O VI R-17 CPC), 9128/2012 (u/S 151 CPC) and 5953/2017 (u/O XI R12 CPC).**

THE INDIAN PERFORMING RIGHT SOCIETY LTD. Plaintiff

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr. Himanshu Bagai, Ms. Anu
Bagai, Mr. Akaashi Lodha, Mr.
Sanjeev, Advocates.

Versus

ENTERTAINMENT NETWORK (INDIA) LTD. Defendant

Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr. Ashish Verma, Ms. Prachi Johri,
Mr. Aditya Gupta, Mr. Shagun Trisal,
Advocates.

AND

CS(OS) 1996/2009

PHONOGRAPHIC PERFORMANCE LTD & ANR Plaintiffs

Through: Mr. Neeraj K. Gupta, Adv. for P1
Mr. Dayan Krishnan, Sr. Adv. with
Mr. Himanshu Bagai, Ms. Anu
Bagai, Mr. Akaashi Lodha, Mr.
Sanjeev, Advocates for Plaintiff
No.2

Versus

CRI EVENTS PRIVATE LIMITED & ORS Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. CS(OS) No.666/2006 was filed, on or about 22nd April, 2006, by the plaintiff The Indian Performing Right Society Limited (IPRS), pleading that, (i) the plaintiff is a company limited by guarantee and registered under the Companies Act, 1956 and also registered as a Copyright Society under Section 33 of the Copyright Act, 1957; (ii) the plaintiff was established to monitor, protect and enforce the rights, interests and privileges of its members, comprising of authors, composers and publishers of literary and/or musical works, who are owners of copyright in their literary and musical works; (iii) the plaintiff is the sole representative body of composers, authors and publishers of literary and musical works in India; (iv) after the amendment of the year 1994 of the Copyright Act, the plaintiff was re-registered as a Society under Section 33(3) of the Act, authorizing the plaintiff IPRS to carry on copyright business in literary and musical works; (v) the members of the plaintiff comprise of authors, composers and publishers of Indian literary and musical works, and have executed deeds of assignment, assigning their public performing rights in respect of the literary and/or musical works in favour of the plaintiff; (vi) the plaintiff is therefore the exclusive owner of the public performing rights in respect of these literary and musical works; (vii) the plaintiff is therefore exclusively authorized to license the public performing rights that exist with respect to literary and musical work created by its members; (viii) the primary task of the plaintiff is to collect royalties from users of music and thereafter disburse the same to the owners of the copyright in the music, whose interest it represents; (ix) the performing rights include right of performing the work in public and the right to communicate the work to the public by making it available for being seen or heard or otherwise enjoyed

by the public directly or by means of display or diffusion and the right of authorizing any of the said acts; (x) music is made by a team of persons comprising of different talents and consequently the copyright in different components of music may belong to a number of individuals; for example, there is a lyric writer who writes words of a song, there are music composers and then there are performers, who actually sing; (xi) under the Copyright Act, lyric writers and music composers create works which are recognized as literary and musical works in Sections 2(o) and 2(p) of the Act; (xii) under Section 2(ff) of the Act, communication to the public includes within its ambit, communication of any work through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel; (xiii) the owner of copyright in literary or musical works exclusively enjoys the rights as set out in Section 14(a) of the Act and which include the right to performing work in public or communicating to the public; (xiv) thus every broadcasting organization, shop, departmental store, showroom, emporium, restaurant, hotel, club, disco, bars, office establishments, television channels, music concerts etc. which play music, impinge on this right unless seek the permission of the plaintiff; (xv) Phonographic Performance Limited (PPL) is also a company incorporated under the provisions of Indian Companies Act and is engaged in the business of carrying on copyright business of its members in sound recordings assigned to PPL by its members who are leading music companies in India; (xvi) the registration of PPL under Section 33 entitles it to charge and collect license fee from users for sound recordings as defined in Section 2(xx) of the Act, for which rights vest in its members;

(xvii) PPL therefore charges and collects license fee from users, on behalf of its members who hold rights to cassettes, compact discs and such other media of sound recordings which are played and performed in public; (xviii) thus the plaintiff IPRS and PPL, though both registered under Section 33 as Copyright Societies, are registered for and in two different categories viz. musical works and sound recordings; (xix) exploitation of the sound recordings also implies exploitation of literary and/or musical works forming part thereof; (xx) accordingly, license fee for both these works i.e. musical works and sound recordings, have to be paid for separately by the users thereof, to each of the Societies; (xxi) consequently, entering into a license agreement with either Society, for using both, the musical works and sound recordings, will not absolve the user from entering into another appropriate license agreement with the other Society; (xxii) the defendant is engaged in the business of broadcasting and is commonly known by its brand name 'Radio Mirchi'; (xxiii) the defendant, in the year 2001 entered into agreements with the plaintiff for the broadcast of music in respect of seven cities in India; (xxiv) though the defendant has commenced broadcasting in three new cities in India but did not obtain a license from the plaintiff therefor and is repudiating the right of the plaintiff; (xxv) the defendant, after having accepted the rights of the plaintiff and after having taken license from the plaintiff with respect to seven cities, cannot so repudiate the rights of the plaintiff; and, (xxvi) the broadcast of music by the defendant, in the three new cities, without obtaining permission of the plaintiff, amounts to infringement of the public performance rights of the plaintiff. Accordingly the reliefs of, permanent injunction restraining the defendant from broadcasting/communicating to

the public, the literary and/or musical works in which the plaintiff has a copyright, and of recovery of damages, are claimed in the suit.

2. CS(OS) No.666/2006 came up first before this Court on 24th April, 2006, when the counsel for the defendants also appeared. Vide subsequent order dated 20th July, 2006, summons/notice of the suit and the application for interim relief were ordered to be issued.

3. The defendant has contested CS(OS) No.666/2006 by filing written statement *inter alia* pleading that, (i) initially, the plaintiff comprised of authors and composers as members, who believed that the copyright pertaining to literary and musical works vested in authors and composers; (ii) however in ***Eastern India Motion Pictures Association Vs. Indian Performing Right Society Limited*** AIR 1974 Cal 257 (DB) it was held that when a composer of lyrics or music, composes for the first time, for valuable consideration, for purposes of a cinematograph film, the owner of the film at whose instance the composition is made, becomes the first owner of the copyright in the composition and the composer acquires no copyright at all, either in respect of the film or its sound track, which he is capable of assigning; the composer can claim a copyright only on the basis of an express agreement, reserving his copyright, between him and the owner of the cinematograph film; the Act makes it clear that a cinematograph film includes its sound track and sound track means the area of a Motion picture film that carries the sound record; (iii) the aforesaid judgment was challenged in the Supreme Court and vide judgment reported as ***Indian Performing Right Society Vs. Eastern India Motion Pictures Association*** AIR 1977 SC 1443 it was held that the author/composer of a

lyric or musical work who has authorised a cinematograph film producer to incorporate his work in a cinematograph film and has thereby permitted him to appropriate his work by incorporating or recording it on the soundtrack of a cinematograph film, cannot restrain the author of the film from causing the acoustic portion of the film to be performed or projected or screened in public, for profit, or from making any record, embodying the recording in any part of the sound track associated with the film, by utilising such sound track or from communicating or authorising the communication of the film by radio diffusion, as Section 14(1)(c) of the Act expressly permits the owner of the copyright of the cinematographic film to do all these things ; (iv) the aforesaid judgment was followed in *Eastern India Motion Pictures Vs. Performing Rights Society Ltd.* AIR 1978 Cal 477, where it was held that the composers, authors and publishers of music have no copyright in the sound track and thus their association cannot have a better right inspite of any alleged assignment; (v) in 1994, certain amendments were introduced to the Copyright Act, which made it mandatory that only the owners of the copyright could be permitted to be members of the copyright society; inspite thereof, the plaintiff continues to hold non-owners of any copyright as its members; (vi) that in the modern scenario, as far as film music/songs/sound recording are concerned, the copyrights that vest in the film producer are bought over by the music companies and the music companies are the single owner of all rights which get incorporated in one right i.e. the sound recording right; the literary and music rights cease to exist individually and get merged in one copyright which is held by the music companies; (vii) the work which the defendant broadcasts, comprises

of three separate works in which copyright may subsist i.e. literary work comprising of lyrics, music work comprising of musical compositions and the sound recordings; (viii) the copyright with respect to literary and musical works gets incorporated/merged with the sound recording and the lyricists and composers are divested of rights and the entire bundle of rights in a song belongs to the music companies; (ix) the defendant cannot be compelled to separately execute a license agreement with the plaintiff, when the entire bundle of rights vests in the music companies and those rights are administered by PPL; (x) the defendant is already paying PPL with respect to its repertoire of works; and, (xi) the defendant, in the past had obtained licence from the plaintiff under the *bona fide* belief that the plaintiff has a right to collect the license fee but has now realised that the plaintiff has no right.

4. CS(OS) No.666/2006 was adjourned from time to time. The plaintiff filed IA No.3509/2010 to amend the plaint to also include the relief with respect to operations commenced by the defendant in other cities. The said application was disposed of vide order dated 19th March, 2010, with liberty to the plaintiff to take fresh proceedings with respect to the fresh cause of action. Review applied by the plaintiff of the said order was dismissed on 30th April, 2011. The plaintiff preferred FAO(OS) No.321/2011 and which was allowed. Thereafter, on 25th February, 2013, the counsels stated that issue entailed in the present suit was pending consideration before Supreme Court in SLP No.21082/2012. On 25th July, 2013, CS(OS) No.666/2006, CS(OS) No.1185/2006 (*The Indian Performing Right Society Ltd. Vs. Aditya Pandey and Anr.*) and CS(OS) No.1996/2009 (also dealt with in this judgment) were taken up together and adjourned again, on the submission

of the counsels that the issue entailed in all the three suits was pending consideration before the Supreme Court. Accordingly, further proceedings in all the three suits were adjourned *sine die*, with liberty to the parties to apply for revival as and when required. None applied for revival. However the suits were taken up on 23rd July, 2015 when it was informed that the issue was still pending consideration in the Supreme Court. Thereafter, on change of minimum pecuniary jurisdiction of this Court, vide order dated 30th December, 2015, CS(OS) No.666/2006 was transferred to the District Court. However, in terms of Notification dated 28th April, 2016 of this Court, CS(OS) No.666/2006 was transferred back to this Court.

5. CS(OS) No.666/2006 came up before the undersigned on 3rd November, 2016, when the senior counsel for the plaintiff, under instructions, withdrew the application for interim relief pending since the year 2006 and on which no order had been made, and drew attention to IA No.9128/2012 of the defendant for dismissal of the suit on the basis of an Arbitral Award and contended that the Arbitral Award had since been set aside. The counsel for the defendant however stated that the defendant, in IA No.9128/2012 had sought dismissal of the suit not only on the basis of Arbitral Award but also on the basis of judgment of the Division Bench of this Court in ***Indian Performing Right Society Ltd. Vs. Aditya Pandey*** 2012 SCC OnLine Del 2645 (DB) and which judgment had since been upheld by the Supreme Court in ***International Confederation of Societies of Authors and Composers (ICSAC) Vs. Aditya Pandey*** (2017) 11 SCC 437. It was the contention of the counsel for the defendant that the defendant, admittedly holding license from PPL, which is the assignee of Intellectual Property Rights in the cinematograph films whose songs the

defendant broadcasts on its radio channels, was not required to obtain license from the plaintiff, which claims to be the assignee of rights only in the literary and the music compositions forming part of the said songs. Per contra, the senior counsel for the plaintiff contended that the findings of the Division Bench of this Court and the Supreme Court in *Aditya Pandey* supra were at the stage of hearing of an application under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC) and the Supreme Court had expressly observed that the said findings would not have any bearing at the time of final disposal of the suit.

6. However, being not satisfied that the interpretation in *Aditya Pandey* supra by the Supreme Court of statutory provisions was not final, the hearing, on request of the senior counsel for the plaintiff, was adjourned. Thereafter, the counsels were heard on 7th November, 2016, 15th November, 2016, 8th February, 2017 and 4th December, 2017, when orders were reserved.

7. At this stage it is apposite to refer to CS(OS) No.1996/2009. The said suit has been filed by, both PPL and IPRS against CRI Events Private Limited (CRI) and its official Rajesh Verma as well as against the banquet hall Nitish Kunj *inter alia* pleading that CRI, a event management company, was organising events, also at the Nitish Kunj banquet hall, where music was played, without obtaining license from PPL or IPRS and were thereby infringing the copyright held by PPL and IPRS and seeking the reliefs of, (a) permanent injunction restraining them from causing communication to the public of sound recordings of PPL's repertoire by way of mechanical devices or any other means and from communicating to

the public the literary works and/or musical works of IPRS's repertoire; and, (b) recovery of damages. It is the plea of PPL and IPRS in the plaint (i) "Music is made by a team of persons comprising different talents and consequently, the copyright in the different components of the music may belong to a number of individuals. For example, there is a lyric writer who writes the words of a song (e.g. Majrooh Sultanpuri who is a well known Indian lyric writer). There is a second category of artists namely music composers (e.g. Naushad who is a legendary composer). Ultimately, the producer of the sound recording (the person who causes the sound recordings to be made) will own all the rights in the sound recording as well as the underlying works i.e. lyrics and musical compositions, having engaged the lyric writer and the music composer on a contract of employment or alternatively by virtue of specific contracts. Since in India, film music makes up a major part of music industry, music companies also source the rights from the film producers and effectively own all rights in the works mentioned hereinabove"; and, (ii) "The exploitation of a sound recording implies therefor, the exploitation of the underlying literary and/or musical work also. Accordingly, the license fee for these works, i.e. literary and musical works on the one hand and sound recordings on the other have to be paid for separately by the users thereof to ..." to PPL and IPRS.... "Consequently, entering into a license agreement with only one copyright society for using both the musical works and sound recordings will not absolve the user from entering into another appropriate license agreement with the other specific/particular society for the usage of the other work".

8. The defendants (though the presence in the order sheets is on behalf of all the defendants but the written statement is by CRI and its official only and not by Nitish Kunj) contested the suit by filing a written statement *inter alia* pleading, (a) that they as event organisers were merely aggregators and it is the disc jockeys who play musical works in events/functions/shows coordinated by CRI and would already have license from PPL and IPRS and similarly the hotel/banquet hall/business centre where such events are organised by CRI, would also have a license and CRI was not required to also obtain a license; and, (b) the events organised by CRI were of two kinds i.e. where entry was paid and others where there was no payment for the entry owing to a existing relationship between the person on whose behalf CRI organises the event and the invitees to the event; music played at events to which entry is not paid qualify as private and/or non-public use of music and there can be no infringement. Though certain other defences are also taken in the written statement, but the need to burden this judgment therewith, is not felt.

9. CS(OS) No.1996/2009 came up first before this Court on 26th September, 2009, when the counsels for the defendants appeared on caveat and written statements were ordered to be filed. Thereafter the suit was adjourned from time to time and ultimately the order dated 10th December, 2009 records “Arguments heard. Order reserved” and orders on the application for interim relief in CS(OS) No.1996/2009 were pronounced on 28th July, 2011 along with the orders on the application for interim relief in CS(OS) No.1185/2006 titled ***IPRS Vs. Aditya Pandey & Anr.*** aforesaid and against which order, appeals preferred to the Division Bench were dismissed vide judgment dated 8th May, 2012 in ***IPRS Vs. Aditya Pandey***

supra and against which judgment appeals were preferred to the Supreme Court and dismissed vide dicta in *ICSAC Vs. Aditya Pandey* supra.

10. It thus becomes relevant to notice in brief, the reasoning which prevailed in the order dated 28th July, 2011 supra in CS(OS) No.1996/2009. It was held, (a) that when a lyricist or music composer composes the lyrics or the musical score, he becomes entitled to exercise all the rights enumerated in Section 14(a) i.e. to reproduce the work in any material form, issue copies of the work to the public, to perform the work in public or to communicate to the public or to make any cinematograph film or sound recording in respect of the work or to make any translation of the work or to make any adaptation of the work; (b) when the sound recording copyright did not independently exist, they were perceived as part of the copyright in the film and it was held that if the film owner or copyright proprietor wishes to exhibit the film including the songs, he is not required to seek authorisation or separate license from the music composer or the lyricist, for communicating to the public, since it was an integral part of the film and this right extends to making any other sound recording embodying the said works or to sell or give the same on hire and to communicate the sound recording alone without the cinematograph film to the public; (c) when a sound recording is communicated to the public by whatever means, it is the whole work i.e. the lyrics, the score, the collocation of sounds caused by the equipment and the capturing of the entire aural experience – the musical or literary work per se is not communicated or broadcast – there is no method of separating musical and lyrical works while communicating the sound recording to the public; (d) thus when sound recording is communicated to the public or played in public or broadcast,

the musical and literary works though are communicated to the public but through the sound recording; (e) a musical or a literary work in itself, without the other elements of the sound recording, may not even be commercially viable; (f) therefore once a license is obtained from the owner or someone authorised to give a license in sound recording, for communicating it to the public, a separate authorisation or license is not necessary from the copyright owner of the musical or literary works embodied in that sound recording; (g) however this could not mean that the musical or literary work can be otherwise performed in public, apart from the sound recording, without authorisation from the owner of the copyright in the said musical or literary work and who remains entitled to enforce the same; (h) if the musical or literary works are performed in the public, by a performer , otherwise than by way of sound recording, license therefor will have to be obtained; and, (i) in case performance is of the literary or musical works without the sound recording, authorisation from IPRS is necessary; if performance before the public is of sound recording as well as by performers using literary and musical works, licence/authorisation from both IPRS as well as PPL will have to be taken. Accordingly, applications for interim relief against the defendants in CS(OS) No.1996/2009 were disposed of with the directions “that in case the defendants wish to perform sound recordings in public, i.e. play them, a license from PPL (mentioned as PPRS in that judgment) is essential; in case the musical works are to be communicated or performed in the public, independently, through an artist, the license from IPRS is essential. In case the defendants wish to hold an event involving performances or communication of works of both kinds to the public, the license or authorisation of both IPRS and PPL are necessary.

The defendants are accordingly restrained from communicating any of such work to the public, or performing them, in the public, without such appropriate authorisation or licensing pending adjudication of the suit”.

11. It is not necessary to notice the judgment of dismissal of appeals preferred against the aforesaid order/judgment on applications for interim relief in CS(OS) No.1996/2009 in as much as the matter ultimately travelled to the Supreme Court and I now notice the reasoning in the dicta of the Supreme Court and awaiting which these suits were kept pending and adjourned *sine die*. The Supreme Court, after noticing the controversy and the definitions of copyright author, sound recording, communication to the public and the provisions of Sections 13(4), 16, 17, 18, 19, 30 and 31 of the Act as it stands after the amendment of the year 2012, observed/held (i) that the producer of a sound recording is also an author but his right would not affect the separate right of any work in respect of which sound recording is made; (ii) that sub Section (10) of Section 19 inserted vide the amendment of the year 2012 providing “No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilisation of such work in any form”, which did not exist on the day the plaint in the suits from which the appeal had arisen to the Supreme Court was filed in the year 2006, was not to be considered since rights as existing in the year 2006 were to be considered; (iii) that conjoint reading of various provisions of the Act leave no manner of doubt that though each of the seven sub clauses of clause (a) of Section 14 relating to literary, dramatical or musical work, are independent of one another but reading these sub clauses

independently cannot be interpreted to mean that the right of producer of sound recording, who also comes under the definition of author and has a right to communicate his work to the public, is lost; (iv) the argument that the permission granted to PPL, was sans the right to communicate the sound recording to the public, cannot be accepted; and, (v) no error could be found in the judgment of the High Court. However the Supreme Court clarified, (a) that with effect from the amendment of the year 2012, the assignment of copyright in the work to make sound recording which does not form part of any cinematograph film, shall not affect the right of the author of the work to claim an equal share of royalties or/and consideration payable for utilisation of such work in any form by the IPRS; and, (b) that its findings were *prima facie*.

12. Though the senior counsel for the plaintiff was heard first, but since arguments were heard on the application of the defendant for dismissal of the suit, it is deemed expedient to record the submissions of the senior counsel for the defendant first. The counsels, besides verbal arguments also handed over written submissions which were taken on record.

13. The senior counsel for the defendant argued, (i) IPRS has instituted the present suit contending, that the defendant Radio, while broadcasting the sound recordings, without payment of license fee to IPRS, is infringing the copyright in the lyrical and musical works embodied in the sound recording; (ii) it is the contention of the defendant that no separate license fee is payable in respect of copyright in the underlying literary and musical works, once license fee is paid for communicating the derivative work i.e. the sound recording; in law, a sound recording is an independent work in

which there exists separate and independent copyright and the requisite licenses for the purposes of broadcasting the sound recording have been obtained by the defendant, as per IPRS also; (iii) issues similar to those which have arisen in the instant suit have been adjudicated by this Court and by the Supreme Court in *ICSAC Vs. Aditya Pandey* supra, wherein it has been held that no separate copyright in the underlying lyrical and musical works in a sound recording is exploited if the sound recording is exploited by communication through radio broadcast, as in the present case; thus the present suit, irrespective of the other defences of the defendant, is liable to be dismissed on this ground alone; (iv) the contention of IPRS, that there is duality of copyrights i.e. copyright in sound recording and copyright in underlying musical and lyrical works, is contrary to law because (a) sound recording is a separate copyright under Section 2(y) and Section 13 of the Act; (b) the first owner of the sound recording is its author i.e. its producer, vide Section 17 of the Act; (c) there is thus only one owner of the copyright work of sound recording i.e. its producer and neither the lyricist nor the music composer holds any copyright in the sound recording; (d) the owner of the copyright in sound recording or his assignee has exclusive right under Section 14(1)(e) including the rights to communicate the work to the public, under Section 14 (1)(e)(iii); (e) the exclusive authority to grant license to communicate the sound recording to the public is with the owner, under Section 18 of the Act; (f) IPRS claims to administer copyright only in literary or musical works belonging to its members and not in sound recordings; (g) there is a separate society i.e. PPL whose members are the authors of sound recording or their assignees and PPL has the exclusive right to administer copyright in sound

recordings; (h) under Section 51(a) of the Copyright Act, if the broadcast is done by the broadcaster under a license from the owner of the copyright work in sound recording, in accordance with the terms of such license, there is no infringement of copyright; (i) the defendant is not involved in the business of public performance of the sound recordings but only broadcasts the sound recordings by radio diffusion; (j) every recorded song *inter alia* consists of literary work i.e. the lyrics of a song, musical work i.e. music composition of the song and sound recording i.e. simultaneous integration of the differentiated, to produce an integrated whole; the integrated whole i.e. the sound recording, when broadcast to the public is an exercise of the ownership right on its own strength; separate and distinct copyright exists in respect of each of the aforesaid three elements as mutually exclusive as is clear from Section 2(y) of the Act; (k) copyright in each work consists of a bundle of rights, as recognised by Section 14 of the Act; thus when owner of a right in a particular class of work exploits his copyright in that work, it does not and cannot amount to exploitation of copyright in any other work; thus, when a cinematograph film is exhibited, the owner of the copyright in that cinematograph film exploits his copyright as provided in Section 14(a)(iii) i.e. of communicating the film to the public; (l) similarly when the owner of the copyright in a sound recording is broadcasting the sound recording, he is exercising his right under Section 14(e)(iii) and which he is fully entitled to; (m) the rights of an owner of a sound recording are in no way inferior to those of an owner of a copyright in the original literary or musical works and the owner of a sound recording has an unfettered and absolute right to exploit the sound recording in all the three modes specified in Section 14 (e); (n) when a

sound recording is legitimately made, the owner of the copyright in the underlying works which have been incorporated in the sound recording, cannot interfere in any manner with the exploitation of all rights of the owner of the copyright in the sound recording; (o) so long as it is the sound recording that is communicated, copyright in the underlying works is not infringed; (p) the owner of the copyright in the underlying works continues to retain the right of public performance or communicating it to the public but having allowed an independent work i.e. the sound recording to come into existence, he cannot object to that independent work being exploited in any manner permitted by Section 14(e) including by communicating to the public; (q) existence of parallel rights does not mean requirement of parallel licenses, especially when one of the parallel rights i.e. the sound recording is statutorily independently recognised; (r) reliance by the plaintiff on the judgment of the Division Bench of the High Court of Bombay in *Super Cassettes Industries Pvt. Ltd. Vs. Trimurti Films Pvt. Ltd.* 2017 SCC OnLine Bom 8999 is misconceived; the same concerns use of lyrics to create a new sound recording; and, (s) Supreme Court in *Entertainment Network (India) Ltd. Vs. Super Cassette Industries Ltd.* (2008) 13 SCC 30 has held that right in a sound recording is in no way inferior to right of an author of original literary work; (v) the contention of the counsel for the plaintiff that dicta of the Supreme Court in *Indian Performing Right Society Ltd. Vs. Eastern Indian Motion Pictures Association* (1997) 2 SCC 820 is not applicable, is erroneous, because: (A) the rationale and ratio of this judgment though in the context of a cinematograph film, applies squarely to sound recordings; (B) Supreme Court therein rejected the argument of requirement for separate licenses

and the argument of duality of rights; (C) it was held therein that once rights are passed by owners of underlying works, their claims are limited and the reliance placed therein on the British law, as before this Court, was rejected; (D) according to the said judgment, the exclusive rights of owner of a cinematograph film or sound recording, to communicate the same to the public, cannot be said to be infringement of copyright of communicating to the public the underlying works themselves; (E) sound recording, recognised as an independent copyright work, though by an amendment of the Act of the year 1994 i.e. subsequent to the judgment, but the Parliament having adopted an identical language in Section 14(e), to that of the pre-existing Section 14(1)(c) which was interpreted by the Supreme Court, there can be no doubt that the intention of the Parliament was as held in the judgment; (F) while a cinematograph film is an amalgam of three components viz. lyrics, musical works and sound and visual recording, composition of a sound recording is an amalgam of two types of works i.e. lyrics and musical work; just like in the case of a film, the author or owner of the copyright in the film is entitled to exhibit/broadcast the film as such, so also the owner of the copyright in a sound recording is entitled to communicate the sound recording; (G) Section 38 applies only in respect of performers rights; Sections 13 & 14 do not apply to the performer; the absence of a provision similar to Section 38(4) (as it stood prior to the amendment to the Act of the year 2012) in relation to underlying works i.e. literary and musical works, does not show any legislative intent that the owner of the copyright in the underlying works has a superior right over the rights of the owner of the sound recording; (H) the necessity of enacting Section 38(4) was that the performer rights were

recognised for the first time by the amendment of the Act of the year 1994 and which right was and is not a copyright work covered by the Copyright Act – there was no need to make similar provision in respect of musical works or literary works as Section 13 recognised the derivative works i.e. cinematograph film and sound recording as independent copyrightable work and as Section 14 (a)(iv) contained provision that the owner of copyright in a cinematograph film or a sound recording would be its producer while Section 13(4) provided that derivative works i.e. cinematograph film and sound recording shall not affect the separate copyright in the underlying works; (I) the Division Bench of this Court in ***Indian Performing Right Society Ltd. Vs. Aditya Pandey*** supra has held that the Copyright Act had drawn a distinction between communication to the public by way of live performance and communication to the public by way of radio diffusion; and, (J) Sections 2(y), 13(4), 14, 31(1)(b), 38(4) and Section 52(a) referred to by the plaintiff do not in any manner suggest that even with the retention of the copyright in the underlying work after the first sound recording is made, the owner of the underlying work incorporated in the sound recording, can interfere or demand any payment for communicating the sound recording to the public through radio diffusion: (vi) the contention of the plaintiff that the orders of the Supreme Court in ***ICSAC Vs Aditya Pandey*** supra are interim orders and cannot be relied upon is erroneous because: (I) it has been held to be settled law that in case of a sound recording, no copyright in lyrical or musical work independently survives; (II) even though the judgment has been passed at interim stage, a reading of the judgment clarifies that law had been laid down after examining all arguments; (III) enunciation of law even at

interim stage, is legally binding; (IV) the observation in the judgment that it would have no effect on the merits of the case is only qua findings given on merits and not qua principles of law on which the judgment is based; and, (V) the judgment of the Division Bench of this Court in appeal before Supreme Court unequivocally held that during the time when copyright in the sound recording did not independently exist also sound recording was perceived as part of copyright in film, the author of the film was not required to seek authorisation or separate license from music composer or the lyricist for communicating the sound recording to the public; (vii) reliance by the plaintiff on *The Gramophone Company of India Ltd. Vs. Super Cassette Industries Ltd.* MANU/DE/1801/2010 holding that even after making of one sound recording incorporating the underlying work, the owner of underlying work retains the rights of making another sound recording, is misplaced; the same does not deal with the right of the owner of the sound recording to communicate his sound recording to the public without interference from the owner of the underlying works; (viii) the High Court of Bombay, in *Music Broadcast Private Ltd. Vs. Indian Performing Right Society Ltd.* MANU/MH/0923/2011 has held that once the musical and literary works are subsumed in a cinematograph film or a sound recording, they do not have a separate existence and the broadcasting of the sound recording to the public does not infringe the copyright of the author of such literary or musical works; (ix) the contention of the plaintiff that the amendment of the year 2012 to the Copyright Act is only clarificatory in nature and is to be construed and applied retrospectively, is not apposite, because: (a) the plaintiff has made no factual assertions to make such a claim and no amendment of the plaint has been sought after

the said statutory amendment; (b) the amendments of the Act of the year 2012 do not materially amend the provisions of the Copyright Act relevant for deciding the present controversy; (c) Supreme Court also in *ICSAC Vs Aditya Pandey* supra held that the suit with which it was concerned having been filed in the year 2006, the law as it existed then for the period prior to 21st June, 2012 had to be applied; and, (d) the 2012 amendment shows the legislative intent to treat the underlying works as separate and distinct from the derivative works; the said position is not disputed by the defendant also; however the controversy for adjudication is, exploitation of such distinct copyrights, such that communication to the public of the sound recording does not infringe the copyright in communication to the public of the underlying works insofar as part of the sound recording.

14. Per contra, the senior counsel for IPRS contended (i) the plaintiff is the owner/assignee of Public Performance Rights in literary and musical works of its members; (ii) the membership of the plaintiff consists of authors, composers, music companies and film producers; (iii) though the defendant, engaged in the business of broadcasting/communicating to the public the literary and musical works belonging to the repertoire of the plaintiff, by means of sound recording and claims to have license for communication to public of sound recordings, but no copies of the said licenses have been produced till date; (iv) the question for adjudication is, whether the communication to the public of a sound recording also amounts to communication to the public of the literary and musical works embodied in the sound recording; (v) copyright in a literary and/or musical work runs parallel to the copyright in a sound recording and hence the exploitation of such sound recording would necessarily invoke the right in

the underlying literary and/or musical works as well; (vi) all the judgments relied upon by the defendant arise out of application under Order XXXIX Rules 1&2 of the CPC and hence are only on a *prima facie* view; (vii) Supreme Court, in *ICSAC Vs. Aditya Pandey* supra has expressly stated so; (viii) thus none of the said judgments are binding precedents; (ix) reliance placed by the defendant on *Indian Performing Right Society Ltd. Vs. Eastern Indian Motion Pictures Association* supra is misconceived because: (a) the same arose from the facts of the time when the members of the plaintiff were authors and composers and the music companies and the publishers were not the members of the plaintiff; (b) the producers of cinematograph films raised objection to the imposition of tariff by the plaintiff, claiming to be the first owner of the copyright, not only in the cinematograph file but also in the musical works contained in the sound recording; (c) the Eastern Indian Motion Pictures Association approached the Copyright Board, challenging the tariff published by the IPRS; (d) the Copyright Board held that in the absence of proof, composers of lyrics and music retained copyright in their musical works provided that such musical works were printed or written and they could always assign performing rights in public to IPRS; (e) the Copyright Board thus held that IPRS had the right to grant license for public performance of music in the soundtrack of a cinematograph film and collect royalties therefor; (f) in the challenge to the decision of the Copyright Board, the High Court held that when the composer of lyrics or music, for the first time, for valuable consideration, composes for the purposes of cinematograph film, the owner of the film at whose instance the composition is made, becomes the owner of the copyright in the composition and the composer acquired no rights in

respect of the film or its soundtrack and could claim copyright only on the basis of an express agreement reserving the copyright between him and the owner of the cinematograph film; (g) in challenge to the judgment of the High Court before the Supreme Court was in the said facts of the time when plaintiff's membership only consisted of authors and composers; (h) however since the year 1993, the membership of the plaintiff consists, besides of music composers, also of owners and film producers; and, (i) therefore irrespective of the ownership of literary and musical works, the plaintiff also is the owner of the sound recording; (x) subsequently, in *Eastern India Motion Pictures Vs. Performing Rights Society Ltd.* supra, it has been held that copyright in the literary and musical works could be retained by the authors/composers by a contract to the contrary; (xi) the 1977 judgment relied on British Copyright Committee Report of 1952 and was concerned only with the copyright in works commissioned by the owner of the cinematograph film and which is not the case now; (xii) "performance" is defined in Section 2(q) of the Act as including any mode of visual or acoustic presentation including by radio diffusion; (xiii) "radio diffusion" is defined in Section 2(v) as including communication to the public by any means of wireless diffusion, whether in the form of sounds or visual images or both; (xiv) "record" is defined in Section 2(w) as meaning any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced; (xv) copyright in a cinematograph film is distinct from copyright in a sound recording; (xvi) a judgment is an authority for what it decides and not what may even be logically deduced therefrom; reliance is placed on *P.S. Sathappan Vs. Andhra Bank Ltd.* (2004) 11 SCC 672; (xvii) after the 1977

judgment, there is a change in definition of communication to the public; (xviii) vide the 1994 amendment to the Act, performers' right have been introduced in the Act; (xix) the contention of the defendant that license from the plaintiff is required only for live performance, is contrary to the clear mandate of the statute; (xx) sound recording is not an especially carved right but merely replaces the definition of 'record' as the same had become obsolete; (xxi) Sections 18(1), 18(2), 19(2), 30, 30A, 51 and 56, all support duality/co-existence of copyrights; (xxii) while under Section 22 copyright in literary and musical works is for life of the author plus 60 years, copyright protection in cinematograph film and sound recording, vide Sections 26 & 27 of the Act, is for 60 years from the beginning of the calendar next following the year in which the work is first published; (xxiii) thus literary and musical works will always enjoy longer period of protection in comparison to sound recording and cinematograph films; (xxiv) per Section 52 (1)(y), the exhibition of a film after the expiration of the term of the copyright therein does not constitute infringement of literary, dramatic or musical works recorded or reproduced in the film; (xxv) if the theory of merger is correct, the question of infringing the underlying works by performing/communicating to the public a cinematograph film, would not arise; (xxvi) though after expiration of the copyright in the film, exhibition of the film is not infringement of copyright in the underlying works but during the subsistence of the copyright in the film, exhibition of the film would be in infringement of the underlying works; (xxvii) though there is no infringement of underlying works in exhibition of the film but if copies of the film are made or given on hire, then underlying works would be infringed; (xxviii) there is no analogous

provision in Section 52, relating to sound recordings; (xxix) the Copyright (Amendment) Act, 2012 is clarificatory in nature and has retrospective effect, because: (A) objects and reasons thereof state that the amendments clarify the existing right; and, (B) the report of the Standing Committee pertaining to the said amendment also clarifies the amendments to be clarificatory; (xxx) from Section 31D also, it follows that literary or musical works can be communicated to public by broadcast by either recorded music or live performance; (xxxi) the Copyright (Amendment) Act, 2012 clarifies and declares already existing rights and clarifies that royalty is payable for underlying works which vest in the plaintiff by virtue of assignments; and, (xxxii) various international conventions also recognise parallel rights.

15. No separate arguments were addressed in CS(OS) No.1996/2009 and in fact none on behalf of the defendants in CS(OS) No.1996/2009 appeared on any of the dates when the arguments were addressed.

16. As would become evident from the aforesaid lengthy narrative of pleadings, proceedings and arguments, (i) both suits were instituted in the legal regime as existed prior to amendment of the Act of the year 2012; (ii) the interim order in CS(OS) No.1996/2009 is also of prior to the amendment of the Act of the year 2012 and the appeals thereagainst were also dismissed prior thereto; (iii) though by the time the Supreme Court decided the matter on 20th September, 2016, the amendment of the year 2012 had come into force but in the context of the legal position prevailing prior thereto; (iv) however, when the matters were argued before this Court, IPRS justified continuation of CS(OS) No.666/2006 invoking

amendment of the Act of the year 2012, contending that the said amendment was retrospective and bettered the rights of composers of lyrics and musical works, whom it represented – however without carrying out any amendments to the plaint and by also contending that though earlier its membership was confined to authors of lyrics and music compositions but it now had owners of sound recordings also as its members – again without carrying out any amendment to the plaint; (v) though CS(OS) No.666/2006 was filed by IPRS only, contending that by broadcast by the defendant therein of the sound recordings under license from PPL, copyright held by lyricists and music composers in the underlying works in the sound recording and whom IPRS represented, was infringed, without making PPL a party to CS(OS) No.666/2006 but subsequently, in para 15 of the plaint in CS(OS) No.1996/2009 jointly filed by IPRS and PPL, as reproduced hereinabove, it was admitted “Ultimately, the producer of the sound recording (the person who causes the song recordings to be made) will own all rights in the sound recordings as well as the underlying works i.e. lyrics and musical compositions, having engaged/employed the lyric writer and the music composer on a contract of employment or alternatively by virtue of specific contracts. Since in India, film music makes up a major part of the music industry, the music companies also source the rights from the film producers and effectively own all rights in the works mentioned hereinabove” and thereby negating the claim in the plaint in CS(OS) No.666/2006 that the copyright in lyrics and musical composition subsists notwithstanding the said works being embodied in the sound recording; and, (vi) however notwithstanding the aforesaid admission in the plaint in CS(OS) No.1996/2009, in the prayer paragraph it

was claimed that the defendant therein was required to take license, both from IPRS and PPL.

17. What thus falls for adjudication is, (a) whether either of the suits entails proof of any fact on which application of law as enunciated in plethora of judgments cited by the counsels, would depend, or the suits can be disposed of by application of such law; (b) whether the changes to the Copyright Act, by amendment of the year 2012, are retrospective and if so to what effect; (c) whether without any amendments to the plaint, after the amendment of the Act of the year 2012, this Court, while adjudicating the suits, is required to also adjudicate whether the plaintiffs would have a case, if not before coming into force of the said amendment, after coming into force of the amendment; and, (d) whether the amendment of the Act of the year 2012 has made any change qua the controversy in the two suits.

18. I may at the outset state that the argument of the senior counsel for IPRS, that the owners of sound recordings are also members of IPRS and IPRS, in CS(OS) No.666/2006 is seeking protection of the rights of the owners of the sound recordings also, is outside the ambit of the pleadings in both the suits and it is well settled in (See *Ponnayal Vs. Karuppannan* (2019) 11 SCC 800 and *Bachhaj Nahar Vs. Nilima Mandal* (2018) 17 SCC 491) that any claim beyond the pleadings, is not to be considered. The said aspect thus, cannot be considered and the suit cannot be kept pending for trial, as is the want of IPRS, by allowing IPRS to, during the arguments, raise new factual pleas. Suffice it is to state that if IPRS wants to assert the rights of owners of sound recordings and infringement of copyright therein, it will be open to IPRS to initiate fresh proceedings.

19. I may also note that though an application of the defendant in CS(OS) No.666/2006 for stay of further proceedings in the suit under Section 10 of the CPC was pending consideration and the senior counsel for IPRS at the time of commencement of the hearing had indicated that IPRS would be applying to the Supreme Court for transfer of the suits to one Court but after the hearing had advanced to an extent, stated, that there was no need therefor.

20. The cause of action with which CS(OS) No.666/2006 was filed, being infringement of underlying literary and music works in the sound recording, by radio diffusion of the sound recording by the defendant under license from PPL only, the question for consideration is, whether on amalgamation or absorption of literary and musical work in a sound recording, the copyright in the said literary and musical works is infringed by radio diffusion of the sound recording and this Court on the application of the defendant, being IA No.9128/2012 for dismissal of the suit before trial, is only concerned with, whether in law, there is infringement of underlying literary and musical works by radio diffusion of the sound recording. If the answer is to be that there is no infringement of copyright in the underlying literary and musical works by radio diffusion of the sound recording, irrespective of the agreement between the owner of the copyright in literary and musical works and the owner of the sound recording, which can only be if it was possible in law for the owner of copyright in literary and musical works to, while permitting the owner of the sound recording to incorporate/amalgamate the literary and musical works in the sound recording, retain the copyright to restrain communication to the public of the said literary and musical works even as

part of sound recording, the suit will have to go to trial. However if under the statute the same is not possible, the suit would be liable to be dismissed forthwith. CS(OS) No.1996/2009 was instituted with the cause of action of the defendants therein infringing the copyright held by both, PPL and IPRS, by organising events and by permitting events to be organised in their premises, where music was communicated to the public.

21. Both suits having been instituted in the years 2006 and 2009 respectively i.e. prior to the 2012 amendment of the Copyright Act, I will first deal with the provisions of the Copyright Act as existing prior to the 2012 amendment and then proceed to discuss, whether 2012 amendment has made any difference. However before discussing the statutory provisions I may surmise my thoughts.

22. The literary work in a sound recording is the lyric component of the sound recording and the musical work in the sound recording is the music on which the lyrics are spoken or sung. However it is not as if the sound recording is the sum total of lyrics and musical works only. For the lyrics to be heard, as distinct from being read, a voice is required and which is not contributed by either the lyricists or the music composers. For all three to have an appeal to the human ear, for which it is meant, somebody has to guide proper, appealing, commercially viable amalgamation of the three and which somebody is generally the music director. Yet further, somebody else has to make a recording thereof in a form communicable to the public and which somebody is generally the producer of the sound recording. The sound recording thus, is something more i.e. something besides the literary or musical works therein. To the said more/addition,

needless to state, neither the owner of the copyright in the literary work nor the owner of the copyright in the musical works has any claim or right. A sound recording is thus the work of joint authorship within the meaning of Section 2(z) of the Act i.e. a work produced by the collaboration of two or more authors and in which the contribution of one author is not distinct from the contribution of the other author or authors. A sound recording is a collaboration of author of literary work, author of musical works and the author of a sound recording who ultimately directs the merger of the musical work and the sound recording to form one complete whole. The Act recognises a separate copyright in a sound recording besides the copyright in the literary work and musical works, even if the only two components of the sound recording. It is the owner of the sound recording who transforms the literary work which otherwise is a mere collection of words into a sound, capable of phonetic pleasure and who gives the composition of music a sound of various musical instruments.

23. I have wondered, that if a separate copyright exists in a sound recording, how the radio diffusion of the sound recording can be violation of the copyright in the literary work and the copyright in the musical works which by themselves are not being communicated to the public by radio diffusion but are being communicated as part of another whole having an independent statutory existence.

24. The Courts, from time to time, have already devoted sufficient time and spoken sufficiently on the subject and the need to reiterate or to add thereto is not felt.

25. The only aspect to be considered by me in this context is, whether interpretation of law as existed prior to the amendment of the Act of the year 2012, while dealing with applications for interim relief, as in CS(OS) No.1996/2009, by the Single Judge and Division Bench of this Court and by the Supreme Court, is not final.

26. What is of significance is that the enunciation of law in none of the judgments was on any factual premise and in none of the judgments was it held/observed that what was interpreted, would not apply if either the plaintiff or the defendant proved any fact otherwise. Thus, the interpretation of the provisions of the Copyright Act as it existed prior to the amendment of the year 2012 was in abstract, de hors of any facts and notwithstanding the observation in the judgments, of the same being on a prima facie view of the matter, as is customary and is the norm, the interpretation therein would bind the final adjudication also, more so when none of the arguments of the counsel for IPRS (and all of which have been dealt with in the judgments aforesaid and the need to deal therewith again thus does not arise) are found to dent the interpretation of law in the judgments aforesaid. The counsel for IPRS, in spite of repeated queries, was not able to answer, what would be proved in the evidence, which fact would require a different interpretation. All that was said was, that the defendant in CS(OS) No.666/2006 had not produced licenses obtained from PPL either and that it will be proved that the agreements between the members of IPRS with the owners of the sound recording, entitled members of the IPRS to license fee from those to whom the owners of the sound recordings or their assignees issued licenses for broadcasting of the sound recordings. However no merit is found in the said contention. Once

the Copyright Act as existing prior to amendment of the Act of the year 2012 has been interpreted as vesting an independent copyright in the owners of the sound recording including to communicate the sound recording to the public, once the owners of the copyright in the literary and musical works have consented to incorporation of their works in the sound recording, they cannot claim infringement, by communication to the public by the owner of the sound recording or its licensees, of their literary and musical works as part of the sound recording; the provision even if any to the contrary in their agreements with the owner of the sound recordings is thus of no avail. I may notice, that the same is also not the plea of IPRS, either in the plaint in CS(OS) No.666/2006 or in the plaint in CS(OS) No.1996/2009. IPRS, without pleading so, cannot at the stage of arguments be heard to contend so.

27. I may at this stage refer to the order dated 4th December, 2017 reserving orders in these suits, where it is expressly recorded that no argument had been addressed by the counsel for PPL though also a plaintiff in CS(OS) No.1996/2009.

28. The plea of IPRS, that the defendant in CS(OS) No.666/2006 having taken licenses from IPRS for broadcasting the sound recordings in seven cities, being estopped from denying the right of IPRS may also be dealt with at this stage. Merely because the defendant took licenses for broadcasting from IPRS, would not compel the defendant to continue to obtain licenses from IPRS inspite of subsequently realising that there was no need for obtaining licence from IPRS. Once in law there is found to be no need for separate licence from owners of copyright in literary and

musical works forming part of a sound recording, there can be no estoppel against the law. It is also significant that IPRS as the sole plaintiff in CS(OS) No.666/2006, in the plaint expressly admitted that while it represents owners of copyright in literary and musical works, PPL represents owners of sound recordings. Thus, the argument of the IPRS that owners of sound recordings are also its members, is an afterthought.

29. Before proceeding to deal with the 2012 amendment of the Act, it must be highlighted that the owners of copyright in literary and musical works, are not entitled to claim infringement only when their work is communicated to the public as part of sound recordings which they have authorised. Else, they retain the right to restrain others from communicating their work to public, otherwise than by way of sound recording, as held in the judgment on the application for interim relief in CS(OS) No.1996/2009 and upheld by the Division Bench of this Court as well as the Supreme Court. While the claim of IPRS against the defendant in CS(OS) No.666/2006 is only of broadcasting the literary and musical works as part of sound recordings, the claim against the defendants in CS(OS) No.1996/2009 is of broadcasting the literary and musical works not only as part of sound recordings but otherwise also. It is for this reason that vide the interim orders in CS(OS) No.1996/2009, the defendants therein have been directed to obtain license from IPRS if communicating to the public the literary and musical works of the members of the IPRS not as part of sound recording but independently, through an artist. Thus, if there is a live performance of songs incorporating the literary and musical works of members of IPRS, even if such songs also have a sound recording, for such live performance, licence from IPRS will be necessary.

30. That brings me to the 2012 amendment of the Copyright Act. One of such amendments, by incorporation of sub Section (10) in Section 19 was noticed by the Supreme Court. However in the year 2012, there were other amendments also to the Act. The first question is, whether such amendments and effect thereof is to be considered while adjudicating these suits, cause of action wherefor accrued much prior to the year 2012. The Supreme Court, while dealing with the matter in the year 2016, held it to be not necessary though if IPRS even if not entitled to interim relief prior to 2012, after 2012 were to be entitled to interim relief, if the 2012 amendment entitled IPRS thereto. Following the said reasoning, this Court also, without any amendment to the plaint, while finally disposing of these suits, is not required to deal with the 2012 amendment. However if this Court were to be required to deal with the legal position of after 2012, the second question is, whether license from the owners of copyright in literary and musical works, after 2012, is required to be taken in addition to the license from the owner of the copyright in sound recording, while communicating the said sound recording incorporating the said literary and musical works, to the public and whether the 2012 amendment is retrospective.

31. The 2012 amendment does not alter the provisions of the Act, on interpretation whereof in the judgments aforesaid it was held that communication to the public of underlying literary and musical works as part of sound recording, under authorisation/licence from owner of the copyright in the sound recording, does not require authorisation/permission from the owner of the copyright in the underlying literary and musical works of the sound recording. Thus when Section 19(10) provides that

assignment of copyright in any work to make a sound recording which does not form part of any cinematograph film shall not affect the right of the author of the work to claim equal share of royalties and consideration payable for any utilisation of such work in any form, it cannot mean that utilisation of the work as embodied in the sound recording also entitles the owner of the copyright in such work to demand equal share of royalties and consideration payable for the sound recording. To read the same otherwise would make the other provisions, on interpretation whereof it was held that no authorisation is required to be taken from owners of copyright in underlying works of the sound recording, while communicating the sound recording under authorisation of copyright in sound recording, otiose. Any interpretation which makes another provision of the statute redundant or otiose, is to be avoided and the rule of harmonious construction has to be applied. Thus Section 19(10) has to be read as not affecting the right of the author of the underlying works in sound recording, to claim share in royalty payable for utilisation of such works though identically as in the sound recording but in any other form, as had earlier also been held by the Single Judge in the judgment on interim relief in CS(OS) No.1996/2009. To the said extent, the amendment of the year 2012, is clarificatory. Moreover Section 19(10) provides for sound recordings which do not form part of any cinematograph film. The claim of IPRS in the plaint in both the suits is with respect to sound recordings forming part of cinematograph film. IPRS, in the plaint in CS(OS) No.1996/2009, in para 15 has expressly admitted that in India, film music makes up a major part of music industry and the music companies also source the rights from the film producers and effectively own all rights in the underlying works in the said film music

also. I thus conclude that the amendment of the Act of the year 2012, even if were to be applied, does not change the legal position as already enunciated in the judgments aforesaid.

32. Axiomatically it follows, that CS(OS) No.666/2006, as per its own averments and for the reasons spelled out by the Single Judge and by the Division Bench of this Court and by the Supreme Court, while dealing with application for interim relief in CS(OS) No.1996/2009, is liable to be dismissed and is hereby dismissed. In the state of law as aforesaid, no costs. Decree sheet be prepared.

33. As far as CS(OS) No.1996/2009 is concerned, the claim therein was primarily on the premise that owners of copyright in underlying literary and musical works in sound recording, are entitled to assert their copyright even when sound recordings are communicated to the public under authorisation from owner of copyright in the sound recording, and no merit has been found in which claim. CS(OS) No.1996/2009 also, to the said extent is to be dismissed. However since in CS(OS) No.1996/2006 claim was also made with respect to live performances of songs in the sound recordings and merit in which claim has been found, the same has to succeed to that extent and with respect whereto there is already an interim order. The defendants therein have accepted the same and have not even contested the suit. A decree in terms of the said interim order is thus entitled to be passed, in CS(OS) No.1996/2009. That leaves the claim for damages. Need is not felt in the circumstances, to keep CS(OS) No.1996/2009 pending for assessment of damages in as much as the plaint is found to be lacking in that regard. Thus, a decree is passed in favour of

the plaintiffs and against the defendants in CS(OS) No.1996/2009, directing (i) that in case the defendants wish to perform the sound recordings in public, i.e. play them, a license from PPL is essential; (ii) in case the musical works are to be communicated or performed in the public, independently, through an artist, the licence of IPRS is essential; (iii) in case the defendants wish to hold an event involving performances or communication of works of both kinds to the public, the licence or authorisation of both, PPL and IPRS is essential; and, (iv) of permanent injunction restraining the defendants from acting contrary to the aforesaid directions, and leaving the parties to bear their own costs. Decree sheet be prepared.

34. The suits are disposed of.

RAJIV SAHAI ENDLAW, J.

JANUARY 4, 2021

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