

Present: Sri Srikumar Goswami (JO Code: WB00714)

Judge, Commercial Court at Alipore.

Title Suit 07/2021

CNR no. WBSP18-000032-2021

Order no. 01

15.03.2021

In the matter of :

*Suit for perpetual injunction,
mandatory injunction and
damages valued at
Rs.1,00,50,000/-.*

And

In the matter of :

SVF Entertainment Pvt. Ltd.

Vs.

In the matter of :

Venus Worldwide

Entertainment Pvt. Ltd.

Appearance for the Plaintiffs/Petitioners:

Ms. Shyantee Datta ... Ld. Counsel.

Ms. Sayantani Das ... Ld. Counsel.

→ Mrs. Krishnaraj Thaker, Advocate

ORDERED

(By Hybrid Mode)

*Plaintiff files a suit for perpetual injunction, mandatory
injunction and damages valued at Rs.1,00,50,000/-, alongwith
Vokalatnama and Court Fee of Rs.50,000/-, which is paid correct.*

Requisites put in alongwith Process Fees.

Let the application be tentatively registered as Title Suit.

Note in the register.

Issue summons accordingly.

*The Plaintiff is also directed to issue notice alongwith the
plaint, all annexures and all relevant documents at once preferably
through Email or Whatsapp or any other mode as prescribed by the
Hon'ble Supreme Court of India and is further directed to file
affidavit of service witin 48 hours.*

Postal receipts at once.

Plaintiffs also file an application for granting of leave under Section 12A of the Commercial Courts Act, 2015, on the prayers stated therein. Let the same be registered as I.A. no. 02/2021.

I.A. no. 02/2021

- 1. The Ld. Counsel Ms. ~~Shyantee-Datta~~ appearing on behalf of the Plaintiff/Petitioner, moves the present application for granting of leave under Section 12A of the Commercial Courts Act, as amended from time to time on the ground that some urgent relief is sought for in order to protect the interest of the Plaintiff/Petitioner.*
- 2. Heard.*
- 3. It appears that the suit contemplates an urgent relief by filing necessary application under Order XXXIX Rules 1 & 2 read with Section 151 CPC and therefore, the leave as sought for is granted.*
- 4. Accordingly, the instant I.A. is disposed of.*

I.A. No. 01/2021

- 1. At this stage, the Ld. Senior Counsel of the Plaintiff/Petitioner, ^{Mr. Krishnaraj Thaker} ~~Ms. Shyantee-Datta~~ files an application under Order XXXIX Rules 1 & 2 read with Section 151 CPC in terms of prayers of the said application. Let the same be registered as I.A. No. 01/2021.*

- Mr. Thaker
2. The Ld. Counsel of the Petitioner, Ms. Datta at this stage, moves the instant application praying for ad-interim order in terms of the prayers of the instant application.
 3. Office noted that there is no caveat against any party in the instant case.
 4. Issue notice returnable by 25.03.2021.
 5. Affidavit of service within 24 hours.
 6. The Petitioners are also directed to issue notice alongwith all annexures and all relevant documents at once through Email or Whatsapp.

- Mr. Thaker
7. I have heard the Ld. Counsel Ms. Datta as well as perused all relevant documents as annexed with the plaint as well as with the instant application.
 8. Perused and considered the present application.

- Mr.
9. From the submission of the Ld. Counsel for the Petitioner, Ms. Datta, it appears that:
 - a. The Petitioner is engaged in the entertainment and media business of, inter alia, production, acquisition, exploitation and distribution of cinematographic films, TV serials, audio and audio-video songs through various modes and formats and is the largest production house in East India with around 125 cinematographic films to its credit.

- M/s Shree Venkatesh Films, a sole proprietorship firm
- b. The ~~Petitioner~~ firm had produced a Bengali cinematographic films "Dada Thakur" which was released on

14.12.2001 and similarly, another cinematographic film namely "Pratibad" which was released on 13.04.2001.

- c. By an agreement dated 04.01.2019, the ^{said M/s Shree Venkatesh Films} Petitioner assigned the entire copyrights in about 52 films including "Dada Thakur" and "Pratibad" as the sole and absolute owner of all rights in the said films ~~to~~ the petitioner.
- d. ^{M/s Shree Venkatesh Films} Vide agreements dated 10.02.2001 and 27.11.2001, the ^{said} Petitioner granted audio distribution rights to audio songs of the films "Dada Thakur" and "Pratibad" respectively to the Defendant/Respondent on the terms and conditions as stated in the said agreements and the said agreements are also enclosed with the present application. All such agreements had expired by an efflux of time and the Respondent had no subsisting right of any nature whatsoever to deal with the songs of the said films in any manner whatsoever.
- e. However, one employee of the Petitioner informed the Petitioner on 01.12.2020, that he had heard the soundtrack and viewed the audio recordings of the songs of the said films on the Defendant's Youtube Channel and after getting such complaint, the Petitioner Firm accessed various Web Portals and streaming platforms such as Youtube, Amazon Music, Apple Music, Hungama, JioSaavn, spotify etc. and the action on the part of the Defendant/Respondent was found to be illegal and unauthorized as the Respondent unauthorizedly broadcasted the soundtracks of the films "Dada Thakur" and "Pratibad".

f. In none of the above agreements, the period of assignment has been mentioned, but statutorily, the Respondent is only assigned for five years in absence of any agreed period.

g. Since both the above films are extremely well known in the Bengali Film Industry, the said films have acquired enormous goodwill and reputation, even after completion of their Box Office run.

h. The Respondent was publishing and making the songs of the above films available on several electronic media and streaming platforms without any authorization or license from the Petitioner whatsoever and the Respondent does not have any subsisting right of any nature whatsoever in the said films or any part thereof, including but not limited to the songs or the audio or the visual records thereof and the unauthorized activities of the Defendant / Respondent caused serious prejudice to the goodwill and reputation of the Petitioner and also caused infringement of copyright and therefore, has filed the instant suit.

10. Considering the submission as advanced by the Ld. Counsel for the Petitioner, ^{Mr. Thakur} Ms. Datta, it appears to me that the Petitioner is able to raise and prove some triable issues, which need determination. The documents referred by the Petitioner clearly establishes the right of the Petitioner in respect of the two films namely "Dada Thakur" and "Pratibad" and further, the Plaintiff/Petitioner is entitled to get relief so that their goodwill and reputation are protected and therefore, the balance of convenience is also in favour of the Petitioner.

11. Accordingly, the Defendant/Respondent or any of its men, agents, servants, distributors, exhibitors are hereby restrained from publication, broadcast, distribution or use in any manner of the audio and audio-video recordings of the songs and soundtrack of the Bengali cinematographic films namely "Dada Thakur" and "Pratibad", till 25.03.2021.

12. Both sides have the liberty to make necessary application for modification of this order in case of emergency after service of notice upon the other side.

13. Issue notice accordingly to show cause as to why the instant application shall not be allowed alongwith plaint, injunction application and all annexures within 24 hours and the Plaintiff/Petitioner is also directed to file the affidavit of service within 24 hours.

14. To 25.03.2021 at 1.30 p.m. for S/R, appearance, filing affidavit-in-opposition, if any, and also for hearing.

Dictated and corrected by me,

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore
and Paschim Midnapore.

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore
and Paschim Midnapore.